

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.2
FOR THE MEETING OF: May 13, 2021**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Interim Executive Director to execute a purchase order with NetXperts Inc. and an enterprise agreement between the Transbay Joint Powers Authority (TJPA) and Cisco Systems, Inc. (Cisco) for cybersecurity services for a five-year term, and an amount not to exceed \$1,363,383.91.

EXPLANATION:

Cybersecurity services for the transit center network are currently being provided by Mosaic451. The base term of the contract was three years (2018-2021). The contract provided the TJPA an option to extend the term by two additional one-year periods. The contract specified the annual budget for each option year, if exercised, would be \$558,408. In determining whether to recommend that the TJPA exercise the existing option term with Mosaic451, the TJPA IT Director evaluated all the cybersecurity services currently being provided by Mosaic451 to look at alternative solutions that could provide these same services and more, possibly at a lesser cost.

The TJPA IT Director investigated other cybersecurity solutions that provided the same set of services, including Cisco. The transit center network is predominantly Cisco based infrastructure, so the cybersecurity solution offered by Cisco can take advantage of current hardware and software investments resulting in a solution that provides all of the services currently being provided by Mosaic451 for less cost.

The TJPA Procurement Policy (Board Policy No. 001) at Section II.B and II.C generally requires publication of an invitation for bid/request for proposals for general and professional services with a total contract value over \$110,000. But the Policy at Section II.G authorizes the TJPA to utilize intergovernmental purchasing for the procurement of any services to increase efficiency and/or reduce expenses. The Policy expressly authorizes the TJPA to “piggyback” on federal, state, and local contracts. The Policy requires any cooperative purchasing to be made through master contracts that were originally awarded through full and open competition.

The TJPA IT Director used the California Multiple Award Schedule (CMAS) program to proceed with the possibility of procuring the Cisco cybersecurity solution. Under the CMAS program, the State of California establishes multiple award agreements with two or more contractors for the same services at the same or similar prices. CMAS pricing is not established through a competitive bid process conducted by the State of California. Rather, through the CMAS program, suppliers offer services at prices based on an existing Federal General Services Administration (GSA) multiple award schedule. California then establishes a California agreement for the services at equal or lower prices compared to the Federal GSA schedule. State and local government agencies are permitted to rely on the CMAS program (unless the specific CMAS contract excludes local government use). Thus, the CMAS program ensures competitively negotiated and fair pricing for Cisco cybersecurity services and use of the program is consistent with the TJPA Procurement Policy.

The CMAS program requires a Request for Offer procurement process where bids are solicited from a minimum of 3 CMAS contractors. The TJPA IT Director solicited bids from 4 CMAS contractors (Presidio, NetXperts, Insight, & Zones). Bids were received from Presidio and NetXperts; the other two vendors did not provide bids.

A comparison of the pricing offered by the current contractor Mosaic451 and the CMAS offers from NetXperts and Presidio is provided below.

	Current Contract	CMAS Program	
Year	Mosaic451	Presidio	NetXperts
Year 1	\$ 558,408.00	\$ 356,941.37	\$ 356,288.83
Year 2	\$ 558,408.00	\$ 252,628.48	\$ 251,773.27
Subtotal (year 1-2)	\$ 1,116,816	\$ 609,569.85	\$ 608,062.10
Year 3	NA	\$ 252,628.48	\$ 251,773.27
Year 4	NA	\$ 252,628.48	\$ 251,773.27
Year 5	NA	\$ 252,628.48	\$ 251,773.27
Total (year 1-5)	--	\$ 1,367,455.29	\$1,363,381.91

Utilizing the CMAS program rather than exercising the existing option with Mosaic451 will result in a cost savings to the TJPA of about \$508,000 for two years of service. Among the CMAS contractors, the NetXperts offer was about \$4,000 lower than the Presidio offer over a five-year term. Thus, staff recommends procuring the Cisco system through the CMAS program from NetXperts.

The form of contract between the TJPA and NetXperts is a purchase order (attached). Additionally, Cisco requires the TJPA to execute an enterprise agreement (attached).

FINANCIAL IMPACT:

The total compensation under the Agreement will not exceed \$1,363,383.91 over the five-year term. The annual amount may vary based on the year in which a financing is executed, the expected annual budgetary impact is shown below.

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Total</u>
\$356,288.83	\$ 251,773.27	\$ 251,773.27	\$251,773.27	\$251,773.27	\$1,363,381.91

RECOMMENDATION:

Staff recommends that the Board authorize the Interim Executive Director to execute the purchase order with NetXperts and the enterprise agreement with Cisco for cybersecurity

services for the Transbay Program for a five-year term, and an amount not to exceed \$1,363,381.91.

ENCLOSURES:

1. Resolution
2. Purchase Order – NetXperts Inc.
3. Enterprise Agreement – Cisco Systems, Inc.

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) requires cybersecurity services for the Transbay Program; and

WHEREAS, The State of California's California Multiple Award Schedules (CMAS) program establishes a pool of vendors offering competitively priced services and goods for procurement by state and local government agencies; use of the CMAS program is consistent with the TJPA Board's Procurement Policy; and

WHEREAS, On February 26, 2021, the TJPA requested proposals from four qualified CMAS contractors for Cisco Systems, Inc. (Cisco) cybersecurity services; and

WHEREAS, On March 15, 2021, the TJPA received two proposals from CMAS contractors that met all minimum qualifications and requirements; and

WHEREAS, The TJPA IT Director reviewed the two proposals from the CMAS contractors, as well as the pricing available to the TJPA pursuant to an existing contract for such services, and determined the CMAS contractor NetXperts met the specific needs of TJPA with the lowest cost; and

WHEREAS, Based on the IT Director's recommendation, the TJPA negotiated a purchase order with NetXperts and an enterprise agreement with Cisco, the forms of which were presented herewith, to provide Cisco cybersecurity services for the Transbay Program; now, therefore, be it

RESOLVED, That the Board authorizes the Interim Executive Director to execute a purchase order with NetXperts Inc. and an enterprise agreement between the TJPA and Cisco Systems Inc. for cybersecurity services for the Transbay Program for a five-year term and in an amount not to exceed \$1,363,383.91.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of May 13, 2021.

Interim Secretary, Transbay Joint Powers Authority

Transbay Joint Powers Authority425 Mission Street, Suite 250
San Francisco, CA 94105

AUTHORITY APPROVAL

PURCHASE ORDER**NO. 21-05-01**

Not Valid Unless Signed

VENDORNetXperts
1777 Botelho Dr. Suite 102
Walnut Creek, CA 94596

Phone: (925) 806-0800

Fax:

INSTRUCTIONS TO VENDORPURCHASE ORDER NO. (UPPER RIGHT) MUST APPEAR ON ALL INVOICES
DELIVERY CHARGES NOT APPEARING ON ORIGINAL INVOICE CANNOT
BE ACCEPTED FOR PAYMENT**SEND ONE COPY OF
INVOICE TO:****Transbay Joint Powers Authority**425 Mission Street, Suite 250
San Francisco, CA 94105ap@tjpa.org

DEPARTMENT TJPA		DEPT. REF. NO.	SHIP TO Transbay Joint Powers Authority 425 Mission Street, Suite 250 San Francisco, CA 94105	PHONE & CONTACT 415-597-4038	
Item No.	Description of Items	Quantity	Unit Price	Ext. Amount	
Cisco Cybersecurity Solution - 5 Years: 6/1/21 - 5/31/26 CMAS Contract # 3-21-70-0622X					
1	Cisco Enterprise Agreement License Bundle (5 Years paid annually)	5	\$137,842.83	\$689,214.15	
2	Cisco Managed Detection and Response (MDR) (5 Years paid annually)	5	\$38,500.00	\$192,500.00	
3	Cisco Incident Response Retainer (IRR) (5 Years paid annually)	5	\$75,430.44	\$377,152.20	
4	Cisco ISE Administration Console (1st year only)	1	\$3,830.00	\$3,830.00	
5	Cisco SecureX Deployment Support (1st year only)	1	\$42,100.00	\$42,100.00	
6	Cisco Security SME / AMP and Stealthwatch Services (1st year only)	1	\$58,585.56	\$58,585.56	
	Year 1 Total: \$356,288.83				
	Year 2 Total: \$251,773.27				
	Year 3 Total: \$251,773.27				
	Year 4 Total: \$251,773.27				
	Year 5 Total: \$251,773.27				
SPECIAL INSTRUCTIONS					TAX: \$0.00
Funding sources TBD					Shipping \$0.00
Note: (i) all references in the CMAS contract documents to the "State" as a party shall mean the TJPA; (ii) NetXperts shall furnish evidence of insurance showing the TJPA as an "additional insured"					
Attachments: (i) NetXperts bid to TJPA, (ii) NetXperts CMAS Cover Page & Ordering Instructions (effective 2/5/21), (iii) CMAS General Provisions – Information Technology (revised date 6/19/19)					
			Department Approval		5 YEAR TOTAL--: \$1,363,381.91
					This PO is for Year 1 only
ACCT'G CHARGES	FOB	TERMS	AMOUNT	DATE	
See Above		Net 45	\$356,288.83	5/14/2021	

Response to:

San Francisco Transbay Terminal



Cisco Cyber Security Services
CMAS # 3-21-70-0622x

Presented by,

NETXPERTS INC.
ALL NET, ALL THE TIME

1777 Botelho Dr #102, Walnut Creek, CA-94596
Ph: (925) 806 - 0800 | Fax: (925) 806 - 089



CMAS STATEMENT OF WORK

A. INTRODUCTION

Transbay Joint Powers Authority desires enhancements to its cybersecurity capabilities through the acquisition of certain software licenses and services to be provided by Cisco Systems, Inc. The software licenses include a Cisco Security Choice Enterprise Agreement for Security Suite to include Stealthwatch, AMP for Endpoints, DUO, Identity Services Engine (ISE), Next Generation Firewall (NGFW), Cloud Mailbox Defense, Tetration, and Umbrella applications with accompanying Smartnet and support services.

This Request for Offer is released to notify qualified CMAS Contractors with the information needed to submit bids that reflect the CMAS schedule price (at a minimum) for associated software licenses and services. Contractor will provide a bid based on the Cisco software and services as listed on the accompanying Attachment A for Cisco Enterprise Agreement licenses and Attachment B for certain Smartnet and support services.

B. PERIOD OF PERFORMANCE

The period of performance for this CMAS Agreement shall be for a period of five calendar years for the Cisco Enterprise Agreement software licenses, commencing on July 1, 2021, (Attachment A) and for a period of one year for certain associated Smartnet and support services also commencing on July 1, 2021 (Attachment B). The Cisco Enterprise Agreement will be billed annually by the Contractor on the anniversary of the commencement date. Attachment B services will be billed at the commencement of this Agreement.

C. BID RESPONSE DEADLINE

Contractor submission in response to this Request for Offer shall be submitted to the listed representative of Transbay Joint Powers Authority by no later than 5pm PST on Wednesday, March 3, 2021. Responses shall be provided in an email format to the attention of:

Jason Blick
Information Technology Director
Transbay Joint Powers Authority
jblick@tjpa.org

Any questions regarding this Request for Offer should be submitted to same contact via email. Bid responses should include your pricing on Attachment A and Attachment B and the completed and signed Bidder Declaration form. Incomplete responses will be rejected. Pricing submitted shall be good for a period of at least ninety days from date of submission.

Attachment A

Detailed Parts and Services List, Cisco Systems, Inc. for Cisco Enterprise Services Agreement
 CMAS Base Schedule: _ CMAS contractor to reference per their CMAS contract __ 3-21-70-0622X

Quantity	Manufacturer Part #	Description	CMAS Bid Price (Annual)	Category
350	E2SF-P-AMP-PRE-1	Sec EA 2.0 Choice AMP Endpoints Premier	\$9,149.28	Market Configurable Option
1	SVS-EA2-AMPE-SUP-E	ENHANCED SUPPORT FOR AMP END POINTS	\$2,094.65	Smartnet
335	E2SF-DUO-MFA	EA Choice - Duo MFA Edition	\$7,951.56	Market Configurable Option
350	E2SF-E-CMD-1	Security EA 2.0 Cisco Cloud Mailbox Defense Essentials	\$2,607.71	Market Configurable Option
350	E2SF-I-ISE-APEX-1	Security EA 2.0 Choice ISE Apex License	\$438.48	Market Configurable Option
700	E2SF-I-ISE-PLUS-1	Security EA 2.0 Choice ISE Plus License	\$1,181.60	Market Configurable Option
1	SVS-EA2-CISE-SUP-E	ENHANCED SUPPORT FOR IDENTITY SERVICES ENGINE	\$370.68	Smartnet
4	E2SF-F-FPR4110T	Sec EA 2.0 Choice FPR4110 Threat Defense Threat, Malware, URL	\$60,611.63	Market Configurable Option
1	SVS-EA2-NGFW-SUP-E	ENHANCED SUPPORT FOR NEXT-GEN FIREWALL	\$12,777.92	Smartnet
2000	E2SF-S-SWPNM-1	Security EA 2.0 Stealthwatch PNM License	\$16,984.80	Market Configurable Option
1	SVS-EA2-STLW-SUP-E	ENHANCED SUPPORT FOR STEALTHWATCH	\$3,891.43	Smartnet
100	E2SF-TA-CWP	Security Choice EA Tetration CWP License - Per Workload	\$11,578.00	Market Configurable Option
350	E2SF-U-DNS-ADV	Sec EA 2.0 Choice Umbrella DNS Advantage	\$7,123.90	Market Configurable Option
1	SVS-EA2-SIG-SUPT-E	Umbrella Support for DNS/SIG Packages - Enhanced	\$1,081.19	Smartnet

Attachment B

Detailed Parts and Services List, Cisco Systems, Inc. for certain Smartnet and support services
 CMAS Base Schedule: __ CMAS contractor to reference per their CMAS contract -3-21-70-0622X

Quantity	Manufacturer Part #	Description	CMAS Bid Price (Annual)	Category
500	SVS-CMS-MDR1	CMS Managed Detection and Response Service	\$38,500.00	Support
1	E2SF-I-ISE-ADM	Security EA 2.0 Choice ISE Device Admin TACACS License	\$3,830.00	Support
1	CON-AS-SE-ADV	Cisco Security Advisory Subscription Services -- Incident Response Retainer Annual	\$75,430.44	Smartnet
1	AS-NS-SMX	Network Security Subject Matter Expert-AMP and Stealthwatch Services	\$58,585.56	Smartnet
1	AS-SE-SMX	Subject Matter Expert -- SecureX Deployment Support	\$42,100.00	Smartnet

- Items highlighted in yellow are for year 1 only, all other items are for all 5 years to be billed annually.

NETQ18902-02

TJPA - Cisco Cyber Services and Software

Qty	Manufacturer Part #	Description	TJPA Extended Price Year 1	TJPA Extended Price Year 2	TJPA Extended Price Year 3	TJPA Extended Price Year 4	TJPA Extended Price Year 5	TJPA Extended Price 5 year total
Cisco Enterprise Agreement License Bundle								
350	E2SF-P-AMP-PRE-1	Sec EA 2.0 Choice AMP Endpoints Premier 10pk	\$9,149.28	\$9,149.28	\$9,149.28	\$9,149.28	\$9,149.28	\$45,746.40
1	SVS-EA2-AMPE-SUP-E	ENHANCED SUPPORT FOR AMP END POINTS	\$2,094.65	\$2,094.65	\$2,094.65	\$2,094.65	\$2,094.65	\$10,473.25
335	E2SF-DUO-MFA	EA Choice - Duo MFA Edition	\$7,951.56	\$7,951.56	\$7,951.56	\$7,951.56	\$7,951.56	\$39,757.80
350	E2SF-E-CMD-1	Security EA 2.0 Cisco Cloud Mailbox Defense Essentials - 10pk	\$2,607.71	\$2,607.71	\$2,607.71	\$2,607.71	\$2,607.71	\$13,038.55
350	E2SF-I-ISE-APEX-1	Security EA 2.0 Choice ISE Apex License 10pk	\$438.48	\$438.48	\$438.48	\$438.48	\$438.48	\$2,192.40
70	E2SF-I-ISE-PLUS-10	Security EA 2.0 Choice ISE Plus License 10pk	\$1,181.60	\$1,181.60	\$1,181.60	\$1,181.60	\$1,181.60	\$5,908.00
1	SVS-EA2-CISE-SUP-E	ENHANCED SUPPORT FOR IDENTITY SERVICES ENGINE	\$370.68	\$370.68	\$370.68	\$370.68	\$370.68	\$1,853.40
4	E2SF-F-FPR4110T	Sec EA 2.0 Choice FPR4110 Threat Defense Threat, Malware,URL	\$60,611.63	\$60,611.63	\$60,611.63	\$60,611.63	\$60,611.63	\$303,058.15
1	SVS-EA2-NGFW-SUP-E	ENHANCED SUPPORT FOR NEXT-GEN FIREWALL	\$12,777.92	\$12,777.92	\$12,777.92	\$12,777.92	\$12,777.92	\$63,889.60
200	E2SF-S-SWPNM-10	Security EA 2.0 Stealthwatch PNM License -10PK	\$16,984.80	\$16,984.80	\$16,984.80	\$16,984.80	\$16,984.80	\$84,924.00
1	SVS-EA2-STLW-SUP-E	ENHANCED SUPPORT FOR STEALTHWATCH	\$3,891.43	\$3,891.43	\$3,891.43	\$3,891.43	\$3,891.43	\$19,457.15
100	E2SF-TA-CWP	Security Choice EA Tetration CWP License - Per Workload	\$11,578.00	\$11,578.00	\$11,578.00	\$11,578.00	\$11,578.00	\$57,890.00
350	E2SF-U-DNS-ADV	Sec EA 2.0 Choice Umbrella DNS Advantage	\$7,123.90	\$7,123.90	\$7,123.90	\$7,123.90	\$7,123.90	\$35,619.50
1	SVS-EA2-SIG-SUPT-E	Umbrella Support for DNS/SIG Packages -	\$1,081.19	\$1,081.19	\$1,081.19	\$1,081.19	\$1,081.19	\$5,405.95
Cisco Managed Detection and Response (MDR)								
30000	SVS-CMS-MDR1	CMS Managed Detection and Response Service	\$38,500.00	\$38,500.00	\$38,500.00	\$38,500.00	\$38,500.00	\$192,500.00
1	E2SF-I-ISE-ADM	Security EA 2.0 Choice ISE Device Admin	\$3,830.00					\$3,830.00
Cisco Incident Response Retainer (IRR)								
1	CON-AS-SE-ADV is being updated to SVS-CTIR-L on 4-15-21	Cisco Security Advisory Subscription Services -- Incident Response Retainer, use SVS-CTIR-	\$75,430.44	\$75,430.44	\$75,430.44	\$75,430.44	\$75,430.44	\$377,152.20
Cisco SecureX Deployment Support								
1	AS-SE-SMX	Subject Matter Expert - SecureX Deployment Support	\$42,100.00					\$42,100.00
Cisco Security SME / AMP and Stealthwatch Services								
1	AS-NS-SMX	Network Security Subject Matter Expert- AMP and Stealthwatch	\$58,585.56					\$58,585.56
Yearly totals			\$ 356,288.83	\$ 251,773.27	\$ 251,773.27	\$ 251,773.27	\$ 251,773.27	\$1,363,381.91
5 Year total								\$1,363,381.91

BIDDER DECLARATION

1. Prime bidder information (Review attached Bidder Declaration Instructions prior to completion of this form):

- a.** Identify current California certification(s) (MB, SB, NVSA, DVBE): SBE or None (If "None," go to Item #2)
- b.** Will subcontractors be used for this contract? Yes No (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.

- c.** If you are a California certified DVBE: (1) Are you a broker or agent? Yes No
 (2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? Yes No N/A

2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. (Attach additional pages if necessary):

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, NVSA, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?
					<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>

CERTIFICATION: By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.

Carol Ann Nordine

BIDDER DECLARATION Instructions

All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.

1.a. Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled “None” and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:

- Microbusiness (MB)
- Small Business (SB)
- Nonprofit Veteran Service Agency (NVSA)
- Disabled Veteran Business Enterprise (DVBE)

1.b. Mark either “Yes” or “No” to identify whether subcontractors will be used for the contract. If the response is “No”, proceed to Item #1.c. If “Yes”, enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.

Bidders certified as MB, SB, NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999 for DVBEs and Government Code Section 14837(d)(4)(A) for small/microbusinesses.

Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.

Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime’s contract.

1.c. This item is only to be completed by businesses certified by California as a DVBE.

(1) Declare whether the prime bidder is a broker or agent by marking either “Yes” or “No”. The Military and Veterans Code Section 999.2 (b) defines “broker” or “agent” as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.

(2) If bidding rental equipment, mark either “Yes” or “No” to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If **not** bidding rental equipment, mark “N/A” for “not applicable.”

2. If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete “Page ___ of ___” on the form.

If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the “Page ___ of ___” accordingly.

2. (continued) Column Labels

Subcontractor Name, Contact Person, Phone Number & Fax Number—List each element for all subcontractors.

Subcontractor Address & Email Address—Enter the address and if available, an Email address.

CA Certification (MB, SB, NVSA, DVBE or None)—If the subcontractor possesses a current State of California certification(s), verify on this website (www.eprocure.pd.dgs.ca.gov).

Work performed or goods provided for this contract—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

Corresponding % of bid price—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

Good Standing?—Provide a response for each subcontractor listed. Enter either “Yes” or “No” to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, NVSA, and/or DVBE status

51% Rental?—This pertains to the applicability of rental equipment. Based on the following parameters, enter either “N/A” (not applicable), “Yes” or “No” for each subcontractor listed.

Enter “N/A” if the:

- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
- Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter “Yes” if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter “No” if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

Read the certification at the bottom of the page and complete the “Page ___ of ___” accordingly.

State of California

MULTIPLE AWARD SCHEDULE

NetXperts Inc.

CMAS NUMBER:	3-21-70-0622X
CMAS TERM DATES:	2/05/2021 through 1/31/2025
CMAS CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	<u>June 7, 2019</u> (www.dgs.ca.gov/-/media/Divisions/PD/Acquisitions/CMAS/IT-CMAS-Terms-and-Conditions.ashx?la=en&hash=B41342080DE511121ECC253A04D62AC90CED6123)
MAXIMUM ORDER LIMIT:	State Agencies: See Purchasing Authority Dollar Threshold provision Local Government Agencies: Unlimited
FOR USE BY:	State & Local Government Agencies
BASE SCHEDULE #:	GS-35F-0234W
BASE SCHEDULE HOLDER:	Octo Consulting Group, Inc.

This CMAS provides for the purchase and warranty of Information Technology (IT) consulting services. (See page 2 for the labor categories and restrictions applicable to this CMAS.)

The most current Ordering Instructions and Special Provisions, CMAS Terms and Conditions, and products and/or services are included herein. All purchase orders issued by State agencies shall incorporate these Ordering Instructions and Special Provisions and CMAS Terms and Conditions.

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

CMAS contractor non-compliance with the requirements may result in termination.

Original Signature on File

Effective Date: **2/05/2021**

BRYAN DUGGER, Program Analyst, California Multiple Award Schedules Unit

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
NETXPERTS INC.
CMAS NO. 3-21-70-0622X**

CMAS PRODUCT & SERVICE CODES

Product & Service Codes listed below are for marketing purposes only. Review the base schedule for the products and/or services available.

IT Consult-Data Communications
IT Consult-Internet Security
IT Consult-LAN/WAN
IT Consult-Process Reengineer
IT Consult-Project Mgmt
IT Consult-Project Planning
IT Consult-Require Analysis
IT Consult-Strategic Planning
IT Consult-System Analysis
IT Consult-System Design
IT Consult-System Integration
IT Consult-System Security

AVAILABLE PRODUCTS AND/OR SERVICES

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

Project Manager 2
Project Manager 1
IT Subject Matter Expert 3
IT Subject Matter Expert 2
Systems Engineer 2
Systems Engineer 1
Security Engineer
Help Desk Specialist 2

You may verify the following current information about the job titles available in the base schedule at the [GSA eLibrary](http://www.gsaelibrary.gsa.gov) (www.gsaelibrary.gsa.gov):

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

EXCLUDED PRODUCTS AND/OR SERVICES

Cloud and cloud-related IT professional services, Earth observation solutions, electronic commerce and subscription services, health Information Technology services, and order-level materials are not available under this CMAS.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
NETXPERS INC.
CMAS NO. 3-21-70-0622X**

ISSUE PURCHASE ORDER TO

Agency purchase orders must be either mailed or emailed to the following:

**NetXperts Inc.
1777 Botelho Drive, Suite 102
Walnut Creek, CA 94596 Gary Nor
Attn: Gary Nordine**

E-mail: gnordine@netxperts.com

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

**Contact: Gary Nordine
Phone: (925) 382-9724
E-mail: gnordine@netxperts.com**

TOP 500 DELINQUENT TAXPAYERS

In accordance with Public Contract Code (PCC) § 10295.4, and prior to placing an order for IT goods and/or services, **agencies must verify** with the Franchise Tax Board and the California Department of Tax and Fee Administration that this CMAS contractor's name does not appear on either list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. **See next paragraph for information.**

The Franchise Tax Board's list of Top 500 Delinquent Taxpayers is available at www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/index.html.

The California Department of Tax and Fee Administration's list of Top 500 Sales & Use Tax Delinquencies in California is available at www.cdtfa.ca.gov/taxes-and-fees/top500.htm.

CMAS PRICES

The maximum prices allowed for the products and/or services available are those set forth in the base schedule.

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

CALIFORNIA CIVIL RIGHTS LAW CERTIFICATION

Pursuant to Public Contract Code section 2010, effective January 1, 2017, applicants must certify their compliance with the California Civil Rights laws and Employer Discriminatory Policies (section 51 of the Civil Code, section 12960 of the Government Code). It is the agency's responsibility to verify that the contractor has a California Civil Rights Law Certification on file.

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WARRANTY

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

CMAS contractor personnel shall have the experience, education and expertise as delineated in the base schedule.

DELIVERY

As negotiated between agency and CMAS 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

Order limits for the purchase of goods and/or services is determined by the individual agency purchasing authority threshold.

No CMAS order may be executed by a State agency that exceeds that agency's purchasing authority threshold. State agencies with approved purchasing authority, along with their dollar thresholds can be obtained at the List of State Departments with Approved Purchasing Authority website (www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-State-Departments-with-Approved-Purchasing-Authority).

HOW TO USE CMAS

Agencies must adhere to the detailed requirements in the State Contracting Manual (SCM) when using CMAS. The requirements for the following bullets are in the SCM, Volume 2, Chapter 6 (for non-IT), the SCM, Volume 3, Chapter 6 (for IT), and the SCM, Volume FISCal, Chapter 5 (FISCal):

- 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 on the CMAS website (www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules) and select "Find a CMAS Contractor."
- 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 (Standard 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, 3, and FISCal, Chapter 3).

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- This is not a bid transaction, so the small business preference, DVBE incentives, 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 CMAS contractor.
- For CMAS transactions under \$10,000, only one offer is required if the State agency can establish and document that the price is fair and reasonable. The fair and reasonable method can only be used for non-customizable purchases.

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

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, per Public Contract Code (PCC) § 10329.

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited, per State Administrative Manual (SAM) § 4819.34.

MINIMUM ORDER LIMITATION

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

ORDERING PROCEDURES

1. Purchase Orders

All Ordering Agency purchase order documents executed under this CMAS must contain the applicable CMAS number as show on page 1.

1. State Departments:

Standard 65 Purchase Documents – State departments not transacting in FISCal must use the Purchasing Authority Purchase Order (Standard 65) for purchase execution. An electronic version of the Standard 65 is available at the DGS-PD website (www.dgsapps.dgs.ca.gov/osp/StatewideFormsWeb/Forms.aspx), select Standard STD Forms.

FISCAL Purchase Documents – State departments transacting in FISCal will follow the FISCal procurement and contracting procedures.

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2. Local Governmental Departments:

Local governmental agencies may use their own purchase document for purchase execution.

The agency is required to complete and distribute the purchase order. 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 purchase orders that are not accurate. Discrepancies are to be negotiated and incorporated into the purchase order prior to the products and services being delivered.

2. Service and Delivery after CMAS Expiration

The purchase order must be issued before the CMAS expires. However, delivery of the products or completion of the services may be after the CMAS expires (unless otherwise specifically stated in the purchase order).

3. Multiple CMAS Agreements on a Single Purchase Order

Agencies wishing to include multiple CMAS agreements on a single FISCAL purchase order must adhere to the following guidelines:

- All CMAS must be for the same CMAS contractor.
- The purchase order must go to one contractor location.
- Write the word "CMAS" in the space usually reserved for the contract number. On Standard 65's, this is at the top of the form. The word "CMAS" signifies that the purchase order contains items from multiple CMAS agreements. The purchasing agency may only use one bill code.
- For each individual CMAS (as differentiated by alpha suffix), the agency must identify and group together the CMAS number with the line items and subtotal per CMAS number (do not include tax in the subtotal), and sequentially identify each individual CMAS as Sub #1, Sub #2, Sub #3, etc. This facilitates accurate billing of administrative fees by the Procurement Division.
- The total of all items on the purchase order must not exceed the purchase order limit identified in the CMAS.
- Do not combine items from both non-IT and Information Technology CMAS agreements. A non-IT CMAS begin with the number "4" and an Information Technology CMAS begins with the number "3." The purchase order limits are different for these two types of CMAS agreements.

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4. Amendments to Agency's Purchase Orders

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

The SCM, Volumes 2 & 3, Chapter 6.A5.0 and SCM, Volume FISCal, Chapter 5.A4.0 provides the following direction regarding amendments to all types of LPA 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 and SCM, Volume FISCal, Chapter 5.A4.1 as follows:

If the original contract permitted amendments, but did not specify the changes (e.g., quantity or time), it may be amended, per Public Contract Code (PCC) § 10335 (d)(1). Only a contract may be amended once under this exemption. 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.

CMAS CONTRACTOR OWNERSHIP INFORMATION

The CMAS contractor is a certified small business (SB) enterprise. Their Office of Small Business and DVBE Services (OSDS) certification number 33992 expires on 3/31/2022.

If this certification has expired, the current expiration date should be verified at: [Cal eProcure](http://Cal eProcure (caleprocure.ca.gov/pages/index.aspx)) (caleprocure.ca.gov/pages/index.aspx) or by contacting the Office of Small Business and DVBE Services at (916) 375-4940. Note that some companies have been assigned a new certification number, so use the company name and/or certification number when checking status on-line.

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 [Government Code (GC) § 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

CMAS Small Business and Disabled Veteran Partners lists (www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules) can be found on the CMAS website by selecting "Find a CMAS Contractor".

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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: www.dgs.ca.gov/OFS/Price-Book.

SMALL BUSINESS/DVBE - TRACKING

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

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its SB or DVBE goals is the dollar amount of the subcontract award made by the CMAS contractor to each SB or DVBE.
2. The CMAS contractor will provide an ordering agency with the following information at the time the order is quoted:
 - a. The CMAS contractor will state that, as the prime contractor, it shall be responsible for the overall execution of the fulfillment of the order.
 - b. The CMAS contractor will indicate to the ordering agency how the order meets the SB or DVBE goal, as follows:
 - i. List the name of each company that is certified by the Office of Small Business and DVBE Services that it intends to subcontract a commercially useful function to; and
 - ii. Include the SB or DVBE certification number of each company listed, and attach a copy of each certification; and
 - iii. Indicate the dollar amount of each subcontract with a SB or DVBE that may be claimed by the ordering agency towards the SB or DVBE goal; and
 - iv. Indicate what commercially useful function the SB 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 for large-scale information technology system integration projects except when specifically approved by the California Department of Technology.

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CONSULTING OR PERSONAL SERVICES

To ensure sufficient expertise for all consulting or personal services, prior to issuing an order, the agency is required to review the resumes of all personnel the CMAS 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 base schedule.

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 an IT service CMAS, see the CMAS IT Terms and Conditions, Provision #75, CMAS Progress Payments & Risk Assessment.

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 (GC) § 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 (GC) §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)

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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 (GC) § 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 (GC) § 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 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 (GC) § 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 (GC) § 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 the CMAS website (www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules), select "Statement of Work Information", Agencies are strongly encouraged to use this information when developing SOW requirements that will accompany the Request for Offer and the resulting purchase order.

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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 (PCC) § 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.

STATE AND LOCAL GOVERNMENTS CAN USE CMAS

State and local government agency use of CMAS 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 CMAS 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 supplement is not required for updates and/or changes once the update and/or change becomes effective for the base schedule, except as follows:

- A CMAS supplement is required when the CMAS is based on specific 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 supplement 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.

SELF-DELETING BASE SCHEDULE TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the base schedule and apply to the purchase, license, or rental (as applicable) of products or services by the US 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.

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ORDER OF PRECEDENCE

The CMAS Terms and Conditions takes precedence if there is a conflict between the terms and conditions of the contractor's base schedule, 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 agreements. Nonetheless, there is no guarantee that every possible requirement that pertains to all the different and unique State processes has been included.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this CMAS are net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code (GC) § 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 (1) the date of acceptance of goods or performance of services; or (2) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Standard 204)

State Agencies not transacting in FISCal, must obtain a copy of the Payee Data Record (Standard 204) in order to process payments. State Ordering Agencies forward a copy of the Standard 204 to their accounting offices. Without the Standard 204, payment may be unnecessarily delayed. State Agencies should contact the CMAS contractor for copies of the Payee Data Record.

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. 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 (www.dgs.ca.gov/OFS/Price-Book).

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Orders from Local Government Agencies:

CMAS contractors, who are not California certified small businesses, are required to remit to DGS an incentive fee equal to a percentage of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS. The incentive fee is in lieu of local government agencies being billed the referenced DGS administrative fee.

See the current incentive fees in the DGS Price Book.

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 CMAS entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

4. Contractor Invoices

Unless otherwise stipulated, the CMAS 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:

- CMAS number
- Agency purchase order number
- Agency Bill Code (State Only)
- 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, 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 (Government Code (GC) § 11256 – 11263 and 11019).

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

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

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6. Credit Card

The CMAS contractor accepts the State of California credit card (CAL-Card).

A purchase order is required even when the ordering department chooses to pay the CMAS contractor via the CAL-Card.

7. Leasing

The State reserves the right to select the form of payment for all procurements, be it either an outright purchase with payment rendered directly by the State, or a financing/lease-purchase or operating lease via the State Financial Marketplace (GS SMarT and/or Lease SMarT). If payment is via the financial marketplace, the Supplier will invoice the State and the State will approve the invoice and the selected Lender/Lessor for all product listed on the State's procurement document will pay the supplier on behalf of the State.

Buyers may contact the GS SMarT Administrator, Kris Bianchini via e-mail at kristopher.bianchini@dgs.ca.gov for further information.

CONTRACTOR QUARTERLY REPORT PROCESS

CMAS contractors are required to submit a detailed CMAS Business Activity Report on a quarterly basis to the CMAS Unit.

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 must be mailed and shall not be e-mailed. All other reports may be e-mailed to the attention of Quarterly Report Processing as follows:

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 the CMAS website (www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/California-Multiple-Award-Schedules) and then select "File a CMAS Quarterly Report".

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Important things to remember regarding CMAS Quarterly Business Activity Reports:

- A report is required for each CMAS, each quarter, even when no new purchase orders are received in the quarter.
- A separate report is required for each CMAS.
- **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.
- CMAS contractors must report the sales activity for all resellers listed on their CMAS.
- Any report that does not follow the required format or excludes required information will be deemed incomplete and returned to the CMAS contractor for corrections.
- Taxes and freight must not be included in the report.
- CMAS contractors must attach to their quarterly report a check covering the required incentive fee for all CMAS sales to local government agencies.
- New CMAS agreements and supplements will be approved only if the CMAS 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	January 1 to March 31	Due April 15
Quarter 2	April 1 to June 30	Due July 15
Quarter 3	July 1 to September 30	Due October 15
Quarter 4	October 1 to December 31	Due January 15

CONTRACTOR QUARTERLY INCENTIVE FEES

CMAS contractors, who are not California certified small businesses, are required to remit to DGS an incentive fee equal to a percentage of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS. The incentive fee is in lieu of local government agencies being billed the referenced DGS administrative fee.

See the current incentive fees in the DGS Price Book.

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

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.

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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 CMAS entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

OBTAINING COPY OF ORIGINAL CMAS AND SUPPLEMENTS

A copy of a CMAS and supplements, if any, can be obtained at [Cal eProcure \(caleprocure.ca.gov\)](http://Cal eProcure (caleprocure.ca.gov)). A complete CMAS consists of the following:

- CMAS cover pages (which includes the signature page, ordering instructions and special provisions, and any attachments or exhibits as prepared by the CMAS Unit)
- CMAS Terms and Conditions.
- Base schedule terms and conditions
- Product/service listing and prices
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the CMAS and are at or below base schedule rates. To streamline substantiation that the needed items are in the base schedule, the agencies should ask the CMAS contractor to identify the specific pages from the base schedule 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 CMAS 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

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 (GC) § 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.

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CONFLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues. See the 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 CMAS 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.

It is important the agency and CMAS contractor discuss necessary travel requirements prior to issuing the purchase order because the detail and cost (only as allowed for in the CMAS) 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 expenses must be incorporated into the purchase order. For the current travel and per diem reimbursement rates, go to the California Department of Human Resources' website (www.calhr.ca.gov).

Notwithstanding the CMAS 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 State Administrative Manual (SAM) § 0774 "Travel and Related Reimbursement of Persons Not State Employees", when transportation and per diem costs are to be reimbursed by the State. Reimbursement must be supported by receipts.

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.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
NETXPPTS INC.
CMAS NO. 3-21-70-0622X**

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 2-202
West Sacramento, CA 95605-2811

Phone # (916) 375-4365

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
NETXPRTS INC.
CMAS NO. 3-21-70-0622X**

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: 916-376-5127 (CALNET 480-5127)

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922, or 7-1-1

Speech to Speech Service: 1-800-854-7784

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

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

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.
- 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.,

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

- 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.

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

- 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, 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

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

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

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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.

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

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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

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

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 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

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

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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.

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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 sub-section 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:
 - i. completed Deliverables,
 - ii. partially completed Deliverables, and,
 - iii. subject to provisions of sub-section e) 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

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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

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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 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

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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 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

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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 subsection 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.

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- 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 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.

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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.

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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 CPI, 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-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

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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 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

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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.

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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.

- 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

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- described in sub-section (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

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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, 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

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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 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.

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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.

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

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 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

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

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 violation of

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

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:

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

- 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.
- 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 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.

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

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

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

- 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 CLOUD COMPUTING – SOFTWARE AS A SERVICE GENERAL PROVISIONS ARE ONLY TO BE USED FOR SOFTWARE AS A SERVICE (SaaS), AS DEFINED BELOW, AND ANY ANCILLARY SERVICES. THE CLOUD COMPUTING SERVICES SPECIAL PROVISIONS (SOFTWARE AS A SERVICE) ARE INCORPORATED BY REFERENCE UNLESS SPECIFICALLY MODIFIED AND ATTACHED HERETO. THIS CONTRACT SHALL BE ACCOMPANIED BY A STATEMENT OF WORK (SOW) AND SERVICE LEVEL AGREEMENT (SLA), IN ADDITION TO STANDARD EXHIBITS.

1. DEFINITIONS:

Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.

- a) **“Application Program”** means a computer program that 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.
- b) **“Buyer”** means the State’s authorized contracting official.
- c) **“Contract”** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
- d) **“Contractor”** means the business entity with whom the State enters into this Contract. Contractor shall be synonymous with supplier, vendor, Reseller, Service Provider, or other similar term.
- e) **“Customer”** means the State or an Eligible Public Entity using the Contractor’s or the Service Provider’s Services.
- f) **“Deliverables”** means the tangible products or works of authorship and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished that are incidental to the provision of Services.
- g) **“Documentation”** means manuals and other published materials necessary or useful to the State in its use or maintenance of the products and Services provided hereunder and includes online materials, virtual help, and help desk where available. In addition, manuals and other published materials customized for the State hereunder constitute Work Product as defined below.
- h) **“Eligible Public Entity”** means each of the non-State public entities authorized to purchase the Deliverables and Services offered hereunder. “Eligible Public Entity” includes the county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the State. “Eligible Public Entity” also includes a federally-recognized tribal entity acting in its tribal governmental capacity.
- i) **“Goods”** means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer and telecommunications equipment).
- j) **“Hardware”** refers to computer equipment and is contrasted with Software.

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

- k) **"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 interaction between people and machines.
- l) **"Maintenance"** includes: i) remedial maintenance performed by the Contractor which results from a Services failure and which is performed as required, i.e., on an unscheduled basis; and ii) the maintenance performed on a scheduled basis by the Contractor.
- m) **"Reseller"** means the agent(s) of the Service Provider or the business entity authorized by the Service Provider to resell the Services or perform aspects of this Contract as specified herein including, but not limited to sales, fulfillment, invoicing, returns, and customer service.
- n) **"Service Provider"** means the Contractor, subcontractors, agents, Resellers, third parties and affiliates of the Contractor, the cloud service provider, or managed service provider who may provide the Services agreed to under the Contract.
- o) **"Services"** means the cloud computing services, including Software as a Service (but not Infrastructure as a Service or Platform as a Service), and any related services, offered to the State by the Contractor herein.
- p) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating Software, Application Programs, and enabling software ("Software Products") that the State downloads to the State's systems to facilitate use of the Service.
- q) **"Software as a Service (SaaS)"** is the capability provided to the Customer to use applications made available by the Service 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 Customer 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.
- r) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- s) **"State Data"** means all data owned by the State, and submitted to, processed by, or stored by the Service Provider under this Contract and includes, but is not limited to, all data that originated with the State or Users, all data provided by the State or Users, and data generated, manipulated, produced, reported by or otherwise emanating from or by applications run by the State or Users on the Services. For clarity, State Data is synonymous with "Customer Data", "Customer Content", or similar terms, as used in various provisions of the service agreements and incorporated into the Contract and includes the following:
 - i. "Non-Public Data" means data submitted to the Service Provider, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that may be exempt by statute, regulation, or policy from access by the general public as public information.

**CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS)
STATE MODEL
CLOUD COMPUTING SERVICES SPECIAL PROVISIONS
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- ii. "Personal Data" means Personal Information as defined by the California Information Practices Act (Civil Code sections 1798 et seq.) submitted to the Service Provider.
- iii. "Public Information" means any information prepared, owned, used, or retained by the State and not specifically exempt from the disclosure requirements of the California Public Records Act (Government Code section 6250 et. seq.) or other applicable state or federal laws. For clarity, "Public Information" is also interchangeable with "Public Data".
- t) **"Statement of Work"** (or "SOW") means a document provided by the State which defines the timeline, and specifies the objectives, Services, Deliverables and tasks that the Contractor is expected to perform, their responsibilities and expectations, indicating the type, level and quality of service that is expected, all of which form a contractual obligation upon the Contractor in providing Services to the State. The SOW includes detailed technical requirements and pricing, with permitted modifications ("carve- outs") to the SaaS General and Special Provisions.
- u) **"User"** means any authorized end user of the Services under this Contract and includes Customer's employees, subcontractors, or any system utilized by the Customer to access the Services, whose compliance with the terms of this Contract is the responsibility of the Customer.
- v) **"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:

- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with section 10290), 3 (commencing with section 12100), and 3.6 (commencing with section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.

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.

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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 the 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 warrant and certify 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, including the California Information Practices Act (Civil Code sections 1798 et seq.). The Contractor agrees to indemnify, defend, and save harmless the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within reasonable time.
- 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 or the Department of Technology, as applicable, 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 7405, the Contractor will be responsible to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or Services. The State shall designate an authorized representative who will be responsible for submission to Contractor of complaints received by the State regarding the accessibility of Contractor's products and Services. Contractor shall be responsible to review and respond to all complaints regarding accessibility brought to the attention of the State. The State and Contractor shall work together to determine a reasonable

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response and resolution of all complaints. The State acknowledges that Contractor can satisfy its duty to respond to and resolve complaints under this provision by taking action it deems appropriate under the circumstances, which may in some instances include no further action beyond responding to the complaint.

8. CONTRACTOR'S POWER AND AUTHORITY:

The Contractor warrants that it has full power and authority to grant the rights herein granted and will reimburse the State for any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty.

Further, the 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 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 or the Department of Technology, as applicable, 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.

9. ASSIGNMENT:

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, the State will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder.

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. Except as specifically set forth in Section 13 (Warranty) below, 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.

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11. 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 Cloud Computing - Software as a Service General Provisions (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, e.g., Purchase Order STD 65, Standard Agreement STD 213, FI\$Cal generated Purchase Order, etc., and any amendments thereto;
- c) The Cloud Computing Special Provisions – Software as a Service (hereafter referred to as, the "SaaS Special Provisions"), which are incorporated by reference unless specifically modified and attached hereto, and other Special Provisions;
- d) Statement of Work, including any specifications incorporated by reference herein;
- e) Cost worksheets;
- f) The Service Provider's service agreement and attachments; and
- g) All other attachments incorporated in the Contract by reference.

12. INSPECTION, ACCEPTANCE AND REJECTION:

Unless otherwise specified in the Statement of Work:

- a) When acquiring SaaS, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing.
- b) 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 and Services 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 the Contractor's quality assurance system or other similar business practices related to performance of the Contract.
- c) In the event any Goods or Deliverables furnished by the Contractor in the performance of the Contract should fail to conform to the requirements herein, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly without expense to the State.

13. WARRANTY:

- a) Limited Warranty for Services. Unless otherwise specified in the Statement of Work, Contractor warrants that 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:
 - i. Services will be performed in accordance with the Contract; and
 - ii. All customer support for Services will be performed with professional care and skill.

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- b) **Duration of Limited Warranty.** The limited warranty will be for the duration of State's use of the Services, unless the underlying Service Provider's warranty is shorter in duration, in which case the parties will specify the length of the applicable limited warranty in the Statement of Work. This limited warranty is subject to the following limitations:
- i. any implied warranties, guarantees, or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
 - ii. the limited warranty does not cover problems caused by the State's accident, abuse or use in a manner inconsistent with this Contract or any applicable service agreement, or resulting from events beyond Contractor's reasonable control;
 - iii. the limited warranty does not apply to components of Software that the State may be permitted to redistribute;
 - iv. the limited warranty does not apply to free, trial, pre-release, or beta Services; and
 - v. the limited warranty does not apply to problems caused by the State's failure to meet minimum system requirements.
- c) **Remedies for breach of Limited Warranty.** Unless otherwise specified in the Statement of Work, if Contractor fails to meet any of the above limited warranties and the State notifies Contractor within the warranty period, then the State's remedy and the Contractor's obligation will be re-performance, repair, replacement, or refund of fees paid. In the event the Contractor fails to re-perform, repair, replace, or refund fees paid for the products and/or Services as appropriate, the State may terminate the Contract.
- d) **Warranty for Software Products.** Any Software Products provided by the Service Provider shall be covered by the developer's consumer warranty that will be passed to the Customer.
- e) **DISCLAIMER OF OTHER WARRANTIES.** OTHER THAN THIS LIMITED WARRANTY, CONTRACTOR PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. CONTRACTOR DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES, OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR TITLE. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.
- f) Contractor shall ensure that the Service Provider shall apply anti-malware controls to the Services to help avoid malicious software gaining unauthorized access to State Data, including malicious software originating from public networks. Such controls shall at all times equal or exceed the controls consistent with the industry standards for such data, but in no event less than the controls that Contractor applies to its own internal corporate electronic data of like character.
- g) Unless otherwise specified elsewhere in the Contract:
- i. The Contractor does not warrant that any Services provided hereunder is error-free or that it will run without immaterial interruption; and
 - 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,

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- b. use of Services in combination with software or services other than as specified by the Contractor, or
- c. misuse by the State.
- h) 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.

14. 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.

15. 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 or the United States Congress, if applicable. If funds to effect such continued payment are not appropriated, the Contractor agrees to 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 minimize the incurrence of costs prior to the expiration of funding for this Contract.

16. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a) The State may terminate performance 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, or the Department of Technology, Deputy Director, Statewide Technology Procurement, or designee, as applicable, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof, which shall be no less than fifteen (15) days from the Notice of Termination date.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately stop work as specified in the Notice of Termination, regardless of any delay in determining or adjusting any amounts due under this clause.
- 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 except that in no instance shall the Contractor seek nor will the State pay for Services not utilized or costs not specified on an order for Services regardless of Contractors' liability or costs for materials, equipment, Software, facilities, or sub- contracts. The Contractor shall submit the proposal promptly, but

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no later than thirty (30) 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 or refunded 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.
 - i. The State will pay the Contractor the Contract price for Services accepted or utilized by the State; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed.
- 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.

17. TERMINATION FOR DEFAULT:

- a) The State may, subject to the clause titled “18. Force Majeure”, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
 - i. 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 thirty (30) days, unless otherwise provided.
- c) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it. The State shall pay Contract price for completed and accepted Deliverables and Services.
- d) 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 “20. Limitation of Liability.”

18. FORCE MAJEURE:

Except for defaults of subcontractors at any tier, and any Contractor responsibilities concerning disaster recovery and/or business continuity, 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.

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19. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) 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 subsequent loss or damage sustained by the State in procuring any Deliverables or Services which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability"); and
- b) 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 the Contractor or to make a claim against the Contractor therefore.

20. LIMITATION OF LIABILITY:

- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, or the Department of Technology, Deputy Director, Statewide Technology Procurement, or designee, as applicable, 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 subsection 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 the 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 provisions herein entitled "Compliance with Statutes and Regulations";
 - ii. to liability under provisions herein 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 the Contractor's negligence or willful misconduct;
 - iv. to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action; or
 - v. to direct costs of mitigation, remediation, and/or notification obligations set forth in the SaaS Special Provisions, resulting from any Data Breach as defined therein, and resulting from the Contractor's failure to perform or negligent acts of its personnel.
- 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 THE CONTRACTOR'S LIABILITY FOR SUCH DAMAGES IS SPECIFICALLY SET FORTH IN THE STATEMENT OF WORK OR (II) TO THE

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EXTENT THAT THE CONTRACTOR'S LIABILITY FOR SUCH DAMAGES ARISES OUT OF SUBSECTION b) (i), b)(ii), OR b)(iv) ABOVE.

21. 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 or the Department of Technology, as applicable, 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.

22. 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.

23. 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 forty-five (45) days after:

- a) the date of acceptance of Deliverables or performance of Services; or
- b) receipt of an undisputed invoice, whichever is later.

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24. TAXES:

Unless otherwise required by law:

- a) the State of California is exempt from Federal excise taxes; and
- b) the State will only pay for any applicable State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

25. CONTRACT MODIFICATION:

- a) 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.
- b) Notwithstanding subsection a) above, service agreements may be modified by Contractor from time to time, but any such modifications will not degrade the functionality or security features of the SaaS. Service agreements shall be subject to section 11(f) Order of Precedence.

26. CONFIDENTIALITY OF DATA:

- a) All Customer Data 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 by use of the same or more effective confidentiality requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's confidentiality 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. Any additional requirements to ensure confidentiality of data shall be set forth in the SOW. 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. Contractor shall sign a security and confidentiality statement. Contractor is responsible for all Contractor personnel assigned to this Contract and will have appropriate agreements in place to enable Contractor to meet its obligations hereunder.
- b) The parties acknowledge information transmitted by the State to the Contractor and/or Service Provider may inadvertently contain Federal Tax Information (FTI). The State will use all reasonable efforts to prevent the transmittal of FTI to Contractor and/or Service Provider under this Contract. The State further acknowledges that the Contractor and/or Service Provider does not require any "access" to, or "receipt" or "storage" of FTI to perform the Services under the Contract. The Contractor and/or Service Provider further acknowledges that Contractor and/or Service Provider shall not knowingly access or permit access to such FTI, unless directed by the State. Access to FTI is out-of-scope of the Services. To the extent that Contractor's and/or Service Provider's access to FTI is "incidental" to Contractor's provision of Services, it is the parties' view that such incidental exposure should not legally subject

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Contractor and/or Service Provider to the Internal Revenue Service (IRS) requirements set forth in IRS Publication 1075, section 11.2. If, however, the IRS ultimately takes a contrary position, and determines that Contractor, Service Provider and/or the State should have nevertheless complied with the requirements of IRS Publication 1075, the parties will immediately commence an evaluation of the feasibility of continued performance under the Contract.

27. 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.

28. DOCUMENTATION:

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, Services, 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.

29. 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, customized software, and other Documentation or improvements thereto, and including the Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be the Contractor's exclusive property. The provisions of this subsection "a)" may be revised in a Statement of Work.
- b) Software, other components of SaaS, and materials developed or otherwise obtained by or for the 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 29 will be construed to interfere with the 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. This

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subsection and the rights thereunder may be modified as required for federally funded SaaS pursuant to federal law or regulations, including, but not limited to, 7 CFR 277.18 and 45 CFR 95.617.

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

30. SOFTWARE LICENSE:

A Service may require the use of Software Products to facilitate use of the Service. 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 royalty-free, non-exclusive license to use the Software Products in this Contract. The State may use the Software Products only in connection with use of the Service and according to any licensing terms if specified in a Statement of Work or otherwise in the Contract. Acceptance of Software (including third party Software) will be governed by the terms and conditions of this Contract.

31. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

- a) The State agrees that all material appropriately marked or identified in writing as proprietary and furnished hereunder by the Contractor are provided for the 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 ensure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act, or other lawful process (e.g., in response to a subpoena);
- b) The State will ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed; and
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary materials and data, subject to the California Public Records Act and other applicable law.

32. FUTURE RELEASES:

Unless otherwise specifically provided in the Statement of Work, if improved versions (e.g., patches, bug fixes, updates or releases) or upgrades of any SaaS versions or Software Product are developed by the Contractor, and are made available to other customers, they will be made available to the State at no additional cost only if such are made available to other customers at no additional cost.

33. ENCRYPTION AND AUTHORIZATION KEYS:

Upon initiation of Service, Contractor will provide all encryption and authorization keys required by the State to operate or access the Software Products or Services.

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34. 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 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).

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 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 or the Department of Technology, as applicable, 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 Software Products or Services, 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, subject to prior approval, permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Services, 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 Services by the State shall be prevented by injunction, the State shall then have the option of terminating this Contract, or applicable portions thereof, without penalty or termination charge and the Contractor shall refund any sums the State has paid the 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 Goods or Software not made or furnished by the Contractor; or
 - ii. The combination or utilization of Software or Services not made or furnished by the Contractor, and introduced into the States computing environment; or

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- iii. The modification initiated by the State, or a third party at the State's direction, of any Software or Service 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 Software in violation of any U.S. Intellectual Property laws.

35. 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 contracting 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, the 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 reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have thirty (30) days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written final decision. If a written decision is not rendered within thirty (30) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention.
- 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 contracting Department Director, or designee. The State's 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 ninety (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 subsection a) above. The Department Director or designee shall have thirty (30) days to render a final decision. If a final decision is not rendered within thirty (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 ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

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- e) The dates of decision in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

36. 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 called for by this Contract in the Statement of Work for a period up to forty-five (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 forty-five (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 sixty (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.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

37. EXAMINATION AND AUDIT:

The Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation directly 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, the Contractor agrees to include a similar right of the State to audit records

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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.

38. 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 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, feasibility studies, or project approval documentation;
 - 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.

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39. 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.

40. 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 damaged sustained by the State in procuring on the open market any items which the 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 in law or equity.

41. NONDISCRIMINATION CLAUSE:

- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate, 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 ensure 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; and
- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

42. 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.

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43. ASSIGNMENT OF ANTITRUST ACTIONS:

Pursuant to Government Code sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a bid to the State, the supplier offers and agrees that if the bid 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 tender's 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 bid price, less the expenses incurred in obtaining that portion of the recovery; and
- 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.

44. 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.

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45. FOUR-DIGIT DATE COMPLIANCE:

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and 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 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.

46. 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. The Contractor further declares under penalty of perjury that they adhere to the Sweat free 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; and
- b) The 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 the Contractor's compliance with the requirements under paragraph (a).

47. RECYCLED CONTENT REQUIREMENTS:

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer 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 post-consumer recycled material, and even if the post-consumer 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 post-consumer 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)).

48. 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

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- b) 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
- c) 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.

49. AMERICANS WITH DISABILITIES ACT AND PUBLIC WEBSITE ACCESSIBILITY

- a) The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The State is responsible for ensuring that public websites are accessible to both the general public and that internal electronic and Information Technology systems are accessible by state employees, including persons with disabilities. Contractor shall assist the State in meeting its responsibilities.
- b) In accordance with Cal. Gov. Code section 7405(b), the Contractor shall have an ongoing obligation to promptly respond to and resolve any complaint regarding accessibility of its electronic and Information Technology products and Services that is brought to the attention of the Contractor, pursuant to Section 7(e) above.

50. 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.

51. 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.

52. 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.

53. 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.

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54. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a) If for this Contract the Contractor made a commitment to achieve small business participation, then the Contractor must within sixty (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 awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.); and
- b) If for this Contract the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within sixty (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.)

55. 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).).

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THESE SPECIAL PROVISIONS ARE ONLY TO BE USED FOR INFRASTRUCTURE AS A SERVICE (IaaS) AND PLATFORM AS A SERVICE (PaaS), 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) **“Authorized Persons”** means the Service Provider’s employees, Contractors, subcontractors or other agents who need to access the State’s Data to enable the Service Provider to perform the services required.
- b) **“Data Breach”** means the unauthorized access that results in the use, disclosure, destruction, modification, loss or theft of the State’s unencrypted Personal Data or Non-Public Data.
- c) **“Individually Identifiable Health Information”** means Information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- d) **“Infrastructure-as-a-Service” (IaaS)** means 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 application; and possibly limited control of select networking components (e.g., host firewalls).
- e) **“Non-Public Data”** means data submitted to the Service Provider’s IaaS or PaaS Service, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, regulation or policy from access by the general public as public information.

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- f) **“Personal Data”** means data submitted to the Service Provider’s IaaS or PaaS Service that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport); financial account information, including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- g) **“Platform-as-a-Service” (PaaS)** means the capability provided to the consumer to deploy onto the cloud infrastructure consumer- created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. 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.
- h) **“Protected Health Information” (PHI)** means Individually Identifiable Health Information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA) as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- i) **“Security Incident”** means the potentially unauthorized access to Personal Data or Non-Public Data the Service Provider believes could reasonably result in the use, disclosure or theft of the State’s unencrypted Personal Data or Non-Public Data within the possession or control of the Service Provider. A Security Incident may or may not turn into a Data Breach.
- j) **“Service Level Agreement” (SLA)** means a written agreement between both the State and the Service Provider that is subject to the terms and conditions in this document that unless otherwise agreed to includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, how disputes are discovered and addressed, and (6) any remedies for performance failures.
- k) **“Service Provider”** means the Contractor, subcontractors, agents, resellers, third parties and affiliates who are providing the services agreed to under the Contract.
- l) **“State Data”** means all data created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State’s hardware, the Service Provider’s hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Service Provider.
- m) **“State Identified Contact”** means the person or persons designated in writing by the State to receive Security Incident or Data Breach notification.
- n) **“Statement of Work” (SOW)** means a written statement in a Contract that describes the State’s service needs and expectations.

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2. DATA OWNERSHIP:

The State will own all right, title and interest in State Data that is related to the services provided by this Contract. The Service Provider shall not access State user accounts or State Data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Contract, (4) at the State's written request or (5) as required by law.

3. DATA PROTECTION:

Protection of personal privacy and data shall be an integral part of the business activities of the Service Provider to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Service Provider shall safeguard the confidentiality, integrity and availability of State information within its control and comply with the following conditions:

- a) In addition to the Compliance with Statutes and Regulations provisions set forth in the General Provisions – Information Technology, the Service Provider shall comply as required with:
 - i. The California Information Practices Act (Civil Code Sections 1798 et seq).
 - ii. NIST Special Publication 800-53 Revision 4 or its successor.
 - iii. Privacy provisions of the Federal Privacy Act of 1974.
- b) All State Data obtained by the Service Provider within its control in the performance of this Contract shall become and remain the property of the State.
- c) Unless otherwise set forth in the SOW and/or SLA, Personal Data and Non-Public Data shall be encrypted at rest, in use, and in transit with controlled access. The SOW and/or SLA will specify which party is responsible for encryption and access control of the State Data for the service model under Contract. If the SOW and/or SLA and the Contract are silent, then the State is responsible for encryption and access control.
- d) Unless otherwise set forth in the SOW and/or SLA, it is the State's responsibility to identify data it deems as Non-Public Data to the Service Provider. The level of protection and encryption for all Non-Public Data shall be identified and made a part of this Contract.
- e) At no time shall any Personal Data and Non-Public Data or processes — which either belong to or are intended for the use of State or its officers, agents or employees — be copied, disclosed or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction without the express written consent of the State except as permitted in Section 2 above.
- f) (For PaaS Only) Encryption of Data at Rest: The Service Provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data and Non-Public Data, unless the Service Provider presents a justifiable position approved by the State that Personal Data and Non-Public Data must be stored on a Service Provider portable device in order to accomplish work as defined in the SOW and/or SLA.

4. DATA LOCATION:

The Service Provider shall provide its services to the State and its end users solely from data centers in the continental United States. Storage of State Data at rest shall be located solely in data centers in the continental United States. The Service Provider shall not allow its personnel or

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contractors to store State Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Service Provider shall permit its personnel and contractors to access State Data remotely only as required to provide technical user support or other customer support. The Service Provider may provide technical user support or other customer support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in this Contract.

5. SECURITY INCIDENT OR DATA BREACH NOTIFICATION:

The Service Provider shall inform the State of any Security Incident or Data Breach related to State Data within the possession or control of the Service Provider and related to the service provided under this Contract.

- a) Security Incident Reporting Requirements: Unless otherwise set forth in the SOW and/or SLA, the Service Provider shall promptly report a Security Incident related to its service under the Contract to the appropriate State Identified Contact as defined in the SOW and/or SLA.
- b) Breach Reporting Requirements: If the Service Provider has actual knowledge of a confirmed Data Breach that affects the security of any State Data that is subject to applicable Data Breach notification law, the Service Provider shall (1) promptly notify the appropriate State Identified Contact within 24 hours or sooner, unless otherwise required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.
- c) (For PaaS Only) Incident Response: The Service Provider may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Service Provider communication and mitigation processes as mutually agreed, defined by law or contained in the Contract.

6. DATA BREACH RESPONSIBILITIES:

This section only applies when a Data Breach occurs with respect to Personal Data and/or Non-Public Data within the possession or control of a Service Provider and related to service provided under this Contract.

- a) The Service Provider, unless otherwise set forth in in the SOW and/or SLA, shall promptly notify the appropriate State Identified Contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is or reasonably believes that there has been a Data Breach. The Service Provider shall (1) cooperate with the State as reasonably requested by the State to investigate and resolve the Data Breach; (2) promptly implement necessary remedial measures, if necessary; and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- b) Service Provider will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Service Provider to the State Identified Contact until the Data Breach has been effectively resolved to the State's satisfaction.
- c) Service Provider shall quarantine the Data Breach, ensure secure access to Data, and repair IaaS and/or PaaS as needed in accordance with the SOW and/or SLA. Failure to do so may

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result in the State exercising its options for assessing damages or other remedies under this Contract.

- d) Unless otherwise set forth in the SOW and/or SLA, if a Data Breach is a direct result of the Service Provider's breach of its Contract obligation to encrypt Personal Data and/or Non-Public Data or otherwise prevent its release, the Service Provider shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State (or Federal) law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by the Service Provider based on root cause; all [(1) through (5)] subject to this Contract's Limitation of Liability provision as set forth in the General Provisions – Information Technology.

7. NOTIFICATION OF LEGAL REQUESTS:

Unless otherwise required by law, the Service Provider shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the State's Data under this Contract, or which in any way might reasonably require access to State's Data. The Service Provider shall not respond to subpoenas, service of process and other legal requests related to the State without first notifying the State, unless prohibited by law from providing such notice. Unless otherwise required by law, Service Provider 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. Service Provider shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

8. DATA PRESERVATION AND RETRIEVAL:

- a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Service Provider shall assist the State in extracting and/or transitioning all State Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in the SOW and/or SLA or as agreed upon in writing by the parties in a Contract amendment.
- c) During the Transition Period, IaaS and/or PaaS and State Data access shall continue to be made available to the State without alteration.
- d) Service Provider agrees to compensate the State for damages or losses the State incurs as a result of Service Provider's failure to comply with this section in accordance with the "Limitation of Liability" provision set forth in the General Provisions - Information Technology.
- e) The State at its option, may purchase additional transition services as agreed upon in the SOW and/or SLA.
- f) During any period of suspension, the Service Provider shall not take any action to intentionally erase any State Data.
- g) The Service Provider will impose no additional fees for access and retrieval of State Data by the State during the Transition Period.
- h) After termination of the Contract and the prescribed retention period, the Service Provider shall securely dispose of all State Data in all forms. State Data shall be permanently deleted and

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shall not be recoverable, according to NIST-approved methods. Certificates of destruction shall be provided to the State.

9. BACKGROUND CHECKS:

As permitted or required by law, the Service Provider shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Service Provider shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents.

10. ACCESS TO SECURITY LOGS AND REPORTS:

- a) **(For IaaS Only)** Upon request, the Service Provider shall provide reports to the State directly related to the infrastructure the Service Provider controls upon which the State account resides. Unless otherwise agreed to in the SLA, the Service Provider shall provide the State a history of all Application Program Interface (API) calls for the State account that includes the identity of the API caller, the time of the API call, the source IP address of the API caller, the request parameters and the response elements returned by the Service Provider. The report will be sufficient to enable the State to perform security analysis, resource change tracking and compliance auditing.
- b) **(For PaaS Only)** Upon request, the Service Provider shall provide reports to the State in a format as specified in the SOW and/or SLA and agreed to by both the Service Provider and the State. Reports will include latency statistics, user access, user access IP address, user access history and security logs for all State files related to this Contract.
- c) The Service Provider and the State recognize that security responsibilities are shared. The Service Provider is responsible for providing a secure infrastructure. The State is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SOW and/or SLA.

11. CONTRACT AUDIT:

The Service Provider shall allow the State to audit conformance to the Contract terms. The State may perform this audit or Contract with a third party at its discretion and at the State's expense.

12. DATA CENTER AUDIT:

The Service Provider shall undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit of its data centers, or its successor at its own expense. The Service Provider shall provide a redacted version of the audit report and Contractor's plan to correct any negative findings upon request. The Service Provider may remove its proprietary information from the redacted version.

13. CHANGE CONTROL AND ADVANCE NOTICE:

The Service Provider shall give advance notice (as agreed to by the parties and included in the SOW and/or SLA) to the State of any upgrades (e.g., major upgrades, minor upgrades, system

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changes) that is expected to materially and negatively impact service availability and performance, as well as any planned downtime for such upgrades. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number. Service Provider may change the features and functionality of the services, without degrading them, to make improvements, address security requirements and comply with changes in law.

14. SECURITY PROCESSES:

The Service Provider shall disclose its non-proprietary security processes and technical limitations to the State such that adequate protection and flexibility can be attained between the State and the Service Provider. The State and the Service Provider shall understand each other's roles and responsibilities, which shall be set forth in the SOW and/or SLA.

15. IMPORT AND EXPORT OF DATA:

The State shall have the ability to import or export data in whole or in part at its discretion without interference from the Service Provider. This includes the ability for the State to import or export data to or from other Service Providers.

16. RESPONSIBILITIES AND UPTIME GUARANTEE:

The Service Provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environment are the responsibility of the Service Provider. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and shall provide service to customers as defined in the SOW and/or SLA.

17. RIGHT TO REMOVE INDIVIDUALS:

The State shall have the right at any time to require the Service Provider remove from interaction with State any Service Provider representative who the State believes is detrimental to its working relationship with the Service Provider. The State shall provide the Service Provider with notice of its determination, and the reasons it requests the removal. The Service Provider shall not assign the person to any aspect of the Contract or future work orders without the State's consent.

18. BUSINESS CONTINUITY AND DISASTER RECOVERY:

The Service Provider shall provide a business continuity and disaster recovery plan and shall ensure that it achieves the State's Recovery Time Objective (RTO), as agreed to by the parties and set forth in the SOW and/or SLA.

19. WEB SERVICES:

(For PaaS Only) The Service Provider shall use Web services exclusively to interface with State Data in near real time when possible, or as mutually agreed in the SOW and/or SLA.

Cisco Enterprise Agreement End User Information Form

End User	
End User's full legal name	TRANSBAY JOINT POWERS AUTHORITY
Address of End User's principal place of business	201 MISSION ST , STE 2100 SAN FRANCISCO, CA 94105

End User's Enterprise
List of Participating Affiliates
Not applicable

Purchased Suite(s) & Suite Term	
Purchased Suite(s)	<u>Cisco Security Choice</u> CMD ISE NGFW AMP For Endpoints Duo Stealthwatch Tetration Umbrella
Suite Term	60 months

Cisco Enterprise Agreement for Cisco Security Choice

Overview

End User Headcount	Value
Employees and Contractors	NA
Security Content Users	335

Security Choice for ISE Suite

License Type	Meter Count
ISE Qualified Licenses	Endpoint Count
Cisco Security EA 2.0 Choice ISE Advantage Subscription	67
Cisco Security EA 2.0 Choice ISE Essentials Subscription	67
Cisco Security EA 2.0 Choice ISE Premier Subscription	67
ISE Optional Licenses	Endpoint Count
Security EA 2.0 Choice ISE 3.0 Device Admin TACACS License	1
Cisco EA 2.0 Choice - ISE 3.0 - Enhanced SW Support	1

Security Choice for NGFW Suite

License Type	Meter Count
NGFW Qualified Licenses	Instance Count
Sec EA 2.0 Choice FPR4110 Threat Defense Threat, Malware,URL	4
ENHANCED SUPPORT FOR NEXT-GEN FIREWALL	1

Security Choice for AMP For Endpoints Suite

License Type	Meter Count
AMP for Endpoints Qualified Licenses	Endpoint Count
Sec EA 2.0 Choice AMP Endpoints Premier 10pk	35
ENHANCED SUPPORT FOR AMP END POINTS	1

Security Choice for Duo Suite

License Type	Meter Count
Duo Qualified Licenses	User Count
EA Choice - Duo MFA Edition	335
BASIC SUPPORT FOR DUO	1

Security Choice for Stealthwatch Suite

License Type	Meter Count
Stealthwatch Qualified Licenses	Endpoint/Flow Count
Security EA 2.0 Stealthwatch PNM License -10PK	200
ENHANCED SUPPORT FOR STEALTHWATCH	1

Security Choice for Tetration Suite

License Type	Meter Count
Security Tetration Qualified Licenses	User Tetration Workload Count
Security Choice EA Tetration CWP License - Per Workload	100
Basic Support for Tetration (OnPrem)	1

Security Choice for CMD Suite

License Type	Meter Count
CMD Qualified Licenses	User Count
Security EA 2.0 Cisco Cloud Mailbox Defense Essentials -10pk	35
ENHANCED SUPPORT FOR CLOUD MAILBOX DEFENSE	1

Umbrella

License Type	Meter Count
Umbrella Qualified Licenses	User Count
Sec EA 2.0 Choice Umbrella Reconstruction SIG Essential	335
Umbrella Support for DNS/SIG Packages - Enhanced	1

Cisco Security Choice Enrollment Description & Supplemental EA Program Terms

This Enrollment Description lists the available Suites and additional program terms that apply to the Cisco Security Choice Enrollment. You may purchase any or all of the Suites available under the Cisco Security Choice Enrollment (provided You satisfy any minimum Suite requirements in effect at the time of Your purchase), but the collection of Software and Cloud Services that comprise a Suite may not be modified.

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Email Security	Cisco Email Security Appliance	Software	EULA	User	Yes	Yes
	Cisco Cloud Email Security	Cloud Service	CES, CRES, DMP, APP and CMD OD EULA	User	Yes	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Cloud Mailbox Defense	Cisco Cloud Mailbox Defense	Cloud Service	CES, CRES, DMP, APP and CMD OD; EULA	User	Yes	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Web Security	Cisco Web Security Appliance	Software	EULA	User	Yes	No

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Cloudlock	Cisco Cloudlock	Cloud Service	Cisco Cloudlock OD; EULA	Cloudlock User; App; Add-on	Yes (Cloudlock User only)	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Identity Service Engine (ISE)	ISE Base & ISE Device Admin	Software	EULA	Endpoint Session (ISE Base) Node (ISE Device Admin)	Yes	No
	ISE Plus & ISE Apex	Software	EULA	Endpoint Session	Yes	No
	ISE Essentials, Advantage, Premier	Software	EULA	Endpoint Session	Yes	No

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Next Generation Firewall (NGFW)	Cisco Firepower Services Includes AMP for Networks	Software; Cloud Service	AMP, Threat Grid, and Clarity OD; EULA	Instance	Yes	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
AMP for Endpoints	Cisco AMP for Endpoints Essentials or Advantage or Premier	Cloud Service	AMP, Threat Grid, and Clarity OD; EULA	Endpoint	Yes	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Duo	Cisco Duo (MFA or Access or Beyond) Cisco Duo Federal (MFA or Access)	Cloud Service	Cisco Duo OD; EULA	User	Yes	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Stealthwatch	Cisco Stealthwatch Cloud For private network monitoring or public cloud monitoring	Cloud Service	Cisco Stealthwatch Cloud OD; EULA	Endpoint (private network monitoring) Effective Megaflow (public cloud monitoring)	Yes	No
	Cisco Stealthwatch Enterprise Includes Cognitive Intelligence	Software; Cloud Service	Cisco Stealthwatch Enterprise SEULA; EULA	Flows	Yes	No

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Umbrella	Cisco Umbrella Includes Umbrella Education, Umbrella DNS Essentials, Umbrella DNS Advantage, and Umbrella SIG Essentials. Option for Umbrella Investigate API, Umbrella Multi-Org, and Umbrella L7 Cloud Firewall	Cloud Service	Cisco Umbrella OD; EULA	User	Yes	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Tetration	Cisco Tetration Workload Protection	Software; Cloud Service	Cisco Tetration Analytics SEULA; Cisco Tetration SaaS OD; EULA	Tetration Workload	Yes	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
	Cisco Tetration Endpoint Visibility	Software; Cloud Service	Cisco Tetration Analytics SEULA; Cisco Tetration SaaS OD; EULA	Endpoint	Yes	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
AnyConnect	Cisco AnyConnect Apex License	Software	Cisco AnyConnect, ASA and CESA SEULA; EULA	User	No	No

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Cisco Defense Orchestrator	Cisco Defense Orchestrator	Cloud Service	Cisco Defense Orchestrator OD; EULA	Instance	No	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Threat Grid	Threat Grid Advanced File Analysis Pack	Cloud Service	AMP, Threat Grid, and Clarity OD; EULA	Daily Submission	No	No
	Threat Grid Cloud Subscription	Cloud Service	AMP, Threat Grid, and Clarity OD; EULA	User	No	No
	Threat Grid Content Subscription for Appliance	Software	EULA	Daily Submission	No	No

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
Cisco Security Analytics and Logging	Cisco Security Analytics and Logging	Cloud Service	Cisco Security Analytics and Logging OD; EULA	Gigabytes per day	No	Yes

Suite	Included Licenses	License Type	Licensing Documents	Meter	Growth Allowance	Value Shift
AMP Virtual Private Cloud	Cisco AMP Virtual Private Cloud Subscription Licenses¹	Software; Cloud Service	EULA; AMP, Threat Grid, and Clarity OD;	Instance	No	Yes

Notes:

- (1) Compatible appliances must be purchased separately and are not included with the AMP Virtual Private Cloud Suite.

Supplemental Terms and Conditions

Applicable Meters

“**Add-on**” means any separately priced Software component not included in an App.

“**App**” means one of the following core Cisco Cloudlock services licensed in bundles based on the quantity of applications: Cloudlock for Google, Cloudlock for Salesforce, Cloudlock for Dropbox, Cloudlock for Box, Cloudlock for Microsoft Office365, Cloudlock for ServiceNow, Cloudlock App Connector for Slack, and Cloudlock for Webex Teams. Note, this list may be revised from time to time.

“**Cloudlock User**” means the number of unique accounts (active, suspended, or otherwise) on the applicable Covered Cloud Services being monitored and scanned by Cisco Cloudlock. For example, a subscription for 1,000 Cloudlock Users means that You are authorized to use Cisco Cloudlock to scan and monitor up to 1,000 unique accounts on each of the applicable Covered Cloud Services.

“**Covered Cloud Service**” means the applicable Cloud Service environments for which You are using Cisco Cloudlock (e.g. Your Salesforce, Box, or Dropbox environment).

“**Daily Submission**” means a daily sample file submission for threat analysis.

“**Effective Megaflow**” means one million lines of flow log data generated by the environment monitored by Stealthwatch Cloud and processed by Cisco, measured on a monthly basis.

“**Endpoint**” means any device supported by the applicable Software or Cloud Service that is capable of processing data and accessing a network, including but not limited to: (a) personal computers; (b) virtual desktop instances (VDIs); (c) mobile devices; and (d) network computer workstations.

“**Endpoint Session**” means each unique network connection of an Endpoint, including but not limited to ethernet, wireless, and VPN connections.

“**Flows**” means network traffic flows per second.

“**Instance**” means an instantiation of a physical or virtual machine, as applicable.

“**Node**” means a Cisco Identity Services Engine (ISE) physical or virtual appliance assuming the Policy Service persona.

“**Tetration Workload**” means any of the following that is subject to Cisco Tetration Workload Protection capability: server, virtual machine, container host, baremetal instance, or other server equivalent.

“**User**” means an authorized user of the applicable Software or Cloud Service.

True Forward Value Shift

For those Suites in the Cisco Security Choice Enrollment that include value shift (as reflected in the above tables), Your True Forward payment obligation will be calculated using the value shift method. Under the value shift method, if You incur a True Forward payment obligation for a given Suite and You also have Residual Value in the same Suite, Your True Forward payment obligation will be offset by the Residual Value. Any Residual Value applied will be reflected in the True Forward invoice from the Approved Source. “**Residual Value**” means the portion of the fees You paid that are attributable to an Under-Consumed Product, as determined by Cisco. “**Under-Consumed Product**” means Software or Cloud Service for which You have Consumed less than Your Entitlement.

Growth Allowance

For those Suites in the Cisco Security Choice Enrollment that include a Growth Allowance (as reflected in the above tables), the Growth Allowance is 20%. During the Suite Term, You may Consume up to 120% of the Initial Entitlement without incurring any additional fees. The True Forward is calculated once You exceed the Growth Allowance. For clarity, if You exceed the Initial Entitlement but do not exceed the Growth Allowance, You will not incur any True Forward fees.

Support Services

Except for Cloudlock, Duo, and Umbrella (discussed below), Basic Support Services include access to: (1) Support and troubleshooting by telephone or web case submission 24 hours per day, 7 days per week; and (2) Technical and general information on Cisco.com. Cisco will respond to requests: (i) within one hour for Severity 1 and 2 cases; (ii) on the next business day for Severity 3 and 4 cases; and (iii) in accordance with the Cisco Severity and Escalation Guideline (available on Cisco.com). For Software, Basic Support Services also include: (3) Work-around solutions or patches to reported Software problems; and (4) Major, minor, and maintenance releases. You will be required to update to the latest Software or Cloud Service release to correct a reported problem and facilitate Cisco's ability to provide Support Services using commercially reasonable efforts. Basic Support Services for Cloudlock and Umbrella are set forth in the applicable OD (as reflected in the above tables). Basic Support Services for Duo are set forth at <https://duo.com/support> and do not include Duo Care, which is available for purchase.

End User Information Form Acceptance

THIS END USER INFORMATION FORM SETS FORTH THE SPECIFICS OF THE END USER'S ENROLLMENT IN THE EA PROGRAM TERMS. END USER'S THE UNDERSIGNED REPRESENTS THAT THEY ARE AUTHORIZED TO SIGN THIS FORM ON THE END USER'S BEHALF AND THAT THE INFORMATION PROVIDED, INCLUDING METER COUNTS FOR THE END USER AND ITS PARTICIPATING AFFILIATES, IS ACCURATE AS OF THE DATE OF SIGNATURE. THE UNDERSIGNED UNDERSTANDS THAT THE APPROVED SOURCE RELIES UPON THE INFORMATION PROVIDED IN THIS FORM TO ESTABLISH THE PRICE QUOTE FOR THE END USER'S PURCHASE.

End User Acceptance	
End User	TRANSBAY JOINT POWERS AUTHORITY
Authorized Representative Name	Nila Gonzales
Authorized Representative Title	Interim Executive Director
Date	
Signature	

Cisco Enterprise Agreement Program Terms and Conditions for US SLED End Users

These terms and conditions together with (a) the applicable Enrollment Descriptions and End User Information Form (collectively, the “**EA Program Terms**”) and, (b) the Cisco-held direct government purchase contract (“**SLED Contract**”) (if a state or local government is purchasing directly under the SLED Contract), which are incorporated by this reference, govern any Suites that You order under the Cisco Enterprise Agreement Program (“**Purchased Suites**”). The EA Program Terms do not modify the terms of any Cisco products or services You purchase outside of the Cisco Enterprise Agreement Program. The documents comprising the EA Program Terms and the SLED Contract are complimentary, and to the extent possible, construed and interpreted consistently. In the event of an inconsistency, conflict, or ambiguity between the EA Program Terms and the SLED Contract, the order of precedence for any Purchased Suite is first the SLED Contract, then the EUIF, then the Enrollment Description, and then these terms and conditions. The EA Program Terms take precedent over the applicable Licensing Documents.

By signing these terms and conditions You agree to the EA Program Terms and the Licensing Documents. If You do not agree to the EA Program Terms or Licensing Documents, You may not Consume the Software or Cloud Services. Notwithstanding the foregoing, You are not obligated to make a purchase by entering into the EA Program Terms, and neither the EA Program Terms nor the Licensing Documents will apply until You place an order as further described in section 1, below.

1. **Orders.** To purchase Suites under the EA Program Terms, You must first submit the applicable EUIF and Enrollment Description signed by Your authorized representative to the Approved Source. The EUIF must list: (a) Your Participating Affiliates; (b) the Purchased Suites; (c) the Suite Term; and (d) accurate Meter counts for You and all Participating Affiliates. You will then be required to place an order for the Purchased Suites according to the process set forth in Your purchasing agreement with the Approved Source.
2. **Access to Purchased Suites.** Subject to Your payment of the applicable fees to the Approved Source, Cisco will grant You and all Participating Affiliates the right to Consume the Purchased Suites during the Suite Term via the EA Workspace or as otherwise set forth in the applicable Enrollment Description. You must pay for all Software and Cloud Services Consumed. You are responsible for keeping all login credentials to the EA Workspace secure and for the actions of any individual You or a Participating Affiliate authorize to access the EA Workspace, including payment for any Software or Cloud Services Consumed by such individuals.
3. **Enterprise-wide Commitment.** The Approved Source relies on the information You provide in the EUIF to establish the Enterprise-wide Commitment. During the Suite Term, Your payment obligation related to the Enterprise-wide Commitment may increase as a result of any of the following: (a) You exceed the Initial Growth Cap (as described in section 5); (b) You exceed the Initial Entitlement or the previous year’s Entitlement subject to a True Forward (as described in section 6); or (c) You purchase an additional Suite (as described in section 9).
4. **Term & Termination.**
 - a. **Term.** The Term of the EA Program Terms will commence on the date of signature below and continue so long as there is an active Purchased Suite, unless earlier terminated in accordance with section 4(c)(i), below.
 - b. **Suite Term.** The Suite Term for each Purchased Suite will commence on the Suite Start Date and last for the period set forth in the EUIF, unless terminated in accordance with section 4(c)(i), below.

c. **Termination.**

- i. Either party may terminate the EA Program Terms or a Purchased Suite if the other party materially breaches the EA Program Terms and does not cure the breach within 30 days of written notice of the breach.
- ii. In the event of Your uncured material breach of the EA Program Terms for non-payment of fees to the Approved Source, Cisco may, in lieu of termination of the Program Terms pursuant to section 4(c)(i), suspend Your right to Consume the Software and Cloud Services in the Purchased Suite and suspend Your access to the EA Workspace, until Your breach has been cured.
- iii. In the event of Your termination for Cisco's uncured material breach of the EA Program Terms, Cisco will refund to the Approved Source (or You, if You purchased directly from Cisco) any fees You paid covering the period after the effective date of termination.
- iv. Other than as provided in this section 4 and to the extent permitted by law, the EA Program Terms and any orders placed thereunder are non-cancellable and may not be terminated.

d. **Effect of Termination; End of Suite Term.** Upon termination or at the end of the Suite Term:

- i. The following rights will terminate with respect to the Purchased Suites: (1) Your right to Consume Cloud Services and Software; (2) Your right to access the EA Workspace; (3) Your right to receive Support Services; and
- ii. You must destroy the product activation keys (PAKs) provided in connection with the Purchased Suites.

5. **Initial Growth Cap.** If You exceed the Initial Growth Cap during the first six months of the Suite Term, the Approved Source may charge You for such Consumption above the Initial Growth Cap. If the Purchased Suite includes a Growth Allowance (described in the applicable Enrollment Description), the Growth Allowance cannot be used to offset fees for exceeding the Initial Growth Cap.

6. **True Forward.**

- a. Cisco performs a True Forward for the Purchased Suites on each anniversary of the Suite Start Date. On the first anniversary of the Suite Start Date, if You have exceeded the Initial Entitlement, the Approved Source will charge You for the Consumption above the Initial Entitlement through the remainder of the Suite Term. On each subsequent anniversary of the Suite Start Date, the Approved Source will charge You for any Consumption above the previous year's Entitlement through the remainder of the Suite Term.
- b. Your True Forward payment obligation for each Purchased Suite will be calculated by comparing Your Consumption of Software and Cloud Services to Your Entitlement for the previous year. Any payment owed to the Approved Source will be determined as follows and reflected in the price quote from the Approved source: the unit price less any applicable discount or incentive multiplied by the quantity by which You exceeded Your then-current Entitlement. The price used to calculate any True Forward fees will be established when You place the order for each Purchased Suite.
- c. For some Suites, a portion of Your True Forward payment obligation may be offset by the residual value remaining in Software or Cloud Services in the same Suite. This process is called value shift, and the applicable Enrollment Description indicates whether and to the extent value shift applies to a given Suite.
- d. There is no fee for exceeding the Entitlement in the final year of the Suite Term.

7. **Updates to Purchased Suites.** Cisco may enhance or refine the Purchased Suites at no additional cost to You. Such updates will not materially reduce the core functionality of the Purchased Suites.
8. **End of Life.** Notwithstanding anything in the EA Program Terms to the contrary, Cisco reserves the right to discontinue a Suite with at least three years' prior notice. If a Purchased Suite is discontinued, Cisco will either: (a) provide You a substantially similar replacement Suite for the remainder of the Suite Term; or (b) issue a credit to the Approved Source (or You, if You purchased directly from Cisco) for any fees You paid for the Purchased Suite covering the period after the last date such Purchased Suite is available for You to Consume. Such credit can be applied towards the future purchase of Cisco products and services.
9. **Purchasing Additional Suites.** You may purchase additional Suites by submitting a new EUIF and order to the Approved Source. Additional Suites may co-terminate with a pre-existing Purchased Suite provided there are at least 12 months remaining in the Suite Term of such pre-existing Purchased Suite. Otherwise, additional Purchased Suites will be given a new Suite Term and will be subject to the then-current EA Program Terms in accordance with section 10, below.
10. **Modifications.** As our business evolves, Cisco may modify the EA Program Terms. Updated EA Program Terms do not apply to pre-existing Purchased Suites or to future orders that co-terminate to a pre-existing Purchased Suite, which will be governed by the version of the EA Program Terms already in effect for the pre-existing Purchased Suite.
11. **Participating Affiliates.** You are responsible for Your Participating Affiliates' compliance with the EA Program Terms.
12. **Support Services.** Basic Support Services are included in the price of the Purchased Suite and described in the applicable Enrollment Description and Licensing Documents. Higher levels of Support Services may be available for You to purchase and, if You elect to do so, will be described in documentation provided to You at the time of purchase.
13. **Confidentiality.** Cisco acknowledges that notwithstanding the Confidentiality label attached to the EA Program Terms, You may be subject to and required to comply with open records laws and You will abide by any required disclosures under such laws.
14. **Importation Fee for Embedded Software.** For Purchased Suites that include Embedded Software, the value of Embedded Software will be deducted from the purchase price of the related Cisco hardware. If You are required to pay an Importation Fee, Your jurisdiction may use the value of both the hardware and Embedded Software to calculate the Importation Fee. Accordingly, the Importation Fee on the value of the combined products may be higher than if calculated solely using the price of the hardware.
15. **Delivery of Embedded Software.** Embedded Software is delivered pre-installed on Cisco hardware to the address provided on the purchase order for the Cisco hardware. Your use of the smart licensing account Cisco designates for the Embedded Software will ensure accurate pricing of the Embedded Software.
16. **No Assignment & Transfer.** Neither the EA Program Terms, nor any right or obligation herein may be assigned or transferred by a party (including under Cisco's Software Transfer and Relicensing Policy) without the other party's prior written consent, which may not be unreasonably conditioned, withheld, or delayed. Any attempted assignment without the other party's consent shall be void and of no effect. Notwithstanding the foregoing, Cisco may assign the EA Program Terms and any right or obligation herein to a Cisco Affiliate without Your consent.
17. **Verification.** Upon reasonable request from Cisco, You will assist Cisco in verifying the quantity of Software and Cloud Services that You have Consumed. If the verification discloses Consumption above Your then-current Entitlement, the Approved Source will charge You for the excess Consumption in accordance with the EA Program Terms.

18. **Combined Discounts.** The pricing, discounts, and other incentives offered in connection with a Purchased Suite may not be combined with any other price reductions, discounts, promotional pricing, rebates, credits, trade-in, or other pricing programs or incentives offered by Cisco unless expressly agreed by Cisco in writing.
19. **Entire Agreement.** The EA Program Terms constitute the entire agreement between the parties concerning the Cisco Enterprise Agreement Program and supersede all prior oral or written communications between the parties concerning the program.
20. **Definitions.**
- a. **"Affiliate"** means any governmental departments, agencies, bodies, and other public sector entities as listed on the completed EUIF by End User.
 - b. **"Approved Source"** means Cisco or a Cisco authorized reseller, distributor, or systems integrator.
 - c. **"Cisco"** means Cisco Systems, Inc. or its applicable Affiliate delivering the EA Program Terms.
 - d. **"Cloud Service"** means the Cisco hosted software-as-a-service listed in the applicable Enrollment Description.
 - e. **"Consume"** or **"Consumption"** means to download, install, activate, provision, enable, or otherwise access Software or Cloud Services.
 - f. **"EA Program Terms"** has the meaning given to it in the introductory paragraph.
 - g. **"EA Workspace"** means the portal from where You Consume Software and Cloud Services and view and manage Your Entitlement.
 - h. **"Embedded Software"** means Software that is delivered on newly purchased Cisco hardware.
 - i. **"End User," "You,"** or **"Your"** means the final purchasing entity as identified on the EUIF.
 - j. **"Enterprise-wide Commitment"** means Your purchase commitment in the Purchased Suite for You and all Participating Affiliates, as reflected on the EUIF.
 - k. **"Entitlement"** means, at any point in time during the Suite Term, the type and quantity of Software and Services as determined by the Meter counts for which You have already paid the applicable fees to the Approved Source.
 - l. **"Enrollment"** means a combination of Suites belonging to the same Cisco product family. Cisco DNA, Cisco Data Center, Cisco Security Choice, Cisco Meraki, and Cisco Collaboration Flex Plan each represent an Enrollment.
 - m. **"Enrollment Description"** means the supplemental program terms and description governing an Enrollment.
 - n. **"EUIF"** means the End User Information Form for the Purchased Suite.
 - o. **"EULA"** means Cisco End User License Agreement, available at [cisco.com/go/eula](https://www.cisco.com/go/eula).
 - p. **"Growth Allowance"** means the right to exceed the Initial Entitlement without incurring additional fees as set forth in the applicable Enrollment Description.
 - q. **"Importation Fee"** means an import duty or tax on the purchase of Cisco hardware.
 - r. **"Initial Entitlement"** means Your Entitlement at the start of the Suite Term as determined by the Meter counts for You and all Participating Affiliates provided on the EUIF.

- s. **“Initial Growth Cap”** means 105% of the Initial Entitlement.
- t. **“Licensing Documents”** means the EULA and SEULAs for the Software and the EULA and ODs for the Cloud Services in the Purchased Suites (or if you are purchasing pursuant to a SLED Contract, the applicable licensing terms in the Cisco SLED Contract, where applicable). The applicable Licensing Documents are listed in the Enrollment Description for each Purchased Suite.
- u. **“Meter”** means the unit of measurement for Software or Cloud Services Consumption.
- v. **“OD”** means the offer description and supplemental licensing terms governing Cloud Services.
- w. **“Participating Affiliates”** means Your Affiliates whose Meter counts are included on the EUIF.
- x. **“Purchased Suites”** has the meaning given to it in the introductory paragraph.
- y. **“Services”** means both Cloud Services and Support Services.
- z. **“SEULA”** means the supplemental licensing terms governing Software.
- aa. **“Software”** means the Cisco software listed in the applicable Enrollment Description.
- bb. **“Suite”** means a combination of Software and Services in an Enrollment.
- cc. **“Suite Start Date”** means, with respect to each Purchased Suite, the earliest date any Software or Cloud Service in the Purchased Suite is made available for You to Consume.
- dd. **“Suite Term”** means, with respect to each Purchased Suite, the duration of the Purchased Suite.
- ee. **“Support Services”** means maintenance, technical assistance, or other support provided for the Software and Cloud Services in a Purchased Suite.
- ff. **“Term”** means the duration of the EA Program Terms.
- gg. **“True Forward”** means an annual adjustment to account for exceeding the previous year’s Entitlement.

Terms and Conditions Acceptance

I HAVE READ THE TERMS AND CONDITIONS ABOVE AND UNDERSTAND THAT IF AN ORDER IS PLACED, THESE TERMS AND CONDITIONS WILL APPLY TO THE PURCHASED SUITES.

End User Acceptance	
End User	TRANSBAY JOINT POWERS AUTHORITY
Authorized Representative Name	Nila Gonzales
Authorized Representative Title	Interim Executive Director
Date	
Signature	