



MANAGED SERVICES STATEMENT OF WORK

This **MANAGED SERVICES STATEMENT OF WORK (“MSSOW”)** is entered into on **5/05/2017 (“SOW Effective Date”)** by **Perris Union High School District**, (“Customer”), and ConvergeOne, Inc., (hereinafter **“ConvergeOne”** or **“Company”**), pursuant to the Master Services Agreement, version ConvergeOne-MSA Rev 4.7 (**“MSA”**), between the parties. This MSSOW incorporates by reference the MSA and constitutes an agreement separate from any other SOWs incorporating by reference the MSA. Unless specifically defined in this MSSOW, capitalized terms herein shall have the meanings set forth in the MSA.

- 1. Services.** Subject to the terms and conditions of the MSA and this MSSOW, ConvergeOne will provide one or more of the following Remote Monitoring & Management Services as shown below.

Remote Enterprise Services for All Service Levels
Proactive 24 x 7 Monitoring Services
Access to Monitoring Tool Web Portal Dashboard
Monitoring and Management Event Logs
Performance Thresholds (Memory, Capacity and Health)
Alert and Event Management
Client Services Management
Quarterly Executive Report

Remote Enterprise Services for Servers	MANAGE +
Active 24 x 7 Monitoring of Physical or Virtual Servers environment (SMNP/WMI/PowerShell Enabled Devices)	X
Access to Monitoring Tool Web Portal Dashboard (up to (10) Customized Dashboards)	X
Proactive Monitoring of Event Logs and Operating System Services	X
Performance Threshold Notification (85% Above for Data Storage Memory, Capacity and Health)	X
Proactive Alert and Event Management	X
Client Success Management	X
Quarterly Executive Report	X
Moves / Adds / Changes (up to (5) per month)	X
Incident Management & Remote remediation	X
Patching Management – Servers OS	X
Enterprise Anti-Virus Patch Management for Servers (Customer Provided Anti-Virus Management Console)	X
3 rd party Vendor Management – Warranty replacement	X
Software License Compliance Management	X
Problem Management - (Measuring (5) Correlated Events in (30) days)	X
Performance, Capacity, Trending & Availability Analysis	X
OS Version Upgrade (Emergency or dot/Minor on Annually Scheduled Basis)	X

Remote Enterprise Services for Network Infrastructure	MANAGE +
Proactive 24 x 7 Monitoring of network devices, resources, LAN/WAN, Circuits, and Wireless devices (SMNP Enabled Devices)	X
Access to Monitoring Tool Web Portal Dashboard (up to (5) customized dashboards)	X
Proactive Monitoring and Management Event Logs	X
Performance Thresholds (Memory, Capacity and Health)	X
Alert and Event Management	X
Client Services Management	X
Quarterly Executive Report	X
Moves / Adds / Changes (up to (5) per month)	X
Incident Management & Remote remediation	X
Network Configuration Backup (CMDB)	X
Security Patches (Either Emergency or Annually Scheduled) IOS based	X
Service Provider Coordination (Telecommunications / WAN) Tracking & Reporting	X
3 rd party Vendor Management – Warranty replacement	X
Problem Management - (Measuring (5) Correlated Events in (30) days)	X
Performance, Capacity, Trending & Availability Analysis	X
OS Version Upgrade (Emergency or dot/Minor on Annually Scheduled Basis)	X

Remote Enterprise Services for Storage	MANAGE +
Proactive 24x7x365 Constant monitoring of storage resources: storage capacity, including virtual machines, databases, backups, applications, configurations, events, and performance	X
Access to Monitoring Tool Web Portal Dashboard (up to 5 customized dashboards)	X
Performance Threshold Notification (85% Above for Data Storage Memory, Capacity and Health)	X
Proactive Monitoring of Event Logs and System Services	X
Proactive Alert and Event Management	X
Client Services Management	X
Quarterly Executive Report	X
Incident Management & Remote remediation	X
Dynamic discovery and monitoring of SAN and corresponding LUN or Volumes	X
Enterprise backup solution management	X
Storage Path Monitoring	X
Moves / Adds / Changes (up to (5) per month)	X
Problem Management - (Measuring (5) Correlated Events in (30) days)	X
Firmware Annual Upgrades (dot Release Only)	X

Remote Enterprise Services for Unified Communications	MANAGE
Active Monitoring and Management of UC Devices (SMNP/WMI/PowerShell Enabled Devices)	X
Access to Monitoring Tool Web Portal Dashboard (up to 5 customized dashboards)	
Proactive Monitoring of Event Logs and Operating System Services	X
Performance Threshold Notification (85% Above for Data Storage Memory, Capacity and Health)	X
Proactive Alert and Event Management	X
Client Services Management	X
Quarterly Executive Report	X
Incident Management & Remote remediation	X
Voice Gateway & Call Manager Backup	X
Security UC Patches (Either Emergency or Annually Scheduled) IOS based	X
Service Provider Coordination (Telecommunications / WAN) Tracking & Reporting	X

Services Not Covered
This service does not include any hardware, software or major upgrades
This service does not include requests for service beyond two hours of labor
This service does not include Projects or Data migration
This service does not include monitoring and managing consumer grade products
This service does not include devices not listed in the entitled device inventory
This service does not include customized reports

2. **Devices and Applications List.** ConvergeOne will provide Services as described and selected in Section 1 above only to the devices and applications listed in Appendix A to this MSSOW (“**Covered Devices**”). Customer shall promptly notify Company of any changes to the Devices and applications, and Appendix A shall be amended in writing upon Company’s approval, subject to Section 3.1.1, Appendix A.

3. **Pricing and Payment.**

Service Item	Service Class	Monthly Fee
Remote Monitoring & Management +	MANAGE + MANAGE - UC	\$6,275.00

NOTE: Reference for CMAS Contract Number 3-15-70-2486E

3.1 **Additional Devices and Applications**

3.1.1 Subject to the parties’ agreement, additional fees will be applied for devices and applications to be added to those already listed in Appendix A.

3.2 **Invoicing and Payment Terms.** Company shall invoice Customer monthly during the SOW Term. Subject to Section 5 of the MSA, the following shall apply:

3.2.1 The first invoice of the monthly fees will be issued upon signing this SOW and will cover the implementation period.

3.2.2 The second invoice will be issued after 30 days, but no later than 45 days from the date of this MSSOW.

3.2.3 Monthly billing for Services shall continue regardless of any delays in the implementation by the Customer.

3.2.4 All invoices are due for payment within 30 days of the invoice date.

3.3 Additional Services

Additional Services, including but not limited to On-Site Services in Section 4, below, will be billed at the following base rates during normal business hours, which shall be Monday – Friday, excluding Company holidays, from 8:00 a.m. to 5:00 p.m. Pacific Time (“**Business Hours**“):

Description	Cost
➤ Tier 1 Desktop Support	\$125/hr
➤ Tier 2 Server/Network Admin	\$175/hr
➤ Tier 3 Server/Network Engineer	\$225/hr

After hours support will be billed at 1.5x rate with a 2-hour minimum. Weekends and holidays are 2 x rates with a 2-hour minimum.

4. On Site Services

For on-site Services or Services outside the original scope of this MSSOW, ConvergeOne will provide T&M support during Business Hours. On-site and project work will be provided with commercially reasonable effort response time and based on resource availability.

4.1 Covered Locations and Sites

Location Name	Address	Point of Contact	Contact Information
District Administrative Center	155 East 4 th Street Perris, CA 92570	Shane Pinnell	951.943.6369 ext. 80256
Perris High School	175 East Nuevo Road, Perris, CA 92570	TBD	951.657.2171

Note 1: On site request for locations not listed here will be covered by T&M plus travel and per diem charges.

4.2 3rd party and service Provider Information

Name	Service Type	Account Number	Contact Info

5. Terms and Conditions.

The term of this MSSOW shall commence on the SOW Effective Date and continue for a period of three (3) years thereafter, and will automatically renew on the anniversary of the Effective Date for subsequent one year terms (“**Term**”) unless terminated earlier in accordance with Section 6 below.

6. Termination.

6.1 Subject to Sections 6.2 and 6.3, either party may terminate this MSSOW, with or without cause, upon written notice to the other party at least ninety (90) days in advance of the effective date of termination.

6.2 Termination without Cause

If Customer terminates this SOW without cause, Customer will pay ConvergeOne, at the time of the termination notice:

1. All outstanding invoices.
2. Fees for the 90 days termination notification period.
3. Early termination fee equal to (15%) of the remaining fees for the remainder of the then current Term of this MSSOW.

If ConvergeOne terminates this SOW without cause, Customer will immediately pay all outstanding invoices and shall pay promptly any further invoices through the effective date of termination.

6.3 Termination with Cause

If Customer terminates this MSSOW for cause, Customer will pay immediately all outstanding invoices and shall pay promptly any further invoices through the effective date of termination. ConvergeOne may terminate this MSSOW or suspend the Services provided for hereunder in accordance with Section 4.5 of the MSA. If ConvergeOne terminates this MSSOW for cause, it may elect to treat the termination as a Termination without Cause by the Customer as set forth in Section 6.2 of this MSSOW.

7. Minimum Standards Required for Services

Customer shall meet the following minimum (non-exclusive) requirements under this MSSOW:

- All Servers with Microsoft Windows Operating Systems must be running Windows 2008 Server or later, and have all of the latest Microsoft Service Packs and Critical Updates installed
- All Desktop PC's and Notebooks/Laptops with Microsoft Windows Operating Systems must be running Windows 7 or later, and have all of the latest Microsoft Service Packs and Critical Updates installed
- All Server and Desktop Software must be Genuine, Licensed and Vendor-Supported
- The environment must have a currently licensed, up-to-date and Vendor-Supported Server-based Antivirus Solution protecting all Servers, Desktops, Notebooks/Laptops, and Email
- The environment must have a currently licensed, Vendor-Supported Server-based Backup Solution that can be monitored, and send notifications on job failures and successes
- The environment must have a currently licensed, Vendor-Supported Hardware Firewall between the Internal Network and the Internet
- All Wireless data traffic in the environment must be securely encrypted
- There must be an outside static IP address assigned to a network device, allowing RDP or VPN access
- Additional reasonable requirements set forth in a written notice by Company to Customer

8. Modifications

ConvergeOne may, from time to time, revise and enhance its managed Services, and may notify Customer with thirty (30) days' written notice or such other time as may be reasonable under the circumstances.

9. Authorization to Represent Customer

From time to time it may be necessary for ConvergeOne to contact Customer's hardware, utility or service providers, e.g., computer hardware manufacturers or internet service providers (collectively, "**Provider(s)**") on behalf of and as a representative of Customer in connection with providing Services. Customer authorizes ConvergeOne or its designated agent to act on Customer's behalf in this capacity. Additionally, Customer authorizes Company to enter into a release from Providers that is reasonably necessary for Company to perform the Services. Customer further agrees to defend, indemnify and hold ConvergeOne harmless from any and all damages, costs and expenses (including legal fees and costs of court or settlement) arising out of or in connection with any claim by Provider related to ConvergeOne's acts in its capacity as a representative of Customer, regardless of the form of action. Customer shall promptly provide to Company upon request all information related to such Providers.

10. Authorization of Technical Support

Customer shall identify at least two (2) Technical Contacts to act on behalf of and as a representative of Customer in connection with the Services. Customer's Technical Contact(s) shall cooperate reasonably with Company in performing the Services, including but not limited to providing to Company Customer's information and data to the extent necessary to perform the Service. Customer assumes sole responsibility and liability for all acts or omissions of its Technical Contact(s). Customer shall defend, indemnify and hold ConvergeOne harmless from any and all damages, costs and expenses (including legal fees and costs of court or settlement) arising out of or in connection with any act or omission of each Technical Contact in its capacity as a representative of Customer, regardless of the form of action.

11. Authorization to Maintain and Access Covered Devices

By purchasing the Services, Customer acknowledges that ConvergeOne will access, connect to and manage covered Devices via remote technologies (except where prohibited by law).

In connection with this MSSOW, ConvergeOne will contact Customer if remote management activities are needed. These activities may include, but are not limited to:

- Updating or changing software drivers
- Installing and applying software patches
- Rebooting devices within maintenance windows
- Deleting temporary files & clearing caches
- Starting or restarting application services
- Staging and executing scripts for automated maintenance routines
- Network performance tuning
- Transfer data associated with routine system tuning and upkeep between systems within a Customer's network
- Identify, collect, and report on detailed data for devices on a network

Notwithstanding the above, Customer shall notify ConvergeOne of any restrictions on or limitations to remote access, connections or management activities related to any Covered Device(s). Restrictions may be limited to pre-defined permission profiles.

12. Third-Party Warranties

Some manufacturers' warranties may become void if ConvergeOne or anyone else other than the manufacturer services their devices or software. It is Customer's responsibility to ensure that ConvergeOne's performance of Services will not affect such warranties or, if it does, that the effect will be acceptable to Customer. ConvergeOne IS NOT RESPONSIBLE FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE ConvergeOne SERVICES MAY HAVE ON THOSE WARRANTIES.

13. Support and Parts/Hardware availability

Additional charges for Services, hardware, equipment, and/or parts will apply to: (i) Devices depending on support practices of the manufacturer of the Covered Device(s) and (ii) any warranty/service contract Customer may have for Covered Device(s). Service parts may not be available for Covered Device(s) or may be subject to additional charges.

14. Out of Scope

Projects and Customer equipment not covered under this MSSOW are considered out of scope. With Customer written authorization, ConvergeOne may provide Services outside the scope of this MSSOW with commercially reasonable response time and as required resources are available. Projects with predefined requirements and deliverables will be billed and performed under a separate SOW or an addendum to this SOW at rates agreed upon by both parties.

15. On-site Support

Customer must provide free, safe and sufficient access to Customer's facilities, including parking, ample working space, electricity, high-speed internet access, and a local telephone line. On-site Support may not be available in all areas and may be limited to commercial locations within supported geographies. Service at a residential address may be limited or not available at all. On-site Support Services in excess of the monthly hours provided as part of the Service may be purchased by Customer as Point of Need (Additional) Services.

16. Service Locations

Services will be delivered to the site(s) set forth in Section 4.1, above. ConvergeOne's obligation to provide these Services is subject to local availability. On-site Support Services are limited to supported U.S. markets.

17. Maintenance

ConvergeOne may schedule normal maintenance outages with 24 hours' notice to designated Customer contacts. This does not pertain to emergency maintenance.

18. Excluded Services

Services that fall outside the scope of ConvergeOne's Managed Services under this MSSOW may be provided at ConvergeOne's discretion at additional cost to the Customer. Examples of specialized services outside the scope of Managed Services may include, but are not limited to: custom software applications, 3rd party software or hardware connected to an otherwise supported system, or an area of expertise under the supported vendors which requires an advanced certification or authorization which ConvergeOne does not currently hold. Services rendered under this MSSOW do not include:

- Parts, equipment or software not covered by vendor/manufacturer warranty or support
- The cost of any parts, equipment, or shipping charges of any kind
- The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind
- The cost of any 3rd Party Vendor or Manufacturer Support or Incident Fees of any kind
- The cost to bring Customer's environment up to minimum standards required for Services
- Failure due to acts of God, building modifications, power failures or other adverse environmental conditions or factors
- Service and repair made necessary by the alteration or modification of equipment other than that authorized by ConvergeOne, including alterations, software installations or modifications of equipment made by Customer's employees or anyone other than ConvergeOne
- Maintenance of Applications software packages, whether acquired from ConvergeOne or any other source unless specified in the terms of this agreement
- Programming (modification of software code) and program (software) maintenance unless as specified in the terms of this agreement

19. Customer Responsibilities

All Covered Devices and other Customer equipment that will require monitoring and management by ConvergeOne hereunder must be covered under current manufacture maintenance or listed as an exception before this MSSOW can be executed. All Customer Covered Devices and equipment not covered under a valid manufacture maintenance contract may be listed as an exception for repair or replacement, or be repaired or replaced with Customer authorization when required. Customer agrees to pay for all authorized repairs or replacement equipment for out of maintenance components.

Customer responsibilities include but are not limited to:

- Customer shall provide ConvergeOne physical and remote access to all areas, network devices, servers, software logins and other access necessary to deliver services to the items within the scope of coverage
- Customer shall provide ConvergeOne access to Customer IT staff that may need to be interviewed, queried or available for ConvergeOne to complete a given task on any scheduled visit
- Customer shall provide ConvergeOne access to all infrastructure documentation and other documents, information or materials request by ConvergeOne which are pertinent to reasonable delivery of the services to the Customer
- Customer shall provide adequate and secure environmental facilities for the Services for any managed services hardware outlined in the Description of Services
- Customer will provide a physical or VM workstation or server that allows ConvergeOne's dedicated Managed Services probe software to function 24x7x365 on customers' internal network infrastructure. If Customer does not have an adequate VM, workstation or server available, ConvergeOne will provide a probe server for a one-time fee
- ConvergeOne will retain ownership of any Managed Services probe hardware/software/licenses

20. Implementation Process

Implementation activities listed below will begin with a processed order for a specific number of Covered Devices and the execution by the parties of this MSSOW:

- The implementation phase will be approximately 30-45 business days depending upon Customer's volume of Covered Devices and a mutually agreed upon date between Customer and ConvergeOne
- ConvergeOne will provide all necessary documentation templates including Letter of Agency (LOA) and Network MACD (Move, Add, Change, Delete) connectivity information form to be completed by the end user or Customer
- Customer will return the required documentation and any other forms requesting information
- ConvergeOne will review all provided information for completeness and begin implementation activities
- When all implementation data is uploaded to ConvergeOne and connectivity has been completed and tested, Customer will be notified that Covered Devices are being managed and monitored

21. ConvergeOne provides the following Service Level Objectives (SLO's) as targets, but not as warranties or covenants, for the Services. SLO's are reported to the Customer on a monthly basis and reviewed quarterly with its Account Manager. ConvergeOne does not assume any financial liability for missed SLO's. The following table shows the targets of response and resolution times for each priority level:

Priorities and Response Times

Description	Priority	Response Time	Escalation Threshold
Service not available - All users and functions unavailable.	P1	Within 15 minutes	2 hours
Significant degradation of service - Large number of users or business critical functions affected.	P2	Within 15 minutes	4 hours
Limited degradation of service - Limited number of users or functions affected, business process can continue.	P3	Within 2 hours	48 hours
Small service degradation - Business process can continue, one user affected.	P4	Within 4 hours	72 hours

The following details and describes the Support Tier levels

Support Tier	Description
Tier 1 Support	All support incidents begin in Tier 1, where the initial trouble ticket is created, and the incident is identified and clearly documented, and basic hardware/software troubleshooting is initiated.
Tier 2 Support	All support incidents that cannot be resolved with Tier 1 Support are escalated to Tier 2, where more complex support on hardware/software incidents can be provided by more experienced Engineers.
Tier 3 Support	Support incidents that cannot be resolved by Tier 2 Support are escalated to Tier 3, where support is provided by the most qualified and experienced Engineers who have the ability to collaborate with vendor Support Engineers to resolve the most complex incidents.

ConvergeOne Contacts List:

Practice Director	Account Manager
Kevin Turner	Zeina Ammar
Practice Director of Managed Services	National Account Manager
KTurner@ConvergeOne.com	ZAmmar@ConvergeOne.com
909.230.7036	909.230.7134
Executive Management	Managed Service, Client Success
Paul Edge	Brittany Terrazas
Vice President of Services Professional/Managed/Cloud	Onboarding Project Coordinator
PEdge@ConvergeOne.com	BTerrazas@ConvergeOne.com
909.230.7074	909.230.7500

Customer Management	Customer Technical
Shane Pinnell	
Assistant Director of Technology	
Shane.pinnell@puhsd.org	
951.943.6369 ext. 80256	

This SOW and its terms is approved and agreed by:

Perris Union High School District

Name _____

Title _____

Signature _____

Date _____

ConvergeOne, Inc.

Name _____

Title _____

Signature _____

Date _____

Appendix A: Entitled Device List

Description	Quantity	Location
Nexus 7000	1	District Administrative Center
ASA 5585x will be replaced with Palo Alto	1	District Administrative Center
Dell M1000e	1	District Administrative Center
M620 and M630 Servers	4	District Administrative Center
Dell Switch N4032F	2	District Administrative Center
EqualLogic PS6210XV	1	District Administrative Center
Compellent SC4020	1	District Administrative Center
Dell DL4000 (AppAssure)	1	District Administrative Center
Dell MD1200 (AppAssure Storage)	1	District Administrative Center
Cisco Server C240 M4S2 (Voice Server)	1	District Administrative Center
Cisco 4500X	6	TBD
Dell M1000e	1	Perris High School
5xM600 servers	5	Perris High School
Dell EqualLogic PS6100e	1	Perris High School
Cisco Call Manager	2	TBD
Cisco Server C240 M4S2 (Voice Server)	1	Perris High School

Common Definitions

Active 24 x 7 Monitoring

Definition – Our monitoring systems and tools allow us to get an expansive view into the health of our customer’s infrastructure. We monitor a specific number of parameters related to the health of our services as well as the different services that reside on them for SMNP/WMI/PowerShell enabled devices and services

Access to Monitoring Tool Web Portal Dashboard

Definition – Provide Customer with a read-only access to a comprehensive web portal that represents the customer’s environment for proper visibility and information.

Services and Event Logs Monitoring and Management

Definition – Monitor OS system services and critical logs for proper event management and alerting

Performance Thresholds

Definition – Set device thresholds for event notifications based on device performance. Setting a baseline provides early indicators that particular attributes are pushing to a critical state, giving the team the opportunity to plan for upgrades, add more capacity or identify problem areas.

Alert and Event Management

Definition - Classify and validate all events and solidify only valid and legitimate events to be processed according to the policy and procedures developed during the on-boarding process.

Client Services Management

Definition - The Client Services Manager acts as a liaison between your organization and ConvergeOne. This person works to facilitate and coordinate efforts and ensure that services are delivered timely and as expected.

Quarterly Executive Report

Definition – ConvergeOne provides a quarterly report on contracted services and entitled devices to review overall performance and health for the prior 3 months of service.

Service Definitions for Servers



Server – Physical & Virtual

Overview

ConvergeOneCARE provides ongoing collaboration with customer resources to assist in troubleshooting and resolving issues within customer IT environment per contracted services and devices, perform corrective and predictive actions to minimize business impact and ensure business continuity, and maintain infrastructure health and stability. Extensive systems management and server monitoring software for server performance monitoring, diagnostics, and tools, regardless of manufacturer and operating system. The service is comprised of ConvergeOne monitoring and patch management of a customer's physical or virtual server systems. As part of the Essential level of service, ConvergeOne will monitor operating system level services as well as key physical elements, which include but are not limited to hard drive, CPU and memory usage. Events captured in this monitoring service will be handled and escalated to customer based on escalation procedures. Also included in this level is patch management. Server devices covered under this service will be added to the monthly patch schedule according to the current ConvergeOne Patch Policy. Services included within this offering apply to a single physical or virtual server instance.

Servers – (MANAGE +)

Active 24 x 7 Monitoring

Definition – Our monitoring systems and tools allow us to get an expansive view into the health of our customer's infrastructure. We monitor a specific number of parameters related to the health of our services as well as the different services that reside on them for SNMP/WMI/PowerShell enabled devices and services

Access to Monitoring Tool Web Portal Dashboard

Definition – Provide Customer with a read-only access to a comprehensive web portal that represents the customer's environment for proper visibility and information.

Services and Event Logs Monitoring and Management

Definition – Monitor OS system services and critical logs for proper event management and alerting

Performance Thresholds

Definition – Set device thresholds for event notifications based on device performance. Setting a baseline provides early indicators that particular attributes are pushing to a critical state, giving the team the opportunity to plan for upgrades, add more capacity or identify problem areas.

Alert and Event Management

Definition - Classify and validate all events and solidify only valid and legitimate events to be processed according to the policy and procedures developed during the on-boarding process.

Client Success Management

Definition - The Client Services Manager acts as a liaison between your organization and ConvergeOne. This person works to facilitate and coordinate efforts and ensure that services are delivered timely and as expected.

Quarterly Executive Report

Definition – ConvergeOne provides a quarterly report on contracted services and entitled devices to review overall performance and health for the prior 3 months of service.

Moves / Adds / Changes Request (up to 5 per month)

Definition – Perform organizational level requests related to moves, adds, or changes within the Customer’s existing environment where each request does not exceed 2 hours in labor.

MOVE: Virtually and remotely move existing Configuration Item (CI) where configuration changes are required excluding any physical work on site and data migration

ADD: Add a new device to the customer’s environment as of Configuration Item (CI) configuration and setup, excluding any physical work on site and data migration. Additional charges may apply for new device monitoring

CHANGE: Modify existing configuration Item (CI) as required excluding any physical work on Site and data migration

Incident Management & Remote remediation

Definition - Deliver a complete incident management and communication plan till resolution throughout the issue life cycle which include issues documentation, troubleshooting, escalation and resolution. Changes to customer’s environment is governed by Change Management and Release Management processes. Provide Root Cause Analysis (RCA) for major incidents and events

Patching Management – Servers OS

Definition – ConvergeOne will patch the OS for servers based on a schedule determined by the Customer and ConvergeOne according to vendor patch cycle

Enterprise Anti-Virus Management (customer provided)

Definition – ConvergeOne will review and update Anti-Virus software and help with virus remediation through vendor support

3rd Party vendor Management – Warranty Replacement

Definition – Leveraging existing service contracts between the customer and associated vendors, ConvergeOne will engage those vendors on the customer’s behalf to expedite replacement, coordinate shipment, restore configurations, escalate for support perform minor revision upgrade

Software License Compliance Management

Definition – Pending access to vendor licensing portal and proper authorization, Software and certificates management for server and cloud level license including OS, VMware, O365, Exchange and Anti-Virus to track, document and ensure compliance with license policy.

Preventive and Predictive Management

Problem Management

Definition – Evaluate repeated incidents and issues within a pre-determined time threshold and frequency which indicate an abnormal trend which could potentially result in a negative impact to business operations. Further investigations are required to identify the chronic issues pertaining to said problem, and possible options for remediation shall be provided for approvals and implementation.

Performance, Capacity & Availability

Definition – ConvergeOne’s will perform a Once a Year health check for existing servers to determining what type of hardware and OS configuration is required to meet application needs. Also identify potential performance degradation and storage limitation and utilization trend. Provide recommendation to improve performance, enhance availability and scale for future growth

Minor OS Version Upgrade

Definition – ConvergeOne will perform a compatibility assessment to ensure inter-operability for upgrades recommended by manufacture for the following, excluding, but not limited to, UCS and data migration:

- Microsoft OS Service Pack
- VMWare DOT release
- Enterprise Storage DOT Release
- Linux Kernel

Service Definitions for Network Infrastructure



Network

Overview

To monitor, assist and proactively manage the IT environment per contracted services and devices, perform troubleshooting, support, and preventive maintenance to vital infrastructure systems, incident escalation, deploy patch management, optimize systems and applications performance, engage selected 3rd party vendors on behalf of customer, and manage ongoing IT cost, roadmap and staffing. ConvergeOneCARE provides 24x7 network monitoring by analyzing device availability and performance with real-time views and topology maps. From the device health, utilization, interface and the telecommunications the flows throughout the network. The service provides the tools and basic services required to manage and monitor a network switch. Advanced version of this service includes monitoring and event management, switch software patching, and remediation of incidents and underlying problems with the device. ConvergeOne will maintain a configuration of the device, and also apply patches (i.e. IOS updates for Cisco devices) at a regular interval. ConvergeOne will not apply every minor patch to the network switch but will apply patches and updated software every 6 months or sooner in the event of a bug or critical security risk.

Service – (MANAGE +)

Active 24 x 7 Monitoring

Definition – Our monitoring systems and tools allow us to get an expansive view into the health of our customer’s infrastructure. We monitor a specific number of parameters related to the health of our services as well as the different services that reside on them for SMNP/WMI/PowerShell enabled devices and services

Access to Monitoring Tool Web Portal Dashboard

Definition – Provide Customer with a read-only access to a comprehensive web portal that represents the customer’s environment for proper visibility and information.

Services and Event Logs Monitoring and Management

Definition – Monitor OS system services and critical logs for proper event management and alerting

Performance Thresholds

Definition – Set device thresholds for event notifications based on device performance. Setting a baseline provides early indicators that particular attributes are pushing to a critical state, giving the team the opportunity to plan for upgrades, add more capacity or identify problem areas.

Alert and Event Management

Definition - Classify and validate all events and solidify only valid and legitimate events to be processed according to the policy and procedures developed during the on-boarding process.

Client Success Management

Definition - The Client Services Manager acts as a liaison between your organization and ConvergeOne. This person works to facilitate and coordinate efforts and ensure that services are delivered timely and as expected.

Quarterly Executive Report

Definition – ConvergeOne provides a quarterly report on contracted services and entitled devices to review overall performance and health for the prior 3 months of service.

Moves / Adds / Changes Request (up to 5 per month)

Definition – Perform organizational level requests related to moves, adds, or changes within the Customer’s existing environment where each request does not exceed 2 hours in labor.

MOVE: Virtually and remotely move existing Configuration Item (CI) where configuration changes are required excluding any physical work on site and data migration

ADD: Add a new device to the customer’s environment as of Configuration Item (CI) configuration and setup, excluding any physical work on site and data migration. Additional charges may apply for new device monitoring

CHANGE: Modify existing configuration Item (CI) as required excluding any physical work on Site and data migration

Incident Management & Remote remediation

Definition - Deliver a complete incident management and communication plan till resolution throughout the issue life cycle which include issues documentation, troubleshooting, escalation and resolution. Changes to customer’s environment is governed by Change Management and Release Management processes. Provide Root Cause Analysis (RCA) for major incidents and events

Network Configuration Backup (CMDB)

Definition – ConvergeOne will back-up configuration for entitled network devices.

Security Patches and Configurations

Definition - Apply recommended vendor patches or configuration changes to entitled devices (as relating to a new bug or known security defect (for example, new SSL vulnerabilities)) to mitigate security risk as recommended by the manufacturer.

Service Provider Coordination (Telecommunication/WAN) Tracking & Reporting

Definition – We'll work with major telco carriers to plan, execute, troubleshoot and escalate major telco issues to restore services and assist with CPE information and configuration changes.

Manage +: Plan and coordinate new circuit installation and setup

3rd Party vendor Management – Warranty Replacement

Definition – Leveraging existing service contracts between the customer and associated vendors, ConvergeOne will engage those vendors on the customer’s behalf to expedite replacement, coordinate shipment, restore configurations, escalate for support perform minor revision upgrade

Preventive and Predictive Management

Problem Management

Definition – Evaluate repeated incidents and issues within a pre-determined time threshold and frequency which indicate an abnormal trend which could potentially result in a negative impact to business operations. Further investigations are required to identify the chronic issues pertaining to said problem, and possible options for remediation shall be provided for approvals and implementation.

Performance, Capacity & Availability

Definition – ConvergeOne’s will perform a Once a Year health check for existing servers to determining what type of hardware and OS configuration is required to meet application needs. Also identify potential performance degradation and storage limitation and utilization trend. Provide recommendation to improve performance, enhance availability and scale for future growth

Minor Firmware Upgrades

Definition - When applicable, apply the latest and recommended firmware to resolve for a bugs and known issues that impact device performance and security. This will be performed on an as-needed basis to resolve caveats or bugs that are actively impacting operations.

Major Firmware Upgrades

Definition – On a yearly basis (for major feature additions, bugfix, or security purposes) major code upgrades shall be applied after assessment and validation of need. Any configuration that is required to support the new feature(s), bugfix, or security-related fixes would be performed so long as said configuration does not exceed two hours of labor.

Service Definitions for Storage



Managed Storage

Overview

ConvergeOneCARE provides In addition to “Watch”, we offer an ongoing collaboration with customers resources to assist in troubleshoot and resolving issues within customer IT environment per contracted services and devices, perform corrective and predictive actions to minimize business impact and ensure business continuity, and maintain infrastructure health and stability. ConvergeOneCARE platform delivers a true picture of all the components – virtual machines, databases, applications, and more – that rely on storage resources for service delivery. The service is comprised of the management, provisioning and maintenance of customer owned, direct attached, fiber channel, iSCSI and network attached storage according to the storage management service that ConvergeOne provides. The ConvergeOne managed dedicated storage offering consists of the services according to all of the ITIL processes (listed below). ConvergeOne gathers performance requirements from the customer to provide specific service levels under this offering, and manages the storage array to meet these requirements. Services included within this offering apply to a single storage array. Also included in this service is the management of the storage fabric and host connectivity as outlined in other segments of the Service Catalog. Not included in this service are data integrity services, such as data mirroring or backup, some of which are offered through other offerings in our Service catalog, as well as our Project Services offering. Within the Managed Storage service the Customer manages their own data management and integrity.

Service – (MANAGE +)

Active 24 x 7 Monitoring

Definition – Our monitoring systems and tools allow us to get an expansive view into the health of our customer’s infrastructure. We monitor a specific number of parameters related to the health of our services as well as the different services that reside on them for SMNP/WMI/PowerShell enabled devices and services

Access to Monitoring Tool Web Portal Dashboard

Definition – Provide Customer with a read-only access to a comprehensive web portal that represents the customer’s environment for proper visibility and information.

Services and Event Logs Monitoring and Management

Definition – Monitor OS system services and critical logs for proper event management and alerting

Performance Thresholds

Definition – Set storage thresholds for event notifications based on device performance. Setting a baseline provides early indicators that storage, including LUNs and volumes demands are pushing near the available capacity, giving the DC team the opportunity to plan for additional Capacity.

Alert and Event Management

Definition - Classify and validate all events and solidify only valid and legitimate events to be processed according to the policy and procedures developed during the on-boarding process.

Client Success Management

Definition - The Client Services Manager acts as a liaison between your organization and ConvergeOne. This person works to facilitate and coordinate efforts and ensure that services are delivered timely and as expected.

Quarterly Executive Report

Definition – ConvergeOne provides a quarterly report on contracted services and entitled devices to review overall performance and health for the prior 3 months of service.

Incident Management & Remote remediation

Definition - Deliver a complete incident management and communication plan till resolution throughout the issue life cycle which include issues documentation, troubleshooting, escalation and resolution. Changes to customer's environment is governed by Change Management and Release Management processes. Provide Root Cause Analysis (RCA) for major incidents and events

Dynamic discovery and monitoring of SAN and corresponding LUNs

Definition – Auto-discovery of the SAN and corresponding LUN's. Monitor overall performance of the storage and the LUN.

Enterprise backup solution management

Definition – Monitor and manage Enterprise Backup solution such as EMC, Dell, and Cisco including backup space, backup process, and data restoration

Storage Path Monitoring

Definition – Monitor and remediate data transfer latency and reachability between source and destination at system and network level

Moves / Adds / Changes Request (up to 5 per month)

Definition – Perform organizational level requests related to moves, adds, or changes within the Customer's existing environment where each request does not exceed 2 hours in labor.

MOVE: Virtually and remotely move existing Configuration Item (CI) where configuration changes are required excluding any physical work on site and data migration

ADD: Add a new device to the customer's environment as of Configuration Item (CI) configuration and setup, excluding any physical work on site and data migration. Additional charges may apply for new device monitoring

CHANGE: Modify existing configuration Item (CI) as required excluding any physical work on Site and data migration

Problem Management

Definition – Evaluate repeated incidents and issues within a pre-determined time threshold and frequency which indicate an abnormal trend which could potentially result in a negative impact to business operations. Further investigations are required to identify the chronic issues pertaining to said problem, and possible options for remediation shall be provided for approvals and implementation.

Firmware Annual Upgrades

Definition – Depending on a controller redundancy availability to avoid any down time or service interruption

Features of Managed Storage

- Constant monitoring of storage resources
- Intuitive dashboards for viewing key events, KPIs, and storage asset metrics in real time
- Dynamic discovery of SAN and corresponding LUNs

Service Definitions for Unified Communications



Unified Communications

Overview

To monitor, assist and proactively manage the IT environment per contracted services and devices, perform troubleshooting, support, and preventive maintenance to vital infrastructure systems, incident escalation, deploy patch management, optimize systems and applications performance, engage selected 3rd party vendors on behalf of customer, and manage ongoing IT cost, roadmap and staffing. ConvergeOne Managed Unified Communication Services is complete framework to supervise, assist and administer the voice and collaboration infrastructure providing remote and on-site troubleshooting thus enabling a constant visibility of how its actual performance and identifying potential risks before they occur.

Service – (MANAGE)

Active 24 x 7 Monitoring

Definition – Our monitoring systems and tools allow us to get an expansive view into the health of our customer’s infrastructure. We monitor a specific number of parameters related to the health of our services as well as the different services that reside on them for SMNP/WMI/PowerShell enabled devices and services

Access to Monitoring Tool Web Portal Dashboard

Definition – Provide Customer with a read-only access to a comprehensive web portal that represents the customer’s environment for proper visibility and information.

Services and Event Logs Monitoring and Management

Definition – Monitor OS system services and critical logs for proper event management and alerting

Performance Thresholds

Definition – Set device thresholds for event notifications based on device performance. Setting a baseline provides early indicators that particular attributes are pushing to a critical state, giving the team the opportunity to plan for upgrades, add more capacity or identify problem areas.

Alert and Event Management

Definition - Classify and validate all events and solidify only valid and legitimate events to be processed according to the policy and procedures developed during the on-boarding process.

Client Success Management

Definition - The Client Services Manager acts as a liaison between your organization and ConvergeOne. This person works to facilitate and coordinate efforts and ensure that services are delivered timely and as expected.

Quarterly Executive Report

Definition – ConvergeOne provides a quarterly report on contracted services and entitled devices to review overall performance and health for the prior 3 months of service.

Incident Management & Remote remediation

Definition - Deliver a complete incident management and communication plan till resolution throughout the issue life cycle which include issues documentation, troubleshooting, escalation and resolution. Changes to customer’s environment is governed by Change Management and Release Management processes. Provide Root Cause Analysis (RCA) for major incidents and events

Voice Gateway and Call Manager Backup

Definition – Setup and perform a periodic configuration and file backup leveraging customer’s existing SFTP server

Security UC Patches

Definition - Apply recommended vendor patches to mitigate security risk as recommended by the manufacturer after internal risk evaluation.

Service Provider Coordination (Telecommunication/WAN) Tracking & Reporting

Definition – We'll work with major telco carriers to plan, execute, troubleshoot and escalate major telco issues to

Network and Data Center Health Check (Contract # 3-15-70-24866E)

Perris Union High School District
Fixed Cost Statement of Work

NAM - Zeina Ammar
Engineering - Don Dykier

May 12, 2017

[Project Overview](#)

[Discovery, Plan, Prepare, Design and Execution Services](#)

[Discovery Phase](#)

[Plan and Prepare](#)

[Design Phase](#)

[Execution](#)

[Implementation Tasks](#)

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[Change Request Form](#)

Project Overview

Perris UHSD has requested ConvergeOne to assist with the preparation tasks of the network and server devices for an upcoming managed services engagement. This will include a general health check of devices and cover the network routers, switches, servers, and storage components. ConvergeOne is pleased to present the following scope of work.

This Statement of Work (“SOW”) is made and entered into between ConvergeOne (“ConvergeOne”) and Perris Union High School District (“Client”).

This SOW defines the services and deliverables that ConvergeOne shall provide to Client pursuant to the Solution Summary. The terms of this SOW are limited to the scope of this SOW and shall not be applicable to any other SOWs, which may be executed and attached to the Agreement.

The scope and pricing of this SOW are valid for 30 days from the **Effective Date of 05/12/2017**. After 30 days, the information contained in the SOW is no longer valid and will need to be re-assessed which could lead to an increase in cost of services and delay in execution of the project.

Initiation and Execution Services

Initiation Phase

- ConvergeOne will furnish a Site Readiness document with environmental and infrastructure requirements for deploying discovery tools and appliances. (Discovery tools will require 2-3 weeks of performance data)
- Perform a verification of site readiness for service delivery
- Identify business and technical owners, availability and scheduling. Complete list of PUHSD and ConvergeOne that will be involved in the project.
- Identify systems and components to be discovered and assessed. Determine resources and requirements. Determine any other constraints and/or dependencies.

Execution

Work with client to prepare document for eventual handover to managed services team. Collect Location, Type, Name, IP, Administrative credentials, Support Portal Credentials, SNMP strings, etc.

- General Configuration to be Verified for each device:
 - Servers Qty. approx. 50
 - General health check including,
 - Compute (Virtual and physical hosts), (make and model, hostnames, Serial numbers, IP's, firmware level, resource utilization)
 - Application Lists
 - Backup solution details (hardware and software details)
 - SNMP read/write strings
 - Administrative credentials
- Storage Qty. approx. 5
General health check including:
 - Storage (make and model, hostnames, IP's, firmware level, resource utilization)
 - Inspect all storage configurations, physical and logical volumes/partitions, performance, capacity and bandwidth.
 - SNMP read/write strings

- Administrative credentials
- Access to support portals

- Call Manager Qty. approx. 2
 - SNMP read/write strings
 - Administrative credentials

- Network Switches Qty. approx. 230 across 8 campuses
General health check including:
 - Uplinks, Routing, VLANs, protocols and communication
 - SNMP read/write strings
 - Administrative credentials

- Network Routers Qty. 8 across 8 campuses
General health check including:
 - Routing, protocols and communication
 - SNMP read/write strings
 - Administrative credentials

- Firewall Qty. 1
General health check including:
 - ACL's, protocols, high availability
 - SNMP read/write strings
 - Administrative credentials
 - Create policies for outbound access to specified IP addresses for managed services collector
 - TCP port 7705
 - Hosts: 208.185.255.240, 208.185.255.241, 208.165.255.242

Execution Deliverables

ConvergeOne may provide the following execution deliverables as part of the deployment:

- Document the device Location, Type, Name, IP, Administrative credentials, SNMP strings, etc. for managing devices in a password protected document to be handed over to managed services team.
- Data center health check documentation with tiered recommendations based on high, medium and low priority.
- Network health check documentation with tiered recommendations based on high, medium and low priority.
- Physical and Logical Topologies of critical network devices and connections.

Project Closeout

At the conclusion of the project, ConvergeOne and the Client will conduct a project closeout meeting. Below are the items that will be covered in the meeting:

- Review of the project deliverables, major milestones and accomplishments
- Review of quality results
- Review of key lessons learned
- Review of any outstanding issues or Client dissatisfaction
- Discussion of any further steps required by either the Client or ConvergeOne

Project Management

ConvergeOne assumes the following project management responsibilities:

- Designate a ConvergeOne Project Manager to be the Client's primary point of contact for all project activities
- Coordinate with the Client and ConvergeOne project personnel to facilitate the project
- Regularly review ConvergeOne project activities, any checkpoint meetings and overall schedule for the project activities
- Ensure ConvergeOne employees and any ConvergeOne subcontractors conform to the Client's reasonable workplace policies, conditions and safety regulations that are consistent with ConvergeOne' obligations herein. Client will provide a written list of these obligations to ConvergeOne in writing prior to commencement of the Services.

ConvergeOne personnel or subcontractors shall not be required to sign individual agreements with the Client or waive any personal rights

- Confirm the Client's business goals and review items to be completed prior to the installation or deployment date(s)

Project Assumptions

This SOW, and the service pricing herein, was prepared based partly on the following key assumptions ("Assumptions"). Any deviations from these Assumptions that arise during the project shall be managed through the Change Management procedures as defined herein. Client agrees that any changes in the Assumptions may result in an adjustment in the Service Pricing.

Specific Assumptions

- All network devices will be accessible remotely
- Remote access will be allowed for engineering team members
- Storage support portal access will be provided by client
- Firewall configuration changes will be made jointly with PUHSD IT team members
- AD discovery and remediation tasks are not included in this scope of work.

General Assumptions

- Delays caused by the lack of completed site preparation or the Client's failure to meet any responsibilities specified in this SOW may be billed at ConvergeOne T&M rates and may include reasonable travel and other expenses
- This SOW exclusively defines the scope of the services that ConvergeOne shall provide to the Client. This SOW shall not apply to any purchase of product or maintenance, which must be purchased separately, under terms outside the scope of this SOW
- A new SOW will be required for any additional project services following the completion of the activities under this SOW or in support of any other services requested by the Client outside the scope of this SOW
- ConvergeOne may require a lead-time of up to 30 days from acceptance of a Purchase Order from the Client to begin work
- The Client shall designate a person to whom all ConvergeOne communications may be addressed and who has the authority to act on all aspects of this SOW

- The Client retains overall responsibility for any business process impact and any Client-internal change management procedures and communications
- The Client will provide accurate information about the network infrastructure in its current state, identifying any significant problems in the current voice and data environments and ensuring pre-requisite hardware, software, network and connectivity configurations are acquired and available
- The Client is responsible for all licenses and software associated to this project. Any delays due to lack of proper licenses and or software may incur additional costs
- The Client is responsible for all hardware, software, and service maintenance contracts. ConvergeOne may choose to not fulfill items within the scope of this SOW if maintenance contracts are not valid and up to date
- ConvergeOne is not responsible for cable management
- ConvergeOne is not responsible for any Microsoft Active Directory, Windows, and/or Exchange administration
- Post-installation design modifications, systems consulting and design, and engineer design and development that are not defined in this SOW are out of scope and can be provided on a T&M or other paid contractual basis upon Client's request

Personnel

ConvergeOne follows a skills-based implementation philosophy. Based on a project's needs, individuals with specific skill sets may be engaged at various phases of this project. This allows ConvergeOne to provide the Client with a specialized team to accomplish a successful implementation. The ConvergeOne Project Manager is responsible for assigning and scheduling engineers as needed.

Travel Policy

Travel and reasonable living expenses will be billed monthly on an actual cost basis. Items to be considered travel expenses include; Air travel, Transportation, Lodging, Meals. ConvergeOne will make reasonable effort to minimize travel expenses and will work closely with Perris Union High School District to ensure sufficient time is built into the project schedule to maximize efficiency when scheduling site visits.

Project Schedule

Estimated Project Start Date: **TBD**

Estimated Project End Date: **TBD**

Estimated Project Duration: **3-4 weeks**

Project duration and end date are dependent upon ConvergeOne and Client availability, Client readiness, and the actual start date.

ConvergeOne will use commercially reasonable efforts to commence delivery of services defined in this SOW within four (4) weeks from the date of the Client's approved purchase order and signed and submitted SOW.

Project work required beyond the term of the Estimated Project Duration specified in this section may require a ConvergeOne Change Request Form signed by both parties in accordance with the Project Change Management procedures defined herein. Any extension of the project's duration for any reason other than delays caused solely by ConvergeOne may require an increase in SOW pricing.

Change Management

It may become necessary to amend this SOW for reasons including, but not limited to, the following:

- The Client requires changes to the scope of work to be performed and/or specifications of design or services
- Non-availability or change in availability of resources which are beyond either party's control
- Environmental or architectural impediments or omissions not previously identified

In the event either party desires to change this SOW, the following procedures will apply:

- The party requesting the change (either the Client or ConvergeOne) will deliver a Change Request document (Appendix A) to the other party. The Change Request will describe the nature of the change; the reason for the change and the effect the change will have on the scope of work, which may include changes to the deliverables, and the schedule. The parties will evaluate the Change Request and negotiate in good faith the changes to the Services and the additional charges, if any, required to implement the Change Request. If both parties agree to implement the Change Request, the appropriate authorized representatives of the parties will sign the Change Request, indicating the acceptance of the changes by the parties.
- Upon execution of the Change Request, said Change Request will be incorporated into, and made a part of this SOW.
- Whenever there is a conflict between the terms and conditions set forth in a fully executed Change Request and those set forth in the original SOW, or previous fully executed Change Request, the terms and conditions of the most recent fully executed Change Request shall prevail.

Completion

ConvergeOne project personnel will be considered to have completed the services under this SOW when they have completed the Planning, Design and Execution Services as described herein.

In order to refuse acceptance of the services performed, Client must immediately provide written notification to ConvergeOne, describing why the Client is rejecting the services performed. ConvergeOne shall have ten (10) business days after the receipt of such notice to remedy the error, given it is within ConvergeOne' scope and reasonable ability to do so. Such time period to correct the error may be extended by mutual consent of Client and ConvergeOne.

Project Pricing and Payment

Description FFP-SOW	Price (U.S. Dollars)
Project Milestone: Planning and Design, and Implementation, Test and Verification	\$67,287.50
Total Price	\$67,287.50

Services provided will be invoiced fifty percent (50%) of the Price upon execution of the SOW and balance due monthly as Services are performed by ConvergeOne and are due within thirty (30) days from the date of the invoice.

Any change to the Project Pricing and Payment schedule will be managed through the Change Management procedures specified herein.

All stated prices are exclusive of any taxes, fees and duties or other amounts, however designated, and including without limitation value added and withholding taxes which are levied or based upon such charges, or upon this SOW (other than taxes based on the net income of ConvergeOne). The Client shall pay any taxes related to services purchased or licensed pursuant to this SOW or the Client shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice.

Authorization to Proceed

The use of signatures on this SOW is to ensure agreement and understanding on project objectives and assumptions, and the work and deliverables to be performed by ConvergeOne.

By signing below, the duly authorized Client representative signifies their commitment to proceed with the project as described in this SOW.

Perris Union High School District

By

Name (please print)

Title

Date

Purchase Order (PO) Number

NOTE: Any services performed on credit (e.g. T&M, Purchase Order) requires a pre-approved credit application to be on file with ConvergeOne.

NOTE: WITHOUT THE PRIOR WRITTEN CONSENT OF CONVERGEONE, UNDER NO CIRCUMSTANCES IS ANY PART OF THIS DOCUMENT TO BE DISCLOSED TO A THIRD PARTY OR USED FOR ANY PURPOSE OTHER THAN THE EXECUTION OF THIS PROJECT BY CONVERGEONE AND THE CLIENT.

Appendix A

Change Request Form

In reference to the section titled *Change Management* of the herein referenced Statement of Work (“SOW”) between ConvergeOne (“ConvergeOne”) and Perris Union High School District , (“Client”), both parties hereby certify, by the signature of an authorized representative, this Change Management Request will amend and be fully incorporated into the existing SOW.

Project Title and OPPID Number

Change Request Number

Description of Change(s) Requested:

Schedule Impact:

Pricing Impact

Original value of SOW

Added value of Change Request

Total new value of SOW

Purchase Order Issuance (if applicable): Client shall issue a written Purchase Order to ConvergeOne, or shall issue an amendment to its original Purchase Order issued under this SOW, for the total added value amount of **\$<TBD>**

Except as changed herein, all terms and conditions of the parent SOW remain in full force and effect.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have caused this Change Management Request to be fully executed.

Perris Union High School District

ConvergeOne

By

By

Name (please print)

Name (please print)

Title

Title

Date

Date

Purchase Order (PO) Number

Service Order (SO) Number

January 6, 2015

Mr. Stephen Monteros
SIGMAnet, Inc.
4290 East Brickell Street
Ontario, CA 91761

Subject: SIGMAnet, Inc.'s California Multiple Award Schedule (CMAS)

CMAS Contract No.: 3-15-70-2486E
CMAS Contract Term: January 6, 2015 through December 31, 2018
Base GSA Schedule No.: GS-35F-0901N

The State of California is pleased to accept your firm's offer to establish a California Multiple Award Schedule (CMAS) contract, which we have assigned the CMAS contract number and term identified above. This contract number must be shown on each invoice rendered. Additionally, this letter shall not be construed as a commitment to purchase any or all of the State's requirements from your firm. Prior approval is required from the State for all news releases regarding this contract.

It is your firm's responsibility to furnish, upon request, a copy of this CMAS contract to State and local government agencies. A complete CMAS contract includes the following: **1)** this acceptance letter, **2)** CMAS cover pages (which includes the signature page, ordering instructions and special provisions, and any attachments or exhibits as prepared by the CMAS Unit), **3)** CMAS terms and conditions, **4)** Federal GSA terms and conditions, and **5)** product/service listing and prices. The CMAS Unit strongly recommends that government agencies place orders with Contractors who provide ALL of the contract elements described above.

To manage this contract, Contractors are directed to the "CMAS Contract Management and Information Guide", which can be accessed at www.dgs.ca.gov/pd/programs/leveraged/cmas.aspx, then select the "For Suppliers/Contractors" link. This guide covers topics such as CMAS Quarterly Reports, amendments, extensions, renewals, Contractor's change of address or contact person, company name change requests, and marketing your CMAS contract.

It is the Contractor's responsibility to submit on a timely basis detailed CMAS Quarterly Reports (along with any applicable incentive fees).

**THE NEXT QUARTERLY REPORT DUE FOR THIS CONTRACT IS Q1-2015 (JAN-MAR)
DUE BY APR 15, 2015.**

The "Approved CMAS Contractor" logo is only available to CMAS contract holders for display at conferences or on other marketing material. A login and password is required to download the logo. Go to <http://www.dgs.ca.gov/pd/Resources/FormsResourcesLibrary.aspx>, then select "Reference Material"; click on "CMAS Logos" under the heading "Marketing Tools". At the prompt, enter the login: "cmassupplier" and the password: "cmas010194".

Should you have any questions regarding this contract, please contact me at 916/375-4395. Thank you for your continued cooperation and support of the CMAS Program.

Bruce Fong

BRUCE FONG, Program Analyst
California Multiple Award Schedules Unit

State of California
MULTIPLE AWARD SCHEDULE
SIGMAnet, Inc.

CONTRACT NUMBER:	3-15-70-2486E
CMAS CONTRACT TERM:	1/6/2015 through 12/31/2018
CONTRACT CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	September 8, 2014
MAXIMUM ORDER LIMIT:	\$500,000
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE NO.:	GS-35F-0901N
BASE SCHEDULE HOLDER:	immixGroup, Inc.

This contract provides for the purchase and warranty of Information Technology Consulting Services. (See page 2 for the labor categories and restrictions applicable to this contract.)

ANY REFERENCE TO A SPECIFIC MANUFACTURER'S OR PUBLISHER'S WARRANTY OR TERMS AND CONDITIONS AS SHOWN IN THE BASE IMMIXGROUP, INC.'S GSA SCHEDULE ARE NOT APPLICABLE TO THIS CMAS CONTRACT.

The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions, products and/or services and pricing are included herein. All purchase orders issued under this contract incorporate the following Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated September 8, 2014.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.

Bruce Fong Effective Date: **1/6/2015**
BRUCE FONG, Program Analyst, California Multiple Award Schedules Unit

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
SIGMANET, INC.
CMAS NO. 3-15-70-2486E**

CMAS PRODUCT & SERVICE CODES

The CMAS Product & Service Codes listed below are for marketing purposes only. Review this CMAS contract and the base contract identified below for the products and/or services available on this contract.

IT Consult-Database Design
IT Consult-Process Reengineer
IT Consult-Project Mgmt
IT Consult-Project Planning
IT Consult-Quality Assurance
IT Consult-Require Analysis
IT Consult-Risk Mgmt
IT Consult-Software Develop
IT Consult-System Analysis
IT Consult-System Design

AVAILABLE PRODUCTS AND/OR SERVICES

The services available under this contract are for the implementation and support of applications developed under this contract. Services to implement or support commercial off-the-shelf (COTS) products are not available under this contract.

Only the following job titles are available within the scope of this contract:

Business Integration Consultant I, II, III
IT Subject Matter Expert I, II
Project Manager I, II
Senior Project Manager
Systems Analyst I, II, III
Systems Implementation Specialist I, II, III
Technology Specialist I, II, III

You may verify the following current information about the job titles available on this CMAS contract at the GSA eLibrary (using the base GSA contract number identified below):

- Description of the functional requirements
- Minimum education and experience requirements
- Maximum pricing allowed (lower pricing acceptable)

Access the GSA eLibrary at www.gsaelibrary.gsa.gov.

EXCLUDED PRODUCTS AND/OR SERVICES

Infrastructure as a Service (IaaS) and Platform as a Service (PaaS) cloud products and related services are not available under this contract.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA Schedule No. GS-35F-0901N (IMMIXGROUP, INC.) with a GSA term of 09/15/2003 through 09/14/2018 including modification 15. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

Replace "immixGroup, Inc." with "SIGMAnet, Inc." where "immixGroup, Inc." is referenced in the federal GSA multiple award Contract Terms and Conditions.

ISSUE PURCHASE ORDER TO

Agency purchase orders must be mailed to the following address, or faxed to (909) 937-9125:

**SIGMAnet, Inc.
4290 East Brickell Street
Ontario, CA 91761
Attn: Katherine Murray**

Agencies with questions regarding products and/or services may contact the contractor as follows:

**Contact: Katherine Murray
Phone: (909) 230-7025
E-mail: kmurray@sigmanet.com**

CONTRACT PRICES

The maximum prices allowed for the products and/or services available in this CMAS contract are those set forth in the base contract identified on page 2 of this contract.

The ordering agency is encouraged to seek prices lower than those on this CMAS contract. When responding to an agency's Request for Offer (RFO), the contractor can offer lower prices to be competitive.

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Ordering departments executing purchases using ARRA funding must attach the ARRA Supplemental Terms and Conditions document to their individual RFOs and purchase documents. Departments are reminded that these terms and conditions supplement, but do not replace, standard State terms and conditions associated with this CMAS contract.

The ARRA Supplemental Terms and Conditions can be accessed at www.documents.dqs.ca.gov/pd/poliproc/ARRATand%20C081009final.pdf.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
SIGMANET, INC.
CMAS NO. 3-15-70-2486E**

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

Contractor personnel shall have the experience, education and expertise as delineated in the CMAS contract.

DELIVERY

As negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Destination. Seller pays the freight charges.

PURCHASING AUTHORITY DOLLAR THRESHOLD

No CMAS order may be executed by a State agency that exceeds that agency's CMAS purchasing authority threshold or the CMAS maximum order limit, whichever is less.

HOW TO USE CMAS CONTRACTS

Agencies must adhere to the detailed requirements in the State Contracting Manual (SCM) when using CMAS contracts. The requirements for the following bullets are in the SCM, Volume 2, Chapter 6 (for non-IT) and the SCM, Volume 3, Chapter 6 (for IT):

- Develop a Request for Offer, which includes a Scope of Work (SOW), and Bidder Declaration form. For information on the Bidder Declaration requirements, see the SCM, Volume 2, Section 3.5.7 and Volume 3, Section 3.4.7.
- Search for potential CMAS contractors at www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, select "Find a CMAS Contract".
- Solicit offers from a minimum of 3 CMAS contractors including one small business and/or DVBE, if available, who are authorized to sell the products and/or services needed
- If soliciting offers from a certified DVBE, include the Disabled Veteran Business Enterprise Declarations form (Std. 843) in the Request for Offer. This declaration must be completed and returned by the DVBE prime contractor and/or any DVBE subcontractors. (See the SCM Volumes 2 and 3, Chapter 3)
- This is not a bid transaction, so the small business preference, DVBE participation goals, protest language, intents to award, evaluation criteria, advertising, etc., are not applicable.

- If less than 3 offers are received, State agencies must document their file with the reasons why the other suppliers solicited did not respond with an offer.
- Assess the offers received using best value methodology, with cost as one of the criteria.
- Issue a Purchase Order to the selected contractor.
- For CMAS transactions under \$5,000 only one offer is required if the State agency can establish and document that the price is fair and reasonable.

Local governments set their own order limits, and are not bound by the order limits on the cover page of this contract.

SPLITTING ORDERS

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (PCC § 10329).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

There is no minimum dollar value limitation on orders placed under this contract.

ORDERING PROCEDURES

1. Order Form

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing website. The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65:

<http://www.dgs.ca.gov/dgs/ProgramsServices/Forms/FMC/Search.aspx>

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SIGMANET, INC.
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2. Purchase Orders

State and Local Government agencies are required to send a copy of each CMAS purchase order to:

Department of General Services
Procurement Division, Data Management Unit
PO Box 989052, MS #2-203
West Sacramento, CA 95798-9052
(or via Interagency Mail Service #Z-1)

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals.

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

3. Service and Delivery after Contract Expiration

The purchase order must be issued before the CMAS contract end term expires. However, delivery of the products or completion of the services may be after the contract end term expires (unless otherwise specifically stated in the contract), but must be as provided for in the contract and as specified in the purchase order.

4. Multiple Contracts on STD. 65 Order Form

Agencies may include multiple CMAS contracts from the same contractor on a single Std. 65 Contract/Delegation Purchase Order. For guidelines, see the SCM, Volumes 2 & 3, Chapter 6.B4.1.

5. Amendments to Agency's Purchase Orders

Agency purchase orders cannot be amended if the CMAS contract has expired.

The SCM, Volumes 2 & 3, Chapter 6.A5.0 provides the following direction regarding amendments to all types of CMAS purchase orders:

Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the RFO process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then amendments are not allowed unless an NCB is approved for those amendments.

Amendments unique to non-IT services are covered in the SCM, Volume 2, Chapter 6.B2.9 as follows:

If the original contract permitted amendments, but did not specify the changes (e.g., quantity or time), it may be amended. This only applies to the first amendment. The time shall not exceed one year, or add not more than 30% of the original order value and may not exceed \$250,000. If the original contract did not have language permitting amendments, the NCB process must be followed.

Also, see the SCM, Volumes 2 & 3, Chapter 8, Topic 6, for more information on amending purchase orders.

CONTRACTOR OWNERSHIP INFORMATION

SIGMANet, Inc. is a large business enterprise.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, State agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners:
www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx
then select "Find a CMAS Contractor".

In response to our commitment to increase participation by small businesses, the Department of General Services **waives the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.**

See the current fees in the DGS Price Book at:
<http://www.dgs.ca.gov/ofs/Pricebook.aspx>

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

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SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
 - b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.
3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

INTEGRATED SERVICES

Agencies are prohibited from using CMAS and/or Masters for large-scale information technology system integration projects except when specifically approved by the California Department of Technology.

CONSULTING OR PERSONAL SERVICES

To ensure sufficient expertise for all consulting or personal services contracts, prior to issuing an order, the agency is required to review the resumes of all personnel the contractor intends to use to fulfill the order. Each agency is responsible for verifying that contractor personnel meet any education or experience requirements listed in the CMAS contract.

Each order should contain, as a minimum, a description of the task, a statement of the contractor's responsibilities, completion criteria, a list of deliverable items (if any), the estimated starting date, the scheduled completion date, and a fixed cost for each task.

The aggregate of the fixed costs for all tasks constitutes the fixed price ceiling for all tasks described.

1. Progress Payments

For IT service contracts, see the CMAS contract IT Terms and Conditions, Provision #71, CMAS Progress Payments & Risk Assessment.

For Non-IT service contracts, see the CMAS contract Non-IT Services Terms & Conditions, Provision #41, Progress Payments/Performance Bonds.

2. Outsourcing Services

Careful analysis must be given by State agencies to using contracted personnel rather than using civil service positions within State government.

Government Code 19130(c) requires that all persons who provide services to the State under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment.

Issuing a CMAS purchase order for services to an independent contractor is permissible when any of the following conditions set forth in Government Code Section 19130(b) can be met:

- Exempt under Constitution
- New State function and legislative authority
- Service not available; highly specialized or
- Technical
- Incidental to the purchase or lease
- Conflict of interest; need unbiased findings
- Emergency appointment
- Private counsel, with Attorney General (AG) approval and Governor's Office, if applicable
- Contractor will provide deliverables that are not feasible for the State to provide
- Training when civil service is not available
- Urgent, temporary, or occasional services when civil service delay would frustrate the purpose (see Option 2 below)

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When justified as outlined above, personal services must fall under one of the two following options:

Option 1. CMAS orders for personal services such as project management, independent verification and validation, systems analysis and design, and miscellaneous services are not limited to the number of hours or months per year that a consultant can work if the services contracted for are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system (Government Code 19130.b (3)).

Option 2. CMAS personal services orders for programmers, systems analysts, and technical specialists which are of an urgent, temporary, or occasional nature, such that hiring additional civil service positions is not feasible, are limited to nine months (1548 hours) per consultant within a twelve consecutive month period (Government Code 19130.b (10)/California State Constitution, Article VII, Section 5).

This provision is per agency and is inclusive of orders issued on your behalf by another agency. Contractors must wait three (3) months from CMAS order termination/expiration before submitting the candidate's resume for work at the same agency/department.

For both options above, the contractor may conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment (Government Code 19130.b (9)).

For each order, the agency must prepare and retain in their file a written justification that includes specific and detailed factual information that demonstrates that the contract meets one or more of the conditions set forth in Government Code 19130(b).

3. State Personnel Board Requirements

State Personnel Board (SPB) approval is required for a purchase order based on cost savings to the State as justification for not using civil service personnel.

4. Statement of Work

A Statement of Work (SOW) must be prepared as applicable for each Purchase Order. Information regarding the preparation of a SOW is available at www.dqs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, then select "For State Agencies". Agencies are strongly encouraged to use this information when developing SOW requirements that will accompany the Request for Offer and the resulting Purchase Order.

5. Follow-on Contracts are Prohibited

No person, firm, or subsidiary thereof who has been awarded a purchase order for consulting services, or a purchase order that includes a consulting component, may be awarded a purchase order for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the purchase order (Public Contract Code 10365.5).

Therefore, any consultant who develops a program study or provides formal recommendations is precluded from providing any work recommended in the program study or the formal recommendation.

OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

STATE AND LOCAL GOVERNMENTS CAN USE CMAS

State and local government agency use of CMAS contracts is optional. A local government is any city, county, city and county, district, or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges empowered to expend public funds. While the State makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

UPDATES AND/OR CHANGES

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.

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- A CMAS amendment is required for changes to contracts that require California Prison Industry Authority (CALPIA) approval.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The CMAS Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's federal GSA, (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies, and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. Nonetheless, there is no guarantee that every possible requirement that pertains to all the different and unique State processes has been included.

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to all statewide procurement requirements in the SCM, Volumes 2 and 3, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements, per the SCM, Volume 3, Chapter 2, Section 2.B6.2.

- SAM Sections 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 State agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, State and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the Contractor's Std. 204, Payee Data Record, to determine sole proprietorship. For inquiries regarding this subject, contact EDD at (916) 651-6945 for technical questions or (888) 745-3886 for information and forms.
- Annual small business and disabled veteran reports.
- Post evaluation reports. Public Contract Code 10369 requires State agencies to prepare post evaluations on form Std. 4 for all completed non-IT consulting services contracts of more than \$5,000. Copies of negative evaluations for non-IT consulting services only must be sent to the DGS, Office of Legal Services. The Bureau of State Audits requires State agencies annually to certify compliance with these requirements.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective January 1, 2007, in accordance with Public Contract Code 10111, State agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this contract are net 45 days.

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Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each State accounting office must have a copy of the Contractor's Payee Data Record (Std. 204) in order to process payment of invoices. Contractors are required to provide a copy of their Std. 204 upon request from an agency customer. Agencies should forward a copy of the Std. 204 to their accounting office. Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative and Incentive Fees

Orders from State Agencies:

The Department of General Services (DGS) will bill each State agency directly an administrative fee for use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This administrative fee is waived for CMAS purchase orders issued to California certified small businesses.

See the current administrative fees in the DGS Price Book at:
<http://www.dgs.ca.gov/ofs/Pricebook.aspx>.

Orders from Local Government Agencies:

Effective for CMAS orders dated 1/1/2010 or later, CMAS contractors, who are not California certified small businesses, are required to remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11258 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

SIGMANet, Inc. accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all CMAS orders to suppliers not California certified as a small business.

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). Approval by the Department of General Services is not required.

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7. Leasing

Except for Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term (\$1 residual value is acceptable), Federal GSA Lease provisions are NOT available through CMAS because the rates and contract terms and conditions are not acceptable or applicable to the State.

SEAT Management financing options are NOT available through this contract.

As an alternative, agencies may consider financing through the State's financial marketplace GS \$Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS \$Mart™ Internet address is www.dgs.ca.gov/pd/programs/statefinancialmarketplace.aspx. Buyers may contact the GS \$Mart™ Administrator, Patrick Mullen by phone at (916) 375-4617 or via e-mail at patrick.mullen@dgs.ca.gov for further information.

CONTRACTOR QUARTERLY REPORT PROCESS

Contractors are required to submit a detailed CMAS Business Activity Report on a quarterly basis to the CMAS Unit. See Attachment B for a copy of this form and instructions.

This report shall be mailed to:

Department of General Services
Procurement Division – CMAS Unit
Attention: Quarterly Report Processing
PO Box 989052, MS #2-202
West Sacramento, CA 95798-9052

Reports that include checks for incentive fees or that exceed a total of 5 pages must be mailed and shall not be faxed or e-mailed.

All other reports may be faxed or e-mailed to the attention of Quarterly Report Processing as follows:

CMAS Unit Fax Number: (916) 375-4663
CMAS Unit E-Mail: cmas@dgs.ca.gov

For the full instructions on completing and submitting CMAS Quarterly Business Activity Reports, and a soft copy of a blank quarterly report form, go to www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, and then select "For Suppliers/Contractors".

Important things to remember regarding CMAS Quarterly Business Activity Reports (referred to as "reports" below):

- A report is required for each CMAS contract each quarter, even when no new purchase orders are received in the quarter.
- A separate report is required for each CMAS contract.

- Each purchase order must be reported only once in the quarter identified by the purchase order date, regardless of when the services were performed, the products were delivered, the invoice was sent, or the payment was received.
- Purchase orders from State and local government agencies must be separated on the report, as shown in the instructions.
- Contractors must report the sales activity for all resellers listed on their CMAS contract.
- Any report that does not follow the required format or excludes required information will be deemed incomplete and returned to the contractor for corrections.
- Taxes and freight must not be included in the report.
- For CMAS orders dated 1/1/2010 or later, contractors are no longer required to attach copies of purchase orders to their reports. This changed requirement will begin on Q1-2010 reports, which are due 4/15/2010.
- For CMAS orders dated 1/1/2010 or later, contractors who are not California certified small businesses must attach to their quarterly report a check covering the required incentive fee for all CMAS sales to local government agencies (see more information below). This new requirement will start on Q1-2010 reports, which are due 4/15/2010.
- New contracts, contract renewals or extensions, and contract modifications will be approved only if the contractor has submitted all required quarterly reports and incentive fees.

CMAS Quarterly Business Activity Reports are due in the CMAS Unit within two weeks after the end of each quarter as shown below:

Quarter 1	Jan 1 to Mar 31	Due Apr 15
Quarter 2	Apr 1 to Jun 30	Due Jul 15
Quarter 3	Jul 1 to Sep 30	Due Oct 15
Quarter 4	Oct 1 to Dec 31	Due Jan 15

CONTRACTOR QUARTERLY INCENTIVE FEES

CMAS contractors who are not California certified small businesses must remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

CMAS contractors cannot charge local government agencies an additional 1% charge on a separate line item to cover the incentive fee. The contractor must include the 1% incentive fee in the price of the products or services offered, and the line item prices must not exceed the applicable GSA prices.

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A local government agency is any city, county, district, or other local governmental body, including the California State University (CSU) and University of California (UC) systems, K-12 public schools and community colleges empowered to expend public funds.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- California CMAS Terms and Conditions.
- Federal GSA Terms and Conditions (unless otherwise stipulated in the CMAS contract).
- Federal GSA products, services, and price list (unless otherwise stipulated in the CMAS contract).
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at or below contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED

When a subcontractor ultimately provides all of the products or performs all of the services that a contractor has agreed to provide, and the prime contractor only handles the invoicing of expenditures, then the prime contractor's role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a Commercially Useful Function (CUF). It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

CONFLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues. See the attached CMAS Terms and Conditions, Conflict of Interest, for more information.

FEDERAL DEBARMENT

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

CONTRACTOR TRAVEL

The provision for travel expense reimbursement is included in this contract.

It is important the agency and contractor discuss necessary travel requirements prior to issuing the purchase order because the detail and cost (only as allowed for in the contract) must be included in the agency purchase order to be payable.

State agencies may only reimburse travel and per diem expenses according to State travel time and per diem rules for State employees. All travel and per diem expenses must be within the contract parameters, incorporated into the purchase order, and supported by receipts. For the current travel and per diem reimbursement rates, go to the Department of Personnel Administration's website at: <http://www.dpa.ca.gov/personnel-policies/travel/main.htm>

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Notwithstanding the contract provisions, the State will not be responsible for the cost of travel to bring contractor personnel from out-of-state to the job site (unless specifically arranged by agency in advance). If requested by the agency, the State will be responsible for reimbursement of travel expenses from one California agency site to another.

State agencies should refer to SAM Section 0774 "Travel and Related Reimbursement of Persons Not State Employees", when transportation and per diem costs are to be reimbursed by the State.

Local government agencies will pay travel and per diem expenses according to their statutory requirements.

LIQUIDATED DAMAGES FOR LATE DELIVERY

The value of the liquidated damages cannot be a penalty, must be mutually agreed upon by agency and contractor and included in the purchase order to be applicable.

ACCEPTANCE TESTING CRITERIA

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

AMERICANS WITH DISABILITY ACT (ADA)

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and State laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment A for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor, MS 202
West Sacramento, CA 95605-2811

Phone # (916) 375-4363
Fax # (916) 375-4663

ATTACHMENT A

ADA NOTICE

**Procurement Division (State Department of General Services)
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY**

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784

ATTACHMENT B

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Contractor Name: _____ Reporting Calendar Year: _____ Revision
 Contract Number: _____ Reporting Quarter: Q1 (Jan-Mar)
 For Questions Regarding This Report Contact: Q2 (Apr-Jun)
 Name: _____ Q3 (Jul-Sep)
 Phone Number: _____ Q4 (Oct-Dec)
 E-mail: _____

Check Here if No New Orders for This Quarter

STATE AGENCY PURCHASES

State Agency Name	Purchase Order Number	Purchase Order Date	Purchase Order	Agency Billing Code	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total State Agency Dollars Reported for Quarter: \$ _____

LOCAL GOVERNMENT AGENCY PURCHASES

Local Government Agency Name	Purchase Order Number	Purchase Order Date	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total Local Government Agency Dollars for Quarter: \$ _____ 1% Remitted to DGS (does not apply to CA certified SIBs): \$ _____

Total of State and Local Government Agency Dollars Reported for this Quarter: \$ _____

ATTACHMENT B

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Instructions for completing the CMAS Quarterly Business Activity Report

1. Complete the top of the form with the appropriate information for your company.
2. **Agency Name** - Identify the State agency or Local Government agency that issued the order.
3. **Purchase Order Number** - Identify the purchase order number (and amendment number if applicable) on the order form. This is not your invoice number. This is the number the State agency or Local Government agency assigns to the order.
4. **Purchase Order Date** - Identify the date the purchase order was issued, as shown on the order. This is not the date you received, accepted, or invoiced the order.
5. **Agency Billing Code** - Identify the State agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Billing codes are not applicable to Local Government agencies.
6. **Total Dollars Per PO** - Identify the total dollars of the order excluding tax and freight. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount (less tax and freight) regardless of when you invoice order, perform services, deliver product, or receive payment.
7. **Agency Contact** - Identify the ordering agency's contact person on the purchase order.
8. **Agency Address** - Identify the ordering agency's address on the purchase order.
9. **Phone Number** - Identify the phone number for the ordering agency's contact person.
10. **Total State Sales & Total Local Sales** - Separately identify the total State dollars and/or Local Government agency dollars (pre-tax) for all orders placed in quarter.
11. **1% Remitted to DGS** - Identify 1% of the total Local Government agency dollars reported for the quarter. This is the amount to be remitted to DGS by contractors who are not California certified small businesses.
12. **Grand Total** - Identify the total of all State and Local Government agency dollars reported for the quarter.

Notes:

- A report is required for each CMAS contract, each quarter, even when there are no new orders for the quarter.
- Quarterly reports are due two weeks after the end of the quarter.

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

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

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- s) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- t) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- u) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
- v) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
- w) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- x) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- y) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- z) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- aa) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- bb) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- cc) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- dd) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- ll) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **"State"** means the government of the State of California, its employees and authorized representatives,

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- Including without limitation any department, agency, or other unit of the government of the State of California.
- nn) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
2. **CONTRACT FORMATION:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this Contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

9. CMAS -- ASSIGNMENT:

- a) This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
- b) Should the State desire financing of the assets provided hereunder through GS\$Mart, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.

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

11. **CMAS -- ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) These General Provisions – Information Technology (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) Other Special Provisions;
- d) Federal GSA (or other multiple award) terms and conditions;
- e) Statement of work, including any specifications incorporated by reference herein; and
- f) All other attachments incorporated in the Contract by reference.

12. PACKING AND SHIPMENT:

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) show the number of the container and the total number of containers in the shipment; and
 - ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) The Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

14. **DELIVERY:** The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.
15. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.
16. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:
- a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
 - b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
 - c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
 - d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
 - e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
17. **SAMPLES:**
- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products offered and/or specified in the Contract.
 - b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.
18. **CMAS – WARRANTY:** The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base Contract used to establish this CMAS Contract. When there is a conflict between the language, the following warranty language overrides.
- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be—free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
 - b) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.
- c) Unless otherwise specified in the Statement of Work:
- (i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
 - (iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through an such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
- i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
19. **SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.
20. **INSURANCE:** The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificates(s) is insufficient for this purpose. When performing work on state owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.
21. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
 - b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
 - c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING.

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - (i) Stop work as specified in the Notice of Termination.
 - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - (iii) Terminate all subcontracts to the extent they relate to the work terminated.
 - (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
- d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
- e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
 - (i) The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
 - (ii) The total of:
 - A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
 - B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
 - C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23. TERMINATION FOR DEFAULT:

- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
 - i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii) Perform any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under subsection a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:

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- (i) completed Deliverables,
- (ii) partially completed Deliverables, and,
- (iii) subject to provisions of sub-section a) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

- e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

24. FORCE MAJEURE: Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

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

26. LIMITATION OF LIABILITY:

- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule Contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations"; (ii) to liability under the General Provisions entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by

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Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.

- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

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

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

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

- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

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

29. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. TAXES: Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

32. NEWLY MANUFACTURED GOODS: All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.

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

34. CONFIDENTIALITY OF DATA: All financial, statistical, personal, technical and other data and information relating to

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the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

35. NEWS RELEASES: Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

36. DOCUMENTATION

- a) The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the

Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

37. RIGHTS IN WORK PRODUCT:

- a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
- b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
- c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
- d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
- e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are

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competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

38. SOFTWARE LICENSE: Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").

- a) The State may use the Software Products in the conduct of its own business, and any division thereof
- b) The license granted above authorized the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.
- c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
- d) Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.

39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA: The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act. The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

40. RIGHT TO COPY OR MODIFY:

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

41. FUTURE RELEASES: Unless otherwise specifically provided in the Contract, or the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State's option at a price not greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.

42. ENCRYPTION/CPU ID AUTHORIZATION CODES:

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

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mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.

43. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section. The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section will be conditional upon the following:

- i) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- ii) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using

the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- (i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
- (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
- (iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or
- (iv) The combination or utilization of Software furnished hereunder with non-Contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

44. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately

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reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the Department of General Services, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting Department Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies.

- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in the subsection a above. The Department Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention.

The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later. The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

45. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

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- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
46. **EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.
47. **FOLLOW-ON CONTRACTS:**
- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - (ii) will not act as consultant to any person or entity that does receive a Contract described in subsection (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - (ii) development or design of test requirements;
 - (iii) evaluation of test data;
 - (iv) direction of or evaluation of another Contractor;
 - (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
- (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.
48. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
49. **COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
50. **NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate.

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harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

52. ASSIGNMENT OF ANTITRUST ACTIONS: Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting an offer to the State, the supplier offers and agrees that if the offer is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action

assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.

- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.

53. DRUG-FREE WORKPLACE CERTIFICATION: The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
- (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
- (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

54. FOUR-DIGIT DATE COMPLIANCE: Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating

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to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

55. SWEATFREE CODE OF CONDUCT:

- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

56. RECYCLED CONTENT REQUIREMENTS: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of postconsumer material as defined in the Public Contract Code (PCC) Section 12200-12209, in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).

57. CHILD SUPPORT COMPLIANCE ACT: For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

59. ELECTRONIC WASTE RECYCLING ACT OF 2003: The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

60. USE TAX COLLECTION: In accordance with PCC Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

61. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to Contract with the State.

62. DOMESTIC PARTNERS: For Contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that the Contractor is in compliance with Public Contract Code Section 10295.3.

63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a) If for this Contract the Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the

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awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

- b) If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

64. **LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).)

ADDITIONAL CMAS TERMS AND CONDITIONS

65. **CMAS – CONTRACTOR'S LICENSE REQUIREMENTS:** Contracts that include installation or the wording "Furnish and Install" require at the time of Contract award that Contractors possess a valid California State Contractor's License. If sub-Contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for Contract revocation.

66. **CMAS -- PUBLIC WORKS REQUIREMENTS (LABOR/INSTALLATION):**

- a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the Contract price.
- b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1

of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.

- c) The Contractor hereby certifies by signing this Contract that:

- i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein;
- ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of the purchase order.

- d) Laws to be Observed

- i) Labor

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than fifty (\$50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five (\$25) for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in

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violation of California Labor Code Sections 1810-1815, inclusive.

ii) **Worker's Compensation Insurance**

The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.

iii) **Travel and Subsistence Payments**

Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

iv) **Apprentices**

Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each Contractor and/or subcontractor must, prior to commencement of the public works Contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.

v) **Payroll**

The Contractor shall keep an accurate payroll record showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in Section 1776 of the California Labor Code.

67. CMAS -- TERMINATION OF CMAS CONTRACT:

- a) The State may terminate this CMAS Contract at any time upon 30 days prior written notice.
- b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the CMAS Contract, the CMAS Contract shall also be considered terminated on the same date.
- c) Prior to the expiration of this CMAS Contract, this Contract may be terminated for the convenience of both parties by mutual consent.
- d) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

68. CMAS -- CONTRACT AMOUNT: There is no guarantee of minimum purchase of Contractor's products or services by the State.

69. CMAS -- Debarment Certification (Federally Funded Contracts): When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the Buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

70. CMAS -- PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT: All Contracts (including Individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 day notice, and are subject to the following:

- a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.
- b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.
- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.

71. CMAS -- CONFLICT OF INTEREST:

- a) **Current State Employees (Public Contract Code Section 10410):**
 - i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
 - ii) No officer or employee shall Contract on his or her own behalf as an independent Contractor with any State agency to provide Goods or services.
- b) **Former State Employees (Public Contract Code Section 10411):**
 - i) For the two-year period from the date he or she left State employment, no former State officer or

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employee may enter into a Contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency.

- ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a Contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed Contract within the twelve-month period prior to his or her leaving State service.

72. CMAS -- SUBCONTRACTING REQUIREMENTS:

Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract (order), and which is expected to receive more than ten (10) percent of value of the Contract/purchase order, must also meet all Contractual, administrative, and technical requirements of the Contract (order), as applicable.

73. CMAS -- RENTAL AGREEMENTS:

The State does not agree to:

- Indemnify a Contractor;
- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the State; or
- Agree to obtain insurance to protect the Contractor.

The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.

If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the Contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment (SAM 8736).

- 74. CMAS -- LEASE (Lease \$Mart ™):** If an agency desires to lease through Lease \$Mart ™, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.

- 75. CMAS -- PROGRESS PAYMENTS & RISK ASSESSMENT:** In accordance with PCC 12112 agencies are required to withhold not less than 10 percent of the Contract price until final delivery and acceptance of the Goods or services, for any Contract that provides for progress payments in a

Contract for IT Goods or services to be manufactured or performed by a Contractor especially for the State and not suitable for sale to others in the ordinary course of the Contractor's business.

Interim Risk Assessment guidelines and financial protection measures are detailed in PCC 12112 for agencies to use to determine their applicability to agency projects.

- 76. CMAS -- QUARTERLY REPORTS:** Contractors are required to submit quarterly business activity reports, as specified in this Contract, even when there is no activity. A separate report is required for each Contract, as differentiated by alpha suffix.

- 77. CMAS -- CONTRACTOR EVALUATION:** In accordance with PCC 10367 and 10369, performance of the Contractor under orders issued against this Contract will be evaluated. The ordering agency shall complete a written evaluation, and if the Contractor did not satisfactorily perform the work specified, a copy of the evaluation will be sent to the DGS, Office of Legal Services.

**CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS)
STATE MODEL
CLOUD COMPUTING SERVICES SPECIAL PROVISIONS
(Software as a Service)**

THESE SPECIAL PROVISIONS ARE ONLY TO BE USED FOR SOFTWARE AS A SERVICE (SaaS), AS DEFINED BELOW. THESE SPECIAL PROVISIONS ARE TO BE ATTACHED TO THE GENERAL PROVISIONS – INFORMATION TECHNOLOGY AND ACCOMPANIED BY, AT MINIMUM, A STATEMENT OF WORK (SOW) AND SERVICE LEVEL AGREEMENT (SLA). STATE AGENCIES MUST FIRST:

- A. CLASSIFY THEIR DATA PURSUANT TO THE CALIFORNIA STATE ADMINISTRATIVE MANUAL (SAM) 5305.5;
- B. CONSIDER THE FACTORS TO BE TAKEN INTO ACCOUNT WHEN SELECTING A PARTICULAR TECHNOLOGICAL APPROACH, IN ACCORDANCE WITH SAM 4981.1, 4983 AND 4983.1 AND THEN;
- C. MODIFY THESE SPECIAL PROVISIONS THROUGH THE SOW AND/OR SLA TO MEET THE NEEDS OF EACH ACQUISITION.

1. Definitions

- a) "Cloud Software as a Service (SaaS)" - The capability provided to the consumer is to use applications made available by the provider 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). The consumer 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.
- b) "Cloud Platform as a Service (PaaS)" - The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- c) "Cloud Infrastructure as a Service (IaaS)" - The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- d) "Data" - means any information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- e) "Data Breach" - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- f) "Recovery Point Objective (RPO)" - means the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
- g) "Recovery Time Objective (RTO)" - means the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.

2. Terms

SaaS AVAILABILITY: Unless otherwise stated in the Statement of Work,

- a) The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work.
- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.
- d) Contractor shall provide advance written notice to the State in the manner set forth in the Statement of Work of any major upgrades or changes that will affect the SaaS availability.

3. **DATA AVAILABILITY:** Unless otherwise stated in the Statement of Work,

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work if the State is unable to access the Data as a result of:
 - 1) Acts or omission of Contractor;
 - 2) Acts or omissions of third parties working on behalf of Contractor;

**CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS)
STATE MODEL
CLOUD COMPUTING SERVICES SPECIAL PROVISIONS
(Software as a Service)**

- 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
 - 4) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.
- 4. SaaS and DATA SECURITY:**
- a) In addition to the Compliance with Statutes and Regulations provision set forth in the General Provisions – Information Technology, Contractor shall certify to the State:
 - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
 - 2) Compliance with the following:
 - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
 - ii. Security provisions of the California State Administrative Manual (Chapters 5100 and 5300) and the California Statewide Information Management Manual (Sections 58C, 58D, 66B, 5305A, 5310A and B, 5325A and B, 5330A, B and C, 5340A, B and C, 5360B);
 - iii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Audit results and Contractor's plan to correct any negative findings shall be made available to the State upon request; and
 - iv. Privacy provisions of the Federal Privacy Act of 1974;
 - 3) Compliance with applicable industry standards and guidelines, including but not limited to relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines.
 - b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Contract to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data.
 - c) Contractor shall allow the State reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Contract and the State's Data, at no cost to the State.
 - d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
 - e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by the State.
 - f) Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Security Officer.
- 5) **ENCRYPTION:** Confidential, sensitive or personal information shall be encrypted in accordance with California State Administrative Manual 5350.1 and California Statewide Information Management Manual 5305-A.
- 6) **DATA LOCATION:** Unless otherwise stated in the Statement of Work and approved in advance by the State Chief Information Security Officer, the physical location of Contractor's data center where the Data is stored shall be within the continental United States.
- 7) **RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the State, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

**CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS)
STATE MODEL
CLOUD COMPUTING SERVICES SPECIAL PROVISIONS
(Software as a Service)**

8) TRANSITION PERIOD:

- a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the State in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, SaaS and Data access shall continue to be made available to the State without alteration.
- d) Contractor agrees to compensate the State for damages or losses the State incurs as a result of Contractor's failure to comply with this section in accordance with the Limitation of Liability provision set forth in the General Provisions - Information Technology.
- e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
- f) The State at its option, may purchase additional transition services as agreed upon in the SOW.

9) DATA BREACH: Unless otherwise stated in the Statement of Work,

- a) Upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor's notification shall identify:
 - 1) The nature of the Data Breach;
 - 2) The Data accessed, used or disclosed;
 - 3) The person(s) who accessed, used, disclosed and/or received Data (if known);
 - 4) What Contractor has done or will do to quarantine and mitigate the Data Breach; and
 - 5) What corrective action Contractor has taken or will take to prevent future Data Breaches.
 - b) Contractor will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Contractor until the Data Breach has been effectively resolved to the State's satisfaction.
 - c) Contractor shall quarantine the Data Breach, ensure secure access to Data, and repair SaaS as needed in accordance with the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
 - d) Notwithstanding anything to the contrary in the General Provisions - Information Technology, in performing services under this Contract, and to the extent authorized by the State in the Statement of Work, Contractor may be permitted by the State to use systems, or may be granted access to the State systems, which store, transmit or process State owned, licensed or maintained computerized Data consisting of personal information, as defined by Civil Code Section 1798.29 (g). If the Contractor causes or knowingly experiences a breach of the security of such Data, Contractor shall immediately report any breach of security of such system to the State following discovery or notification of the breach in the security of such Data. The State's Chief Information Security Officer, or designee, shall determine whether notification to the individuals whose Data has been lost or breached is appropriate. If personal information of any resident of California was, or is reasonably believed to have been acquired by an unauthorized person as a result of a security breach of such system and Data that is not due to the fault of the State or any person or entity under the control of the State, Contractor shall bear any and all costs associated with the State's notification obligations and other obligations set forth in Civil Code Section 1798.29 (d) as well as the cost of credit monitoring, subject to the dollar limitation, if any, agreed to by the State and Contractor in the applicable Statement of Work. These costs may include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach of the security of such personal information.
 - e) Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.
- 10) DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work,
- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:
 - 1) The scale and quantity of the Data loss;
 - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
 - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
 - 4) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Contract.

**CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS)
STATE MODEL
CLOUD COMPUTING SERVICES SPECIAL PROVISIONS
(Software as a Service)**

- b) Contractor shall restore continuity of SaaS, restore Data in accordance with the RPO and RTO as set forth in the SLA, restore accessibility of Data, and repair SaaS as needed to meet the performance requirements stated in the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
 - c) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.
- 11) **EXAMINATION AND AUDIT:** In addition to the Examination and Audit provision set forth in the General Provisions - Information Technology, unless otherwise stated in the Statement of Work:
- a) Upon advance written request, Contractor agrees that the State or its designated representative shall have access to Contractor's SaaS, operational documentation, records and databases, including online inspections, that relate to the SaaS purchased by the State.
 - b) The online inspection shall allow the State, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
 - 1) Operating system/network vulnerability scans,
 - 2) Web application vulnerability scans,
 - 3) Database application vulnerability scans, and
 - 4) Any other scans to be performed by the State or representatives on behalf of the State.
 - c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, State-approved third party perform an information security audit. The audit results shall be shared with the State within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the State with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.
- 12) **DISCOVERY:** Contractor shall promptly notify the State upon receipt of any requests which in any way might reasonably require access to the Data of the State or the State's use of the SaaS. Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the State unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

State of California
MULTIPLE AWARD SCHEDULE
SIGMAnet, Inc.

CONTRACT NUMBER:	3-15-70-2486E
CMAS CONTRACT TERM:	1/6/2015 through 12/31/2018
CONTRACT CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	September 8, 2014
MAXIMUM ORDER LIMIT:	\$500,000
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE NO.:	GS-35F-0901N
BASE SCHEDULE HOLDER:	immixGroup, Inc.

This contract provides for the purchase and warranty of Information Technology Consulting Services. (See page 2 for the labor categories and restrictions applicable to this contract.)

ANY REFERENCE TO A SPECIFIC MANUFACTURER'S OR PUBLISHER'S WARRANTY OR TERMS AND CONDITIONS AS SHOWN IN THE BASE IMMIXGROUP, INC.'S GSA SCHEDULE ARE NOT APPLICABLE TO THIS CMAS CONTRACT.

The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions, products and/or services and pricing are included herein. All purchase orders issued under this contract incorporate the following Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated September 8, 2014.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.

Bruce Fong Effective Date: **1/6/2015**
BRUCE FONG, Program Analyst, California Multiple Award Schedules Unit

January 6, 2015

Mr. Stephen Monteros
SIGMAnet, Inc.
4290 East Brickell Street
Ontario, CA 91761

Subject: SIGMAnet, Inc.'s California Multiple Award Schedule (CMAS)

CMAS Contract No.: 3-15-70-2486E
CMAS Contract Term: January 6, 2015 through December 31, 2018
Base GSA Schedule No.: GS-35F-0901N

The State of California is pleased to accept your firm's offer to establish a California Multiple Award Schedule (CMAS) contract, which we have assigned the CMAS contract number and term identified above. This contract number must be shown on each invoice rendered. Additionally, this letter shall not be construed as a commitment to purchase any or all of the State's requirements from your firm. Prior approval is required from the State for all news releases regarding this contract.

It is your firm's responsibility to furnish, upon request, a copy of this CMAS contract to State and local government agencies. A complete CMAS contract includes the following: **1)** this acceptance letter, **2)** CMAS cover pages (which includes the signature page, ordering instructions and special provisions, and any attachments or exhibits as prepared by the CMAS Unit), **3)** CMAS terms and conditions, **4)** Federal GSA terms and conditions, and **5)** product/service listing and prices. The CMAS Unit strongly recommends that government agencies place orders with Contractors who provide ALL of the contract elements described above.

To manage this contract, Contractors are directed to the "CMAS Contract Management and Information Guide", which can be accessed at www.dgs.ca.gov/pd/programs/leveraged/cmas.aspx, then select the "For Suppliers/Contractors" link. This guide covers topics such as CMAS Quarterly Reports, amendments, extensions, renewals, Contractor's change of address or contact person, company name change requests, and marketing your CMAS contract.

It is the Contractor's responsibility to submit on a timely basis detailed CMAS Quarterly Reports (along with any applicable incentive fees).

THE NEXT QUARTERLY REPORT DUE FOR THIS CONTRACT IS Q1-2015 (JAN-MAR)
DUE BY APR 15, 2015.

The "Approved CMAS Contractor" logo is only available to CMAS contract holders for display at conferences or on other marketing material. A login and password is required to download the logo. Go to <http://www.dgs.ca.gov/pd/Resources/FormsResourcesLibrary.aspx>, then select "Reference Material"; click on "CMAS Logos" under the heading "Marketing Tools". At the prompt, enter the login: "cmassupplier" and the password: "cmas010194".

Should you have any questions regarding this contract, please contact me at 916/375-4395. Thank you for your continued cooperation and support of the CMAS Program.

Bruce Fong

BRUCE FONG, Program Analyst
California Multiple Award Schedules Unit

State of California
MULTIPLE AWARD SCHEDULE
SIGMAnet, Inc.

CONTRACT NUMBER:	3-15-70-2486E
CMAS CONTRACT TERM:	1/6/2015 through 12/31/2018
CONTRACT CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	September 8, 2014
MAXIMUM ORDER LIMIT:	\$500,000
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE NO.:	GS-35F-0901N
BASE SCHEDULE HOLDER:	immixGroup, Inc.

This contract provides for the purchase and warranty of Information Technology Consulting Services. (See page 2 for the labor categories and restrictions applicable to this contract.)

ANY REFERENCE TO A SPECIFIC MANUFACTURER'S OR PUBLISHER'S WARRANTY OR TERMS AND CONDITIONS AS SHOWN IN THE BASE IMMIXGROUP, INC.'S GSA SCHEDULE ARE NOT APPLICABLE TO THIS CMAS CONTRACT.

The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions, products and/or services and pricing are included herein. All purchase orders issued under this contract incorporate the following Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated September 8, 2014.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.

Bruce Fong Effective Date: **1/6/2015**
BRUCE FONG, Program Analyst, California Multiple Award Schedules Unit

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
SIGMANET, INC.
CMAS NO. 3-15-70-2486E**

CMAS PRODUCT & SERVICE CODES

The CMAS Product & Service Codes listed below are for marketing purposes only. Review this CMAS contract and the base contract identified below for the products and/or services available on this contract.

IT Consult-Database Design
IT Consult-Process Reengineer
IT Consult-Project Mgmt
IT Consult-Project Planning
IT Consult-Quality Assurance
IT Consult-Require Analysis
IT Consult-Risk Mgmt
IT Consult-Software Develop
IT Consult-System Analysis
IT Consult-System Design

AVAILABLE PRODUCTS AND/OR SERVICES

The services available under this contract are for the implementation and support of applications developed under this contract. Services to implement or support commercial off-the-shelf (COTS) products are not available under this contract.

Only the following job titles are available within the scope of this contract:

Business Integration Consultant I, II, III
IT Subject Matter Expert I, II
Project Manager I, II
Senior Project Manager
Systems Analyst I, II, III
Systems Implementation Specialist I, II, III
Technology Specialist I, II, III

You may verify the following current information about the job titles available on this CMAS contract at the GSA eLibrary (using the base GSA contract number identified below):

- Description of the functional requirements
- Minimum education and experience requirements
- Maximum pricing allowed (lower pricing acceptable)

Access the GSA eLibrary at www.gsaelibrary.gsa.gov.

EXCLUDED PRODUCTS AND/OR SERVICES

Infrastructure as a Service (IaaS) and Platform as a Service (PaaS) cloud products and related services are not available under this contract.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA Schedule No. GS-35F-0901N (IMMIXGROUP, INC.) with a GSA term of 09/15/2003 through 09/14/2018 including modification 15. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

Replace "immixGroup, Inc." with "SIGMAnet, Inc." where "immixGroup, Inc." is referenced in the federal GSA multiple award Contract Terms and Conditions.

ISSUE PURCHASE ORDER TO

Agency purchase orders must be mailed to the following address, or faxed to (909) 937-9125:

SIGMAnet, Inc.
4290 East Brickell Street
Ontario, CA 91761
Attn: Katherine Murray

Agencies with questions regarding products and/or services may contact the contractor as follows:

Contact: Katherine Murray
Phone: (909) 230-7025
E-mail: kmurray@sigmanet.com

CONTRACT PRICES

The maximum prices allowed for the products and/or services available in this CMAS contract are those set forth in the base contract identified on page 2 of this contract.

The ordering agency is encouraged to seek prices lower than those on this CMAS contract. When responding to an agency's Request for Offer (RFO), the contractor can offer lower prices to be competitive.

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Ordering departments executing purchases using ARRA funding must attach the ARRA Supplemental Terms and Conditions document to their individual RFOs and purchase documents. Departments are reminded that these terms and conditions supplement, but do not replace, standard State terms and conditions associated with this CMAS contract.

The ARRA Supplemental Terms and Conditions can be accessed at www.documents.dqs.ca.gov/pd/poliproc/ARRATand%20C081009final.pdf.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
SIGMANET, INC.
CMAS NO. 3-15-70-2486E**

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

Contractor personnel shall have the experience, education and expertise as delineated in the CMAS contract.

DELIVERY

As negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Destination. Seller pays the freight charges.

PURCHASING AUTHORITY DOLLAR THRESHOLD

No CMAS order may be executed by a State agency that exceeds that agency's CMAS purchasing authority threshold or the CMAS maximum order limit, whichever is less.

HOW TO USE CMAS CONTRACTS

Agencies must adhere to the detailed requirements in the State Contracting Manual (SCM) when using CMAS contracts. The requirements for the following bullets are in the SCM, Volume 2, Chapter 6 (for non-IT) and the SCM, Volume 3, Chapter 6 (for IT):

- Develop a Request for Offer, which includes a Scope of Work (SOW), and Bidder Declaration form. For information on the Bidder Declaration requirements, see the SCM, Volume 2, Section 3.5.7 and Volume 3, Section 3.4.7.
- Search for potential CMAS contractors at www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, select "Find a CMAS Contract".
- Solicit offers from a minimum of 3 CMAS contractors including one small business and/or DVBE, if available, who are authorized to sell the products and/or services needed
- If soliciting offers from a certified DVBE, include the Disabled Veteran Business Enterprise Declarations form (Std. 843) in the Request for Offer. This declaration must be completed and returned by the DVBE prime contractor and/or any DVBE subcontractors. (See the SCM Volumes 2 and 3, Chapter 3)
- This is not a bid transaction, so the small business preference, DVBE participation goals, protest language, intents to award, evaluation criteria, advertising, etc., are not applicable.

- If less than 3 offers are received, State agencies must document their file with the reasons why the other suppliers solicited did not respond with an offer.
- Assess the offers received using best value methodology, with cost as one of the criteria.
- Issue a Purchase Order to the selected contractor.
- For CMAS transactions under \$5,000 only one offer is required if the State agency can establish and document that the price is fair and reasonable.

Local governments set their own order limits, and are not bound by the order limits on the cover page of this contract.

SPLITTING ORDERS

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (PCC § 10329).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

There is no minimum dollar value limitation on orders placed under this contract.

ORDERING PROCEDURES

1. Order Form

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing website. The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65:

<http://www.dgs.ca.gov/dgs/ProgramsServices/Forms/FMC/Search.aspx>

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
SIGMANET, INC.
CMAS NO. 3-15-70-2486E**

2. Purchase Orders

State and Local Government agencies are required to send a copy of each CMAS purchase order to:

Department of General Services
Procurement Division, Data Management Unit
PO Box 989052, MS #2-203
West Sacramento, CA 95798-9052
(or via Interagency Mail Service #Z-1)

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals.

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

3. Service and Delivery after Contract Expiration

The purchase order must be issued before the CMAS contract end term expires. However, delivery of the products or completion of the services may be after the contract end term expires (unless otherwise specifically stated in the contract), but must be as provided for in the contract and as specified in the purchase order.

4. Multiple Contracts on STD. 65 Order Form

Agencies may include multiple CMAS contracts from the same contractor on a single Std. 65 Contract/Delegation Purchase Order. For guidelines, see the SCM, Volumes 2 & 3, Chapter 6.B4.1.

5. Amendments to Agency's Purchase Orders

Agency purchase orders cannot be amended if the CMAS contract has expired.

The SCM, Volumes 2 & 3, Chapter 6.A5.0 provides the following direction regarding amendments to all types of CMAS purchase orders:

Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the RFO process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then amendments are not allowed unless an NCB is approved for those amendments.

Amendments unique to non-IT services are covered in the SCM, Volume 2, Chapter 6.B2.9 as follows:

If the original contract permitted amendments, but did not specify the changes (e.g., quantity or time), it may be amended. This only applies to the first amendment. The time shall not exceed one year, or add not more than 30% of the original order value and may not exceed \$250,000. If the original contract did not have language permitting amendments, the NCB process must be followed.

Also, see the SCM, Volumes 2 & 3, Chapter 8, Topic 6, for more information on amending purchase orders.

CONTRACTOR OWNERSHIP INFORMATION

SIGMANet, Inc. is a large business enterprise.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, State agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners:
www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx
then select "Find a CMAS Contractor".

In response to our commitment to increase participation by small businesses, the Department of General Services **waives the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.**

See the current fees in the DGS Price Book at:
<http://www.dgs.ca.gov/ofs/Pricebook.aspx>

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
SIGMANET, INC.
CMAS NO. 3-15-70-2486E**

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
 - b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.
3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

INTEGRATED SERVICES

Agencies are prohibited from using CMAS and/or Masters for large-scale information technology system integration projects except when specifically approved by the California Department of Technology.

CONSULTING OR PERSONAL SERVICES

To ensure sufficient expertise for all consulting or personal services contracts, prior to issuing an order, the agency is required to review the resumes of all personnel the contractor intends to use to fulfill the order. Each agency is responsible for verifying that contractor personnel meet any education or experience requirements listed in the CMAS contract.

Each order should contain, as a minimum, a description of the task, a statement of the contractor's responsibilities, completion criteria, a list of deliverable items (if any), the estimated starting date, the scheduled completion date, and a fixed cost for each task.

The aggregate of the fixed costs for all tasks constitutes the fixed price ceiling for all tasks described.

1. Progress Payments

For IT service contracts, see the CMAS contract IT Terms and Conditions, Provision #71, CMAS Progress Payments & Risk Assessment.

For Non-IT service contracts, see the CMAS contract Non-IT Services Terms & Conditions, Provision #41, Progress Payments/Performance Bonds.

2. Outsourcing Services

Careful analysis must be given by State agencies to using contracted personnel rather than using civil service positions within State government.

Government Code 19130(c) requires that all persons who provide services to the State under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment.

Issuing a CMAS purchase order for services to an independent contractor is permissible when any of the following conditions set forth in Government Code Section 19130(b) can be met:

- Exempt under Constitution
- New State function and legislative authority
- Service not available; highly specialized or
- Technical
- Incidental to the purchase or lease
- Conflict of interest; need unbiased findings
- Emergency appointment
- Private counsel, with Attorney General (AG) approval and Governor's Office, if applicable
- Contractor will provide deliverables that are not feasible for the State to provide
- Training when civil service is not available
- Urgent, temporary, or occasional services when civil service delay would frustrate the purpose (see Option 2 below)

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
SIGMANET, INC.
CMAS NO. 3-15-70-2486E**

When justified as outlined above, personal services must fall under one of the two following options:

Option 1. CMAS orders for personal services such as project management, independent verification and validation, systems analysis and design, and miscellaneous services are not limited to the number of hours or months per year that a consultant can work if the services contracted for are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system (Government Code 19130.b (3)).

Option 2. CMAS personal services orders for programmers, systems analysts, and technical specialists which are of an urgent, temporary, or occasional nature, such that hiring additional civil service positions is not feasible, are limited to nine months (1548 hours) per consultant within a twelve consecutive month period (Government Code 19130.b (10)/California State Constitution, Article VII, Section 5).

This provision is per agency and is inclusive of orders issued on your behalf by another agency. Contractors must wait three (3) months from CMAS order termination/expiration before submitting the candidate's resume for work at the same agency/department.

For both options above, the contractor may conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment (Government Code 19130.b (9)).

For each order, the agency must prepare and retain in their file a written justification that includes specific and detailed factual information that demonstrates that the contract meets one or more of the conditions set forth in Government Code 19130(b).

3. State Personnel Board Requirements

State Personnel Board (SPB) approval is required for a purchase order based on cost savings to the State as justification for not using civil service personnel.

4. Statement of Work

A Statement of Work (SOW) must be prepared as applicable for each Purchase Order. Information regarding the preparation of a SOW is available at www.dqs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, then select "For State Agencies". Agencies are strongly encouraged to use this information when developing SOW requirements that will accompany the Request for Offer and the resulting Purchase Order.

5. Follow-on Contracts are Prohibited

No person, firm, or subsidiary thereof who has been awarded a purchase order for consulting services, or a purchase order that includes a consulting component, may be awarded a purchase order for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the purchase order (Public Contract Code 10365.5).

Therefore, any consultant who develops a program study or provides formal recommendations is precluded from providing any work recommended in the program study or the formal recommendation.

OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

STATE AND LOCAL GOVERNMENTS CAN USE CMAS

State and local government agency use of CMAS contracts is optional. A local government is any city, county, city and county, district, or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges empowered to expend public funds. While the State makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

UPDATES AND/OR CHANGES

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.

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- A CMAS amendment is required for changes to contracts that require California Prison Industry Authority (CALPIA) approval.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The CMAS Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's federal GSA, (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies, and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. Nonetheless, there is no guarantee that every possible requirement that pertains to all the different and unique State processes has been included.

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to all statewide procurement requirements in the SCM, Volumes 2 and 3, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements, per the SCM, Volume 3, Chapter 2, Section 2.B6.2.

- SAM Sections 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 State agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, State and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the Contractor's Std. 204, Payee Data Record, to determine sole proprietorship. For inquiries regarding this subject, contact EDD at (916) 651-6945 for technical questions or (888) 745-3886 for information and forms.
- Annual small business and disabled veteran reports.
- Post evaluation reports. Public Contract Code 10369 requires State agencies to prepare post evaluations on form Std. 4 for all completed non-IT consulting services contracts of more than \$5,000. Copies of negative evaluations for non-IT consulting services only must be sent to the DGS, Office of Legal Services. The Bureau of State Audits requires State agencies annually to certify compliance with these requirements.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective January 1, 2007, in accordance with Public Contract Code 10111, State agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this contract are net 45 days.

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Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each State accounting office must have a copy of the Contractor's Payee Data Record (Std. 204) in order to process payment of invoices. Contractors are required to provide a copy of their Std. 204 upon request from an agency customer. Agencies should forward a copy of the Std. 204 to their accounting office. Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative and Incentive Fees

Orders from State Agencies:

The Department of General Services (DGS) will bill each State agency directly an administrative fee for use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This administrative fee is waived for CMAS purchase orders issued to California certified small businesses.

See the current administrative fees in the DGS Price Book at:
<http://www.dgs.ca.gov/ofs/Pricebook.aspx>.

Orders from Local Government Agencies:

Effective for CMAS orders dated 1/1/2010 or later, CMAS contractors, who are not California certified small businesses, are required to remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11258 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

SIGMANet, Inc. accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all CMAS orders to suppliers not California certified as a small business.

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). Approval by the Department of General Services is not required.

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7. Leasing

Except for Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term (\$1 residual value is acceptable), Federal GSA Lease provisions are NOT available through CMAS because the rates and contract terms and conditions are not acceptable or applicable to the State.

SEAT Management financing options are NOT available through this contract.

As an alternative, agencies may consider financing through the State's financial marketplace GS \$Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS \$Mart™ Internet address is www.dgs.ca.gov/pd/programs/statefinancialmarketplace.aspx. Buyers may contact the GS \$Mart™ Administrator, Patrick Mullen by phone at (916) 375-4617 or via e-mail at patrick.mullen@dgs.ca.gov for further information.

CONTRACTOR QUARTERLY REPORT PROCESS

Contractors are required to submit a detailed CMAS Business Activity Report on a quarterly basis to the CMAS Unit. See Attachment B for a copy of this form and instructions.

This report shall be mailed to:

Department of General Services
Procurement Division – CMAS Unit
Attention: Quarterly Report Processing
PO Box 989052, MS #2-202
West Sacramento, CA 95798-9052

Reports that include checks for incentive fees or that exceed a total of 5 pages must be mailed and shall not be faxed or e-mailed.

All other reports may be faxed or e-mailed to the attention of Quarterly Report Processing as follows:

CMAS Unit Fax Number: (916) 375-4663
CMAS Unit E-Mail: cmas@dgs.ca.gov

For the full instructions on completing and submitting CMAS Quarterly Business Activity Reports, and a soft copy of a blank quarterly report form, go to www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, and then select "For Suppliers/Contractors".

Important things to remember regarding CMAS Quarterly Business Activity Reports (referred to as "reports" below):

- A report is required for each CMAS contract each quarter, even when no new purchase orders are received in the quarter.
- A separate report is required for each CMAS contract.

- Each purchase order must be reported only once in the quarter identified by the purchase order date, regardless of when the services were performed, the products were delivered, the invoice was sent, or the payment was received.
- Purchase orders from State and local government agencies must be separated on the report, as shown in the instructions.
- Contractors must report the sales activity for all resellers listed on their CMAS contract.
- Any report that does not follow the required format or excludes required information will be deemed incomplete and returned to the contractor for corrections.
- Taxes and freight must not be included in the report.
- For CMAS orders dated 1/1/2010 or later, contractors are no longer required to attach copies of purchase orders to their reports. This changed requirement will begin on Q1-2010 reports, which are due 4/15/2010.
- For CMAS orders dated 1/1/2010 or later, contractors who are not California certified small businesses must attach to their quarterly report a check covering the required incentive fee for all CMAS sales to local government agencies (see more information below). This new requirement will start on Q1-2010 reports, which are due 4/15/2010.
- New contracts, contract renewals or extensions, and contract modifications will be approved only if the contractor has submitted all required quarterly reports and incentive fees.

CMAS Quarterly Business Activity Reports are due in the CMAS Unit within two weeks after the end of each quarter as shown below:

Quarter 1	Jan 1 to Mar 31	Due Apr 15
Quarter 2	Apr 1 to Jun 30	Due Jul 15
Quarter 3	Jul 1 to Sep 30	Due Oct 15
Quarter 4	Oct 1 to Dec 31	Due Jan 15

CONTRACTOR QUARTERLY INCENTIVE FEES

CMAS contractors who are not California certified small businesses must remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

CMAS contractors cannot charge local government agencies an additional 1% charge on a separate line item to cover the incentive fee. The contractor must include the 1% incentive fee in the price of the products or services offered, and the line item prices must not exceed the applicable GSA prices.

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A local government agency is any city, county, district, or other local governmental body, including the California State University (CSU) and University of California (UC) systems, K-12 public schools and community colleges empowered to expend public funds.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- California CMAS Terms and Conditions.
- Federal GSA Terms and Conditions (unless otherwise stipulated in the CMAS contract).
- Federal GSA products, services, and price list (unless otherwise stipulated in the CMAS contract).
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at or below contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED

When a subcontractor ultimately provides all of the products or performs all of the services that a contractor has agreed to provide, and the prime contractor only handles the invoicing of expenditures, then the prime contractor's role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a Commercially Useful Function (CUF). It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

CONFLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues. See the attached CMAS Terms and Conditions, Conflict of Interest, for more information.

FEDERAL DEBARMENT

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

CONTRACTOR TRAVEL

The provision for travel expense reimbursement is included in this contract.

It is important the agency and contractor discuss necessary travel requirements prior to issuing the purchase order because the detail and cost (only as allowed for in the contract) must be included in the agency purchase order to be payable.

State agencies may only reimburse travel and per diem expenses according to State travel time and per diem rules for State employees. All travel and per diem expenses must be within the contract parameters, incorporated into the purchase order, and supported by receipts. For the current travel and per diem reimbursement rates, go to the Department of Personnel Administration's website at: <http://www.dpa.ca.gov/personnel-policies/travel/main.htm>

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Notwithstanding the contract provisions, the State will not be responsible for the cost of travel to bring contractor personnel from out-of-state to the job site (unless specifically arranged by agency in advance). If requested by the agency, the State will be responsible for reimbursement of travel expenses from one California agency site to another.

State agencies should refer to SAM Section 0774 "Travel and Related Reimbursement of Persons Not State Employees", when transportation and per diem costs are to be reimbursed by the State.

Local government agencies will pay travel and per diem expenses according to their statutory requirements.

LIQUIDATED DAMAGES FOR LATE DELIVERY

The value of the liquidated damages cannot be a penalty, must be mutually agreed upon by agency and contractor and included in the purchase order to be applicable.

ACCEPTANCE TESTING CRITERIA

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

AMERICANS WITH DISABILITY ACT (ADA)

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and State laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment A for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor, MS 202
West Sacramento, CA 95605-2811

Phone # (916) 375-4363
Fax # (916) 375-4663

ATTACHMENT A

ADA NOTICE

Procurement Division (State Department of General Services)
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784

ATTACHMENT B

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Contractor Name: _____ Reporting Calendar Year: _____ Revision
 Contract Number: _____ Reporting Quarter: Q1 (Jan-Mar) Q2 (Apr-Jun) Q3 (Jul-Sep) Q4 (Oct-Dec)
 For Questions Regarding This Report Contact:
 Name: _____
 Phone Number: _____
 E-mail: _____

Check Here if No New Orders for This Quarter

STATE AGENCY PURCHASES

State Agency Name	Purchase Order Number	Purchase Order Date	Purchase Order	Agency Billing Code	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total State Agency Dollars Reported for Quarter: \$ _____

LOCAL GOVERNMENT AGENCY PURCHASES

Local Government Agency Name	Purchase Order Number	Purchase Order Date	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total Local Government Agency Dollars for Quarter: \$ _____ 1% Remitted to DGS (does not apply to CA certified SIBs): \$ _____

Total of State and Local Government Agency Dollars Reported for this Quarter: \$ _____

ATTACHMENT B

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Instructions for completing the CMAS Quarterly Business Activity Report

1. Complete the top of the form with the appropriate information for your company.
2. **Agency Name** - Identify the State agency or Local Government agency that issued the order.
3. **Purchase Order Number** - Identify the purchase order number (and amendment number if applicable) on the order form. This is not your invoice number. This is the number the State agency or Local Government agency assigns to the order.
4. **Purchase Order Date** - Identify the date the purchase order was issued, as shown on the order. This is not the date you received, accepted, or invoiced the order.
5. **Agency Billing Code** - Identify the State agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Billing codes are not applicable to Local Government agencies.
6. **Total Dollars Per PO** - Identify the total dollars of the order excluding tax and freight. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount (less tax and freight) regardless of when you invoice order, perform services, deliver product, or receive payment.
7. **Agency Contact** - Identify the ordering agency's contact person on the purchase order.
8. **Agency Address** - Identify the ordering agency's address on the purchase order.
9. **Phone Number** - Identify the phone number for the ordering agency's contact person.
10. **Total State Sales & Total Local Sales** - Separately identify the total State dollars and/or Local Government agency dollars (pre-tax) for all orders placed in quarter.
11. **1% Remitted to DGS** - Identify 1% of the total Local Government agency dollars reported for the quarter. This is the amount to be remitted to DGS by contractors who are not California certified small businesses.
12. **Grand Total** - Identify the total of all State and Local Government agency dollars reported for the quarter.

Notes:

- A report is required for each CMAS contract, each quarter, even when there are no new orders for the quarter.
- Quarterly reports are due two weeks after the end of the quarter.

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

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

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- s) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- t) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- u) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
- v) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
- w) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- x) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- y) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- z) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- aa) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- bb) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- cc) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- dd) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- ll) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **"State"** means the government of the State of California, its employees and authorized representatives,

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- Including without limitation any department, agency, or other unit of the government of the State of California.
- nn) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
2. **CONTRACT FORMATION:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this Contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

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9. CMAS -- ASSIGNMENT:

- a) This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
- b) Should the State desire financing of the assets provided hereunder through GS\$Mart, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.

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

11. **CMAS -- ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) These General Provisions – Information Technology (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) Other Special Provisions;
- d) Federal GSA (or other multiple award) terms and conditions;
- e) Statement of work, including any specifications incorporated by reference herein; and
- f) All other attachments incorporated in the Contract by reference.

12. PACKING AND SHIPMENT:

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) show the number of the container and the total number of containers in the shipment; and
 - ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) The Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

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14. **DELIVERY:** The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.
15. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.
16. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:
- a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
 - b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
 - c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
 - d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
 - e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
17. **SAMPLES:**
- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products offered and/or specified in the Contract.
 - b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.
18. **CMAS – WARRANTY:** The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base Contract used to establish this CMAS Contract. When there is a conflict between the language, the following warranty language overrides.
- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be—free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
 - b) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of

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- harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.
- c) Unless otherwise specified in the Statement of Work:
- (i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
 - (iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through an such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
- i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
19. **SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.
20. **INSURANCE:** The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificates(s) is insufficient for this purpose. When performing work on state owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.
21. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
 - b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
 - c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING.

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TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - (i) Stop work as specified in the Notice of Termination.
 - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - (iii) Terminate all subcontracts to the extent they relate to the work terminated.
 - (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
- d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
- e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
 - (i) The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
 - (ii) The total of:
 - A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
 - B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
 - C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23. TERMINATION FOR DEFAULT:

- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
 - i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii) Perform any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under subsection a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:

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- (i) completed Deliverables,
 - (ii) partially completed Deliverables, and,
 - (iii) subject to provisions of sub-section a) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."
- 24. FORCE MAJEURE:** Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:
- a) Acts of God or of the public enemy, and
 - b) Acts of the federal or State government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.
- 25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
 - b) In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
 - c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
 - d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.
- 26. LIMITATION OF LIABILITY:**
- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule Contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
 - b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations"; (ii) to liability under the General Provisions entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by

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Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.

- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

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

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

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

- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

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

29. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. TAXES: Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

32. NEWLY MANUFACTURED GOODS: All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.

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

34. CONFIDENTIALITY OF DATA: All financial, statistical, personal, technical and other data and information relating to

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the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

35. NEWS RELEASES: Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

36. DOCUMENTATION

- a) The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the

Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

37. RIGHTS IN WORK PRODUCT:

- a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
- b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
- c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
- d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
- e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are

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competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

38. SOFTWARE LICENSE: Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").

- a) The State may use the Software Products in the conduct of its own business, and any division thereof
- b) The license granted above authorized the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machined-readable form, on any other State CPU until the designated CPU is returned to operation.
- c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
- d) Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.

39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA: The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act. The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

40. RIGHT TO COPY OR MODIFY:

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

41. FUTURE RELEASES: Unless otherwise specifically provided in the Contract, or the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State's option at a price not greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.

42. ENCRYPTION/CPU ID AUTHORIZATION CODES:

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

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mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.

43. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section. The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section will be conditional upon the following:

- i) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- ii) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using

the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- (i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
- (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
- (iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or
- (iv) The combination or utilization of Software furnished hereunder with non-Contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

44. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately

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reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the Department of General Services, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting Department Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies.

- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in the subsection a above. The Department Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention.

The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later. The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

45. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

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- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
- 46. EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.
- 47. FOLLOW-ON CONTRACTS:**
- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - (ii) will not act as consultant to any person or entity that does receive a Contract described in subsection (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - (ii) development or design of test requirements;
 - (iii) evaluation of test data;
 - (iv) direction of or evaluation of another Contractor;
 - (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
- (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.
- 48. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
- 49. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 50. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate.

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harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

52. ASSIGNMENT OF ANTITRUST ACTIONS: Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting an offer to the State, the supplier offers and agrees that if the offer is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action

assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.

- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.

53. DRUG-FREE WORKPLACE CERTIFICATION: The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
- (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
- (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

54. FOUR-DIGIT DATE COMPLIANCE: Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating

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to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

55. SWEATFREE CODE OF CONDUCT:

- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

56. RECYCLED CONTENT REQUIREMENTS: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of postconsumer material as defined in the Public Contract Code (PCC) Section 12200-12209, in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).

57. CHILD SUPPORT COMPLIANCE ACT: For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

59. ELECTRONIC WASTE RECYCLING ACT OF 2003: The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

60. USE TAX COLLECTION: In accordance with PCC Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

61. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to Contract with the State.

62. DOMESTIC PARTNERS: For Contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that the Contractor is in compliance with Public Contract Code Section 10295.3.

63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a) If for this Contract the Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the

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awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

- b) If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

64. **LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).)

ADDITIONAL CMAS TERMS AND CONDITIONS

65. **CMAS – CONTRACTOR'S LICENSE REQUIREMENTS:** Contracts that include installation or the wording "Furnish and Install" require at the time of Contract award that Contractors possess a valid California State Contractor's License. If sub-Contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for Contract revocation.

66. **CMAS -- PUBLIC WORKS REQUIREMENTS (LABOR/INSTALLATION):**

- a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the Contract price.
- b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1

of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.

- c) The Contractor hereby certifies by signing this Contract that:

- i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein;
- ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of the purchase order.

- d) Laws to be Observed

- i) Labor

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than fifty (\$50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five (\$25) for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in

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violation of California Labor Code Sections 1810-1815, inclusive.

ii) **Worker's Compensation Insurance**

The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.

iii) **Travel and Subsistence Payments**

Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

iv) **Apprentices**

Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each Contractor and/or subcontractor must, prior to commencement of the public works Contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.

v) **Payroll**

The Contractor shall keep an accurate payroll record showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in Section 1776 of the California Labor Code.

67. CMAS -- TERMINATION OF CMAS CONTRACT:

- a) The State may terminate this CMAS Contract at any time upon 30 days prior written notice.
- b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the CMAS Contract, the CMAS Contract shall also be considered terminated on the same date.
- c) Prior to the expiration of this CMAS Contract, this Contract may be terminated for the convenience of both parties by mutual consent.
- d) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

68. CMAS -- CONTRACT AMOUNT: There is no guarantee of minimum purchase of Contractor's products or services by the State.

69. CMAS -- Debarment Certification (Federally Funded Contracts): When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the Buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

70. CMAS -- PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT: All Contracts (including Individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 day notice, and are subject to the following:

- a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.
- b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.
- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.

71. CMAS -- CONFLICT OF INTEREST:

- a) **Current State Employees (Public Contract Code Section 10410):**
 - i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
 - ii) No officer or employee shall Contract on his or her own behalf as an independent Contractor with any State agency to provide Goods or services.
- b) **Former State Employees (Public Contract Code Section 10411):**
 - i) For the two-year period from the date he or she left State employment, no former State officer or

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employee may enter into a Contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency.

- ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a Contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed Contract within the twelve-month period prior to his or her leaving State service.

72. CMAS -- SUBCONTRACTING REQUIREMENTS:

Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract (order), and which is expected to receive more than ten (10) percent of value of the Contract/purchase order, must also meet all Contractual, administrative, and technical requirements of the Contract (order), as applicable.

73. CMAS -- RENTAL AGREEMENTS:

The State does not agree to:

- Indemnify a Contractor;
- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the State; or
- Agree to obtain insurance to protect the Contractor.

The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.

If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the Contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment (SAM 8736).

- 74. CMAS -- LEASE (Lease \$Mart™):** If an agency desires to lease through Lease \$Mart™, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.

- 75. CMAS -- PROGRESS PAYMENTS & RISK ASSESSMENT:** In accordance with PCC 12112 agencies are required to withhold not less than 10 percent of the Contract price until final delivery and acceptance of the Goods or services, for any Contract that provides for progress payments in a

Contract for IT Goods or services to be manufactured or performed by a Contractor especially for the State and not suitable for sale to others in the ordinary course of the Contractor's business.

Interim Risk Assessment guidelines and financial protection measures are detailed in PCC 12112 for agencies to use to determine their applicability to agency projects.

- 76. CMAS -- QUARTERLY REPORTS:** Contractors are required to submit quarterly business activity reports, as specified in this Contract, even when there is no activity. A separate report is required for each Contract, as differentiated by alpha suffix.

- 77. CMAS -- CONTRACTOR EVALUATION:** In accordance with PCC 10367 and 10369, performance of the Contractor under orders issued against this Contract will be evaluated. The ordering agency shall complete a written evaluation, and if the Contractor did not satisfactorily perform the work specified, a copy of the evaluation will be sent to the DGS, Office of Legal Services.

**CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS)
STATE MODEL
CLOUD COMPUTING SERVICES SPECIAL PROVISIONS
(Software as a Service)**

THESE SPECIAL PROVISIONS ARE ONLY TO BE USED FOR SOFTWARE AS A SERVICE (SaaS), AS DEFINED BELOW. THESE SPECIAL PROVISIONS ARE TO BE ATTACHED TO THE GENERAL PROVISIONS – INFORMATION TECHNOLOGY AND ACCOMPANIED BY, AT MINIMUM, A STATEMENT OF WORK (SOW) AND SERVICE LEVEL AGREEMENT (SLA). STATE AGENCIES MUST FIRST:

- A. CLASSIFY THEIR DATA PURSUANT TO THE CALIFORNIA STATE ADMINISTRATIVE MANUAL (SAM) 5305.5;
- B. CONSIDER THE FACTORS TO BE TAKEN INTO ACCOUNT WHEN SELECTING A PARTICULAR TECHNOLOGICAL APPROACH, IN ACCORDANCE WITH SAM 4981.1, 4983 AND 4983.1 AND THEN;
- C. MODIFY THESE SPECIAL PROVISIONS THROUGH THE SOW AND/OR SLA TO MEET THE NEEDS OF EACH ACQUISITION.

1. Definitions

- a) "Cloud Software as a Service (SaaS)" - The capability provided to the consumer is to use applications made available by the provider 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). The consumer 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.
- b) "Cloud Platform as a Service (PaaS)" - The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- c) "Cloud Infrastructure as a Service (IaaS)" - The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- d) "Data" - means any information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- e) "Data Breach" - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- f) "Recovery Point Objective (RPO)" - means the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
- g) "Recovery Time Objective (RTO)" - means the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.

2. Terms

SaaS AVAILABILITY: Unless otherwise stated in the Statement of Work,

- a) The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work.
- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.
- d) Contractor shall provide advance written notice to the State in the manner set forth in the Statement of Work of any major upgrades or changes that will affect the SaaS availability.

3. **DATA AVAILABILITY:** Unless otherwise stated in the Statement of Work,

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work if the State is unable to access the Data as a result of:
 - 1) Acts or omission of Contractor;
 - 2) Acts or omissions of third parties working on behalf of Contractor;

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- 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
 - 4) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.
- 4. SaaS and DATA SECURITY:**
- a) In addition to the Compliance with Statutes and Regulations provision set forth in the General Provisions – Information Technology, Contractor shall certify to the State:
 - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
 - 2) Compliance with the following:
 - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
 - ii. Security provisions of the California State Administrative Manual (Chapters 5100 and 5300) and the California Statewide Information Management Manual (Sections 58C, 58D, 66B, 5305A, 5310A and B, 5325A and B, 5330A, B and C, 5340A, B and C, 5360B);
 - iii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Audit results and Contractor's plan to correct any negative findings shall be made available to the State upon request; and
 - iv. Privacy provisions of the Federal Privacy Act of 1974;
 - 3) Compliance with applicable industry standards and guidelines, including but not limited to relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines.
 - b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Contract to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data.
 - c) Contractor shall allow the State reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Contract and the State's Data, at no cost to the State.
 - d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
 - e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by the State.
 - f) Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Security Officer.
- 5) **ENCRYPTION:** Confidential, sensitive or personal information shall be encrypted in accordance with California State Administrative Manual 5350.1 and California Statewide Information Management Manual 5305-A.
- 6) **DATA LOCATION:** Unless otherwise stated in the Statement of Work and approved in advance by the State Chief Information Security Officer, the physical location of Contractor's data center where the Data is stored shall be within the continental United States.
- 7) **RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the State, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

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8) TRANSITION PERIOD:

- a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the State in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, SaaS and Data access shall continue to be made available to the State without alteration.
- d) Contractor agrees to compensate the State for damages or losses the State incurs as a result of Contractor's failure to comply with this section in accordance with the Limitation of Liability provision set forth in the General Provisions - Information Technology.
- e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
- f) The State at its option, may purchase additional transition services as agreed upon in the SOW.

9) DATA BREACH: Unless otherwise stated in the Statement of Work,

- a) Upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor's notification shall identify:
 - 1) The nature of the Data Breach;
 - 2) The Data accessed, used or disclosed;
 - 3) The person(s) who accessed, used, disclosed and/or received Data (if known);
 - 4) What Contractor has done or will do to quarantine and mitigate the Data Breach; and
 - 5) What corrective action Contractor has taken or will take to prevent future Data Breaches.
 - b) Contractor will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Contractor until the Data Breach has been effectively resolved to the State's satisfaction.
 - c) Contractor shall quarantine the Data Breach, ensure secure access to Data, and repair SaaS as needed in accordance with the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
 - d) Notwithstanding anything to the contrary in the General Provisions - Information Technology, in performing services under this Contract, and to the extent authorized by the State in the Statement of Work, Contractor may be permitted by the State to use systems, or may be granted access to the State systems, which store, transmit or process State owned, licensed or maintained computerized Data consisting of personal information, as defined by Civil Code Section 1798.29 (g). If the Contractor causes or knowingly experiences a breach of the security of such Data, Contractor shall immediately report any breach of security of such system to the State following discovery or notification of the breach in the security of such Data. The State's Chief Information Security Officer, or designee, shall determine whether notification to the individuals whose Data has been lost or breached is appropriate. If personal information of any resident of California was, or is reasonably believed to have been acquired by an unauthorized person as a result of a security breach of such system and Data that is not due to the fault of the State or any person or entity under the control of the State, Contractor shall bear any and all costs associated with the State's notification obligations and other obligations set forth in Civil Code Section 1798.29 (d) as well as the cost of credit monitoring, subject to the dollar limitation, if any, agreed to by the State and Contractor in the applicable Statement of Work. These costs may include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach of the security of such personal information.
 - e) Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.
- 10) DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work,
- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:
 - 1) The scale and quantity of the Data loss;
 - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
 - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
 - 4) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Contract.

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- b) Contractor shall restore continuity of SaaS, restore Data in accordance with the RPO and RTO as set forth in the SLA, restore accessibility of Data, and repair SaaS as needed to meet the performance requirements stated in the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
 - c) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.
- 11) **EXAMINATION AND AUDIT:** In addition to the Examination and Audit provision set forth in the General Provisions - Information Technology, unless otherwise stated in the Statement of Work:
- a) Upon advance written request, Contractor agrees that the State or its designated representative shall have access to Contractor's SaaS, operational documentation, records and databases, including online inspections, that relate to the SaaS purchased by the State.
 - b) The online inspection shall allow the State, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
 - 1) Operating system/network vulnerability scans,
 - 2) Web application vulnerability scans,
 - 3) Database application vulnerability scans, and
 - 4) Any other scans to be performed by the State or representatives on behalf of the State.
 - c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, State-approved third party perform an information security audit. The audit results shall be shared with the State within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the State with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.
- 12) **DISCOVERY:** Contractor shall promptly notify the State upon receipt of any requests which in any way might reasonably require access to the Data of the State or the State's use of the SaaS. Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the State unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.