

GENERAL PROVISIONS – TELECOMMUNICATIONS

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SECTION 1. DEFINITIONS

Unless otherwise specified in the Statement of Work or defined in the text of this Contract, capitalized terms used herein shall be given the meaning shown below. The word "include" or "including" shall be deemed to mean "include, without limitation" or "including, without limitation," as case may be, and the language following "include" or "including" shall not be deemed to set forth an exhaustive list.

Acceptance: as defined in Section 15.1.2 Acceptance.

Acceptance Test: means the tests performed after Installation Date which are intended to determine compliance, performance, and reliability of Deliverables with the specifications and all other attachments incorporated herein by reference and to determine the specifications set forth in the Contract.

Artificial Intelligence (AI): means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments (Gov Code §§ 11549.64 & 11546.45.5).

Attachment: means a mechanical, electrical, or electronic interconnection to Contractor-supplied Goods that is not connected or provided by Contractor.

Business Entity or Firm: 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.

Buyer or Customer: means (i) State entities, (ii) local government entities that are defined as "any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds for the acquisition of goods, information technology, or services" per Public Contract Code Chapter 2, Paragraph 10298 (a) (b), (iii) 100% tax supported governmental entity, (iv) a governmental entity with a Joint Powers Agreement, or (v) federally recognized Indian Tribes.

CALNET: means California Network and Telecommunications program, a division of the Office of Technology Services within CDT.

CDT: means California Department of Technology.

CMO: means CALNET Management and Oversight.

Cloud Services or Cloud Computing Services: means the cloud services, including Software as a Service ("SaaS"), Infrastructure as a Service ("IaaS"),

Platform as a Service ("PaaS"), and any other vendor-managed or hosted services, and any related services, provided to the State pursuant to the Contract.

Cloud Services Availability: as defined in Section 21.7 Cloud Services Availability.

Cloud Services Overage Charges: any additional fees incurred for usage of Cloud Services that exceeds the allocated usage limits specified in the Contract.

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.

Conflict Laws: as defined in Section 13.5.2 Waiver of the Follow-On Restrictions.

Contract: means, collectively, the purchase order (by whatever name known or in whatever format used), these General Provisions – Telecommunications, and the other documents set forth in Section 3 Order of Precedence.

Contract Manager: means Contract Representative, Contract Contact, Contract Program Manager, or as specified in the Contract.

Contractor: means individual(s) or the business entity with whom the State enters into this Contract. Contractor shall be synonymous with "Reseller," "supplier," "vendor," "Service Provider," or other similar term.

Contractor's Published Pricing: as defined in Section 2.3.2 Compliance With Regulatory Filings Requirements.

Cost to Cover: means as defined in Section 8.7 Remedies for Breach of Warranty.

CPU: means as defined in Section 4.1 Software License.

Data Breach: means any access, destruction, loss, theft, use, modification, or disclosure of State Data by an unauthorized party or that is in violation of Contract terms, or applicable state or federal law.

Days: means calendar day(s).

Deliverables: means Goods, Services, Documentation, works of authorship, and any items to be delivered pursuant to this Contract, including any such items supplied that are incidental to the provision of Services.

Derivative Works: as defined in Section 9.1.2 Pre-Existing Material.

Disentanglement: means as defined in Section 5.5 Disentanglement (Migration-Out).

Documentation: means instructions, specifications, training materials, reports, manuals, or other documents provided in hard copy or electronic form with the Goods, Services or otherwise, in accordance with the Contract. Documentation customized for the State hereunder constitutes Work Product if such materials are required by the Statement of Work.

DVBE: as defined in Section 19.2.1 DVBE Criteria.

Economic Sanctions: as defined in Section 13.10 Executive Order N-6-22 Russia Sanctions.

eVAQ: means Electronic Vendor Application of Qualifications. The eVAQ is an external pre-qualification process to the solicitation and it is designed to process as much of the administrative requirements required to do business in the State of California in advance to streamline the solicitation process.

Effective Date: shall mean the date set forth in Section 2.1.3.a Contract Effective Date.

E-rate: as defined in Section 15.4.1 Examination and Audit of Records.

Enhancements: means as defined in Section 5.3 Availability of Refreshed Technology and Additional Service Items.

Four-Digit Date Compliance: as defined in Section 13.17 Four-Digit Date Compliance.

FTI: as defined in Section 21.6.1 No Access to FTI.

GenAI Training Data: any content, information, or data that is used to train, tune, test, or validate a GenAI, including text, images, video, audio, code, or similar types of input.

Generated Data: any output, results, content, or other data that is produced by GenAI, including but not limited to text, images, video, audio, code, or similar types of output.

Generative AI (GenAI): means an AI system that can generate derived synthetic content, including text, images, video, and audio, that emulates the structure and characteristics of the system's GenAI Training Data (Gov Code §11549.64).

Goods: means all types of tangible personal property, including but not limited to, materials, supplies, technology, hardware, Software, and equipment (including telecommunications and broadband hardware) to be delivered pursuant to this Contract, including any such items furnished incidental to the provision of Services.

Government Purpose Rights: as defined in Section 9.2 Government Purpose Rights.

Hallucination: means Generated Data that is nonsensical, false, or misleading, and is not based on real or existing data, but is instead produced by bias or the GenAI's extrapolation or creative interpretation of its Gen AI Training Data.

IFB: means Invitation for Bid.

Infrastructure-as-a-Service (IaaS): means the capability to provide processing, storage, networks and other fundamental computing resources where the User is able to deploy and run arbitrary software, which can include operating systems and applications. The User does not manage or control the underlying Cloud Services infrastructure but has control over operating systems, storage, and deployed applications; and possibly limited control of select networking components (e.g., host firewalls).

Installation Date: means the date by which the Contractor must have commenced the Services, or installed Software, or Goods, ready (certified) for use by the State or Customer.

IPR: as defined in Section 15.7 Price Guarantee Period.

Limitation of Liability: as defined in Section 16.3.4 Rights and Remedies of State for Default.

Maintenance: means (i) remedial maintenance performed as a result of Goods, Software or Services failure, and which is performed as required, i.e. on an unscheduled basis; or (ii) maintenance performed on a scheduled basis and is designed to keep the Goods, Software or Services in proper operating condition, in accordance with the requirements of the Contract.

Most Favored Nation: as defined in Section 15.14 "Most Favored Nation" Status of State.

Ordering Document or Service Request: means the document used to, without limitation, order, purchase, move, add, change, disconnect, transfer, cancel or delete Goods, Software or Services such as a Telecommunications Service Request (Form 20), STD. 65, Request for Offer (RFO) or other Customer authorized procurement document.

OSTP: means Office of Statewide Technology Procurement.

Party or Parties: means as defined in Section 2.1 Contract Formation.

Platform-as-a-Service (PaaS): means the capability to deploy onto Cloud Services infrastructure Customer- created or -acquired applications created using programming languages and tools supported by the Service Provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The User 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.

Pre-Existing Materials: as defined in Section 9.1.2 Pre-Existing Material.

Prompt: means any written, spoken, or rendered information provided as a query, command, or other form of input, to any GenAI in connection with this Contract. For avoidance of doubt, Prompt includes any input automatically detected or created by the GenAI, as well as any derivate works of a Prompt or collection of Prompts.

Purchase Price: as defined in Section 12.1.1 Direct Damages.

Rejection Notice: means as defined in Section 6.2 Notice of Rejection.

Requests: as defined in Section 10.7 Legal Requests.

Reseller (see also Contractor): means the business entity authorized by the Service Provider or software publisher to resell the Deliverables to the State.

RFP: means Request for Proposal.

RPO: as defined in Section 21.14.4 Repair and Restore.

RTO: as defined in Section 21.14.4 Repair and Restore.

Scope of Work: means description of work as mutually agreed upon by Contractor and the Customer (or CMO) that is accompanied with an Ordering Document. The Scope of Work does not supersede the Statement of Work.

Security Incident: means an occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits or that constitutes a violation or imminent threat of violation of security policies, security procedures, or acceptable use policies, including but not limited to a Data Breach.

Security Policies: as defined in Section 21.12.1 Customer Security Policies Compliance.

Service Provider: means a provider of the Services under the Contract, as set forth in the Statement of Work, if applicable.

Services or Telecommunications Services: means an all-inclusive term, which includes, support services (such as Maintenance, operation), other personal services (such as technical or professional services, e.g., consulting and direction, project management, implementation, training, customization), telecommunications technologies or services (such as Voice over Internet Protocol, Ethernet, Cellular, Internet, Satellite), Cloud Services (such as SaaS, PaaS, IaaS) provided by the Contractor in accordance with this Contract or telecommunication security services (such as network, infrastructure or device security).

Signing Date: as defined in Section 2.1.3 Contract Effective Date.

Software: means an all-inclusive term that refers to any computer programs, routines, or subroutines supplied by Contractor, including Commercial Software or operating Software, application programs or programming aids to facilitate the use of Goods or Services.

Software as a Service (SaaS): means the capability provided to the User to use the Service Provider's applications running on a cloud infrastructure; applications are accessible from various client devices through either a thin client interface, such as a web browser (e.g., web-based email), or a program interface; User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited User-specific application configuration settings.

State: 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 as identified in the Contract.

State Data: means all data owned by the State, and submitted to, processed by, or stored by Contractor or Service Provider under this Contract and includes all data that originated with the State or Users, all data provided by the State or Users, and all data generated, manipulated, produced, reported by or otherwise emanating from or by applications run by the State or Users on the System or Services. For clarity and without narrowing the scope of this definition, State Data is synonymous with “customer data”, “customer content”, or similar terms, as may be used in Contractor’s or Service Provider’s service agreements that may be incorporated into the Contract as an attachment or by reference, and includes the following:

- a) **Non-Public Data:** means data, including Personal Information, that is not subject to distribution to the public as Public Information. Non-Public Data includes Customer Proprietary Network Information (CPNI). It is deemed to be sensitive or 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.
- b) **Personal Information:** as defined by the California Information Practices Act (Civ. Code, § 1798 et seq.).
- c) **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 (Gov. Code, § 7920 et seq.) or other applicable state or federal laws. For clarity, “Public Information” is also interchangeable with “Public Data”.

State Data Availability: as defined in Section 21.8 State Data Availability.

Statement of Work (SOW): means a document provided by the State which defines the timeline, and specifies the objectives, Deliverables and tasks that Contractor is expected to provide or perform, the responsibilities and expectations, indicating the type, level and quality that is expected, all of which form a contractual obligation upon Contractor. For purposes of the CALNET program, the SOW shall mean the requirements contained in the CALNET solicitation documentation and Contractor's response to meet the program requirements in the solicitation as stated in Contractor’s proposal.

System: means the hardware, Software or Services as described in this Contract that are integrated, functioning together, and performing in accordance with this Contract.

Telecommunications: means but is not limited to, wireless or wired systems for transport of voice, video, and data communications, network systems, requisite

facilities, equipment, system controls, simulation, electronic commerce and all related interactions between people and machines as defined in Government Code 11532.

Termination Date: as defined in Section 16.2.1 Termination for Convenience Notice.

Termination Notice: as defined in Section 16.2.1 Termination for Convenience Notice.

Third Party Obligation: as defined in Section 11.1.2 Pass-Through Indemnity for Third Party Obligations.

Transition Period: as defined in Section 21.13.1 Transition Period.

Updates: means as defined in Section 4.2 Future Releases.

U.S. Intellectual Property Right: means any intellectual property right enforceable in the United States, including, without limitation, rights in trademarks, trade secrets, copyrights, and U.S. patents.

Use: as defined in Section 10.5.1 Restriction on Use.

User(s): means any authorized end user of the Deliverables or System under this Contract including but not limited to Buyer's employees, independent contractors, authorized agents, auditors, representatives, officials, other independent providers, or any external users contemplated by the Parties.

Work Authorization: an attachment to a Statement of Work, used for approval of unanticipated work. At minimum, a Work Authorization includes:

- i. Task summary of work to be performed
- b) Schedule dates of work
- c) Estimated labor hours
- d) Labor hour rates
- e) Estimated total costs.
- f) Contractor personnel to be assigned
- g) Job classification/skill level
- h) Completion criteria and/or deliverables
- i) Approval signature lines for contractor and the State

Work Product: as defined in Section 9.1.1 Work Product.

SECTION 2. CONTRACT FORMATION

2.1 CONTRACT FORMATION

The State and Contractor are individually referred to as a "Party" and collectively referred to as "Parties".

2.1.1 SOLICITATION RESPONSE

If this Contract results from a response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), 3.5 (commencing with Section 12120), 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), or PCC Section 6611, then Contractor's solicitation response 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.

2.1.2 OTHER OFFERS, QUOTES OR PROPOSALS

If this Contract results from a solicitation other than as set forth in Section 2.1.1 (Solicitation Response), Contractor's quotation or proposal is deemed a firm offer and this Contract is the State's acceptance of that offer.

2.1.3 CONTRACT EFFECTIVE DATE

- a) Awarded Contracts signed by Contractor ("Signing Date") shall become effective when signed by the State ("Effective Date"). This Contract shall not be binding or of any legal force or effect on the State until the Effective Date.
- b) For CALNET Contracts, an awarded Contractor shall not begin implementation, i.e., selling Goods or Services or accepting the Customer orders until the CMO authorizes Contractor in writing to do so, and naming a specific implementation start date for such activities. The CMO reserves the right to delay a Contractor's implementation of sale of Goods or Services, or accepting the Customer orders pursuant to an awarded Contract to the extent determined by the CMO to be in the State's interest.

2.1.4 IRREVOCABLE OFFER

- a) From the Signing Date to the Effective Date, this Contract constitutes the irrevocable, firm offer by Contractor to provide the Services to the State for the charges set forth in the Contract.
- b) The State may exercise its option to extend the Contract by giving written notice of extension to Contractor prior to expiration of the term. Contractor shall provide a reminder letter to the State ninety (90) calendar days prior to the end of the Term and each extension thereof if the State shall not have previously provided written notice to Contractor of its intent to extend the Contract prior to such dates.
- c) For purpose and clarity and avoidance of confusion under this Contract, the State is granted the limited right to make Goods and Services contemplated herein available to Customers.

2.1.5 EVAQ INCORPORATION

Contract shall automatically incorporate by reference all of the OSTP eVAQ terms and conditions which shall apply for the duration of the Contract. Contractor may utilize the eVAQ terms and conditions for multiple solicitations provided the eVAQ is valid and applicable.

2.1.6 BUDGET CONTINGENCY CLAUSE

This Contract is valid and enforceable only if: (a) sufficient funds are made available by the State Budget Act of the appropriate State Fiscal Year(s) covered by this Contract ; or (b) sufficient funds are made available to the State by the United States Government for the Fiscal Year(s) covered by this Contract. If funding for any fiscal year is reduced or deleted by the Budget Act or by the United States Government, CDT shall have the option to either cancel this Contract with no liability occurring to the State other than as contained herein, or offer Contract amendment to Contractor to reflect the reduced amount, as provided in Section 16.1 (Termination for Non-Appropriation of Funds).

2.2 CONTRACTOR'S POWER AND AUTHORITY

2.2.1 GRANT OF RIGHTS

- a) Contractor warrants that it has full power and authority to grant the rights herein 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.
- b) The State will notify Contractor promptly in writing of any such breach of warranty claim, and Contractor will have sole control of the defense of any 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 required by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); or
 - 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, CDT must approve any settlement or compromise, which approval will not unreasonably be withheld or delayed.
 - iii. The State will reasonably cooperate in the defense and in any related settlement negotiations. Further, Contractor agrees it will not enter into any arrangement with any third-party which may diminish any rights of the State under the Contract.

2.2.2 RESELLER'S WARRANTY

To the extent, Contractor is a Reseller, Contractor warrants that: (a) the Service Provider has reviewed the Contract; (b) in Contractor's agreement with the Service Provider, the Service Provider has agreed to accept the responsibilities, obligations, and liabilities (such as License Grant, Inspection, Acceptance, Rejection, Warranties, Confidentiality, Indemnification, Data Protection Provisions) under this Contract that naturally reside with the Service Provider with respect to the provision of Deliverables; and (c) Contractor can provide the Deliverables in accordance with the Contract.

2.3 COMPLIANCE WITH STATUTES AND REGULATIONS

2.3.1 COMPLIANCE WITH LAWS

The Parties warrant and certify that in the performance of this Contract, they will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. Contractor agrees to indemnify the State against any loss, cost, damage, or liability by reason of Contractor's violation of this provision (including violations by Contractor's employees, contractors, and agents), subject to the requirements set forth in Section 11.2 (Indemnification Process).

2.3.2 COMPLIANCE WITH REGULATORY FILINGS REQUIREMENTS

- a) In the event that any term or action required in this Contract requires a regulatory filing, Contractor shall make such filing and such action or term shall, to the extent applicable, be made effective pursuant to the rules of the Federal Communications Commission ("FCC") or the California Public Utilities Commission ("CPUC"). To the extent applicable, Contractor shall make the appropriate FCC filing in a timely manner with the rates being effective consistent with FCC requirements. Under the CPUC, the terms are effective immediately upon signature by the Parties; provided, however, that, to the extent applicable, Contractor is obligated to and shall make a formal filing with the CPUC in a timely manner and shall provide the State with written notice that such filing has been made.
- b) In addition to the foregoing, Contractor shall make all necessary regulatory filings which shall include the rates and charges for the Service(s) and any terms and conditions that affect the rates and charges paid by any Customer.
- c) Should the filings described herein not adequately address an issue or fail to address an essential fact, Contractor's tariffs or published service guides (or other published corporate pricing if Contractor is not required to file tariffs) (collectively the "Contractor's Published Pricing"), if applicable, shall be utilized as a basis for providing continuity of Service, and Service offerings, pending subsequent mutual agreement and modification of this Contract by the parties; provided, however, if the Parties are unable to reach such mutual agreement within a reasonable period of time and good faith effort, then the State may take action pursuant to the terms and conditions

of this Contract, including but not limited to terminating the affected Service(s) without penalty, or continuing the Service at Contractor's Published Pricing.

SECTION 3. ORDER OF PRECEDENCE

In the event of any inconsistency or conflict between the sections, exhibits, attachments, specifications or provisions comprising the Contract, the following order of precedence shall apply:

- a) All regulatory filings pursuant to the terms and conditions of this Contract.
- b) The eVAQ inclusive of the General Provisions – Telecommunications (except in the instances herein where the provision contains “Unless otherwise specified in the Statement of Work” (or similar phrase), the provisions specified in SOW shall take precedence over the provisions referenced in these General Provisions).
- c) The eVAQ inclusive of the GenAI Special Provisions (except in the instances therein where the provision contains “Unless otherwise specified in the Statement of Work” (or similar phrase), the provisions specified in SOW shall take precedence over the provisions referenced in these Special Provisions).
- d) Contractor's approved eVAQ, and any attachments thereto.
- e) The TECH 213 Standard Agreement and any amendments thereto, issued as a result of a solicitation (e.g., IFB and RFP).
- f) Statement of Work contained in the solicitation documentation in the following order of precedence:
 - i. The specifications and requirements contained in the solicitation documentation.
 - ii. State approved pricing contained in the Cost Worksheet and Catalog A (for CALNET Contracts only), and any amendments thereto, whichever cost is lower.
 - iii. Contractor's response to meet or exceed the specifications and requirements in the solicitation as stated in their bid or proposal. (The parties acknowledge and agree that silence in the bid or proposal with respect to a particular solicitation specification or

requirement equals consent by Contractor to meet such specification and requirement.)

- iv. Any other exhibits or attachments to Statement of Work.
- g) Ordering Document or equivalent, or Work Authorizations.
- h) The Scope of Work, including any specifications and requirements contained in the Scope of Work.
- i) All other Contractor or Service Provider attachments included in the Contract or incorporated in the Contract by reference (e.g. end user license agreements, acceptable use policies, service guides, product specific terms and conditions.)

SECTION 4. LICENSE GRANTS

4.1 SOFTWARE LICENSE

Unless otherwise specified in the Statement of Work:

- a) If use of the Service requires the use of separate or additional Software, Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, a royalty-free and non-exclusive license to use the Software and any Documentation. The State may use the Software only in connection with the use of the Service and according to any licensing terms as may be specified in the Contract. Acceptance of Software (including any third-party Software) will be governed by the terms and conditions of this Contract.
- b) The license granted herein authorizes the State to use the Software in machine-readable form on the computer System located at the site(s) specified in the Statement of Work. The computer System and its associated units (collectively, "CPU") are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license granted herein shall be temporarily extended to authorize the State to use the Software, in machine-readable form, on any other State CPU. By prior written notice, the State may redesignate the CPU in which the Software is 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.

4.2 FUTURE RELEASES

Unless otherwise specified in the Statement of Work, if improved versions, patches, corrections, modifications, bug fixes, updates, or releases (collectively, "Updates") of the Software versions are developed by Contractor, and are made available to other licensees, such Updates 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 Contractor offers new versions or upgrades to the Software, they shall be made available to the State at the State's option, at a price no greater than the Contract price.

4.3 ENCRYPTION & AUTHORIZATION KEYS

Upon initiation of Cloud Service, Contractor shall provide all encryption and authorization keys required by the Users to access the Cloud Services.

4.4 DOCUMENTATION FOR MAINTENANCE PURPOSES

4.4.1 DOCUMENTATION FOR DELIVERABLES

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 to the State in its use of the Deliverables or System provided hereunder. The State may reproduce the Documentation as reasonably necessary to use the Deliverables or System, provided that all such copies reproduce Contractor's proprietary markings in the same form and manner as the original. Contractor agrees to provide additional Documentation at prices not in excess of charges made by Contractor to its other customers for similar Documentation or the Contract rate.

4.4.2 DOCUMENTATION FOR MAINTENANCE

Upon written notice by the State, Contractor will provide assistance including relevant Documentation to allow the State to perform Maintenance on the Deliverables or the System based on Contractor's methodology. Contractor agrees that the State may reproduce such Documentation for the State's own use in maintaining the Deliverables or the System and Contractor agrees to license any other contractor that the State may have hired for Maintenance, to use the above noted Documentation. The State agrees to include Contractor's copyright notice

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

SECTION 5. SERVICES

5.1 SERVICES

Contractor will provide the Services for the periods set forth in the Statement of Work or Ordering Document. Subject to Section 10 (Confidentiality; Data Rights) and Section 21 (Data Protection Provisions) of this Contract, the State may provide reasonable access to information, Documentation, facilities, equipment, hardware, Software, and personnel as agreed by the Parties to facilitate Contractor's performance of the Services.

5.2 CUSTOMER IN-USE REQUIREMENTS

Unless otherwise specified in the Statement of Work:

- a) The State requires that each Good and Service component proposed as part of a solution must have been installed and in production to one or more commercial or government accounts in the same configuration provided, to paying customers external to Contractor's organization, for at least six (6) months prior to the Installation Date set forth in the applicable Statement of Work or Work Order.
- b) The State has the option at any time to request from Contractor supporting evidence of compliance with the Customer In-Use Requirements.

5.3 AVAILABILITY OF REFRESHED TECHNOLOGY AND ADDITIONAL SERVICE ITEMS

5.3.1 ENHANCEMENTS

- a) Contractor shall evolve, supplement and enhance the Goods and Services provided in the normal course of business and that which is in scope of the Contract during the Term, both to keep pace with and utilize technological advancements and improvements in the method of delivering telecommunications related Services and the pricing thereof. Contractor also acknowledges that the telecommunications environment is critical to the State's business success, and that the State's needs and requirements with regard to

the telecommunications environment may also evolve and change over time, and that the need for enhanced or modified functionality may arise. Therefore, during the Term and within Contract scope, either Party may suggest enhancements or additional required Goods or Services, modifications, cost saving items, or items that might be considered to keep pace with or to take advantage of the latest and most useful technological advancements and improvements in Contractor's performance (collectively, "Enhancements").

- b) When such Enhancements substitute, replace, modify or improve Goods or Services already being received by the State (e.g., network upgrades that generally benefit all users of the network and are not specifically requested by the State), Contractor will make such Enhancements available to the State under this Contract at no additional cost to the State.
- c) If Enhancements do not substitute, replace, modify or improve Goods or Services already being received by the State under this Contract, but instead add to additional material functionality and features, Contractor will make such Enhancements available to the State under the existing Contract through a written proposal. Each proposal for Enhancements must provide a i) business case that includes potential users and technical requirements, if any, and ii) competitive pricing that includes market analysis that illustrates cost benefits and cost justification. The State, in its sole discretion, shall determine whether to approve of the proposal Enhancements and its inclusion in the Contract. If the State chooses to proceed hereunder, the State and Contractor will negotiate in good faith to agree on any additional terms and conditions, if any, under which the Enhancement will be added to this Contract through the amendment process. Contractor shall update any applicable marketing plans used in connection with the Goods or Services hereunder.

5.3.2 ENHANCEMENTS APPROVAL

- a) Contractor understands that the State is solely responsible for approval of proposal for Enhancements and agrees, absent an approved amendment from the Contract's authorized State agency or State's designated authority, Enhancements must not be added to this Contract. Consistent with and without limiting anything

set forth in Section 20.13, Non-Exclusive Agreement, nothing in this Section shall prohibit the State from pursuing or obtaining the same or similar Enhancements with or from other providers or requiring that certain Enhancements may only be obtained from certain providers.

- b) For statewide telecommunications Contracts, Contractor agrees that the Enhancements must not be added to the Contract at the request of any Buyer unless otherwise authorized by CDT.

5.4 MIGRATION (MIGRATION-IN)

Contractor shall perform all migration-in, transition-in, and other similar services as set forth in the Statement of Work. Contractor's failure to perform such services or any non-compliance with the migration-in or transition-in requirements as set forth in the Statement of Work shall constitute a material breach of the Contract. In the event of such breach or any non-compliance, the State shall be entitled to pursue all rights and remedies available under the Contract, at law or in equity.

5.5 DISENTANGLEMENT (MIGRATION-OUT)

Contractor shall perform all migration-out, transition-out, transfer and other similar services as set forth in the Statement of Work. Contractor's failure to perform such services or any non-compliance with the migration-out, transition-out or transfer requirements as set forth in the Statement of Work shall constitute a material breach of the Contract. In the event of such breach or any non-compliance, the State shall be entitled to pursue all rights and remedies available under the Contract, at law or in equity.

5.6 NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY

Unless otherwise specified in the Statement of Work, in case of an emergency, Contractor shall make every reasonable effort to assist the Customer in procuring the use of Contractor Services consistent with that provided under this Contract to meet such emergency. During an emergency, the price and service levels for such compatible Services or Goods shall be reasonably set by mutual agreement of the parties and shall be no greater than the Contract rates and at service levels substantially similar to those set forth in the Contract. The Customer, at its option, may accept or reject the use of emergency Goods or Services. An emergency is defined in **PCC SECTION 1102**: "Emergency," as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate

action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

5.7 PROVISIONING OF DELIVERABLES AND SERVICES

Unless otherwise specified in the Statement of Work, Contractor will not commence provisioning Deliverables or Services for a given Buyer until Contractor receives a complete, signed, accepted, and accurate Ordering Document in accordance with the Contract user instructions. The Ordering Document may be accompanied by a Scope of Work or a Work Authorization as applicable.

5.8 SERVICE TO PUBLIC ENTITIES AND LOCAL GOVERNMENT AGENCIES

In accordance with Government Code Section 11541, Contractor agrees to provide Service to all eligible Buyers pursuant to this Contract. Contractor agrees that it shall have no recourse against the State for any act or omission of the Buyer, which arises from Contractor furnishing Goods or Services pursuant to this Contract. Contractor understands and acknowledges that under this Contract the State neither promises nor guarantees any minimum amount of revenue for Contractor or minimum number of Deliverables, requirements, or Services to be purchased.

5.9 CONTINUING STANDARD OF PERFORMANCE FOR CONTRACTOR SERVICES

Unless otherwise specified in the Statement Work:

5.9.1 CAUSES AND EFFECTS OF CONTRACTOR DELIVERABLE MALFUNCTIONS

- a) In the event Contractor's Service failure or unsatisfactory performance is a result of factors external to the Contract as determined by the State, Contractor agrees to make appropriate recommendations to the State in order that such external factors may be corrected to preclude future problems of a similar nature. Within five (5) business days after such failure occurs, Contractor shall meet and confer with the State regarding appropriate next steps, which may include preparation, for the State's review, comment and approval, of a milestone-based action plan making

such recommendations and corrections described in the preceding sentence.

- b) In the event that the precise cause of a failure cannot be readily determined, Contractor shall continue to research the situation until the probable cause has been identified or until agreement is reached with the State that the probable cause cannot be identified. Within five (5) business days after such failure occurs (or such other timeframe specified in the solicitation), Contractor shall meet and confer with the State regarding appropriate next steps, which may include preparation, for the State's review, comment and approval, of a milestone-based action plan for researching the probable cause of the failure.

5.9.2 REMEDIES FOR UNACCEPTABLE LEVELS OF PERFORMANCE

- a) The remedies provided in this Section shall be in addition to any remedies provided in Section 8 (Warranties and Representations). If a Contractor Deliverable does not meet the minimum level of performance as set forth in the Statement of Work, the remedy or process for correction set forth in the Statement of Work will be followed by the parties. If the specific Deliverable has no remedy or process for correction set forth in the Statement of Work, State shall promptly notify Contractor in writing of such unacceptable performance and the impact on the State, and Contractor shall promptly initiate action to remedy the unsatisfactory performance. Contractor shall, at its option, take one or more of the following actions to correct the situation:
 - i. Provide on-site Contractor personnel for analysis of the problem;
 - ii. Replace the Deliverable;
 - iii. Provide substitute Deliverable satisfactory to the State;
 - iv. Modify the Deliverable; or
 - v. Take any other action with which the State concurs.
- b) If Contractor fails to correct an unacceptable level of performance with respect to any Deliverable during the thirty (30) calendar days following receipt of written notice from the State (or such other timeframe specified in the Contract), the State and Contractor can mutually agree to extend the time to a specified date. If Contractor

fails to correct the situation to the satisfaction of the State by the end of the specified time period, then, without limiting any other remedy specified in the Contract, including the application of Section 20.8 (Liquidated Damages) or the exercise of 15.9 (Set-Off Rights), the State may (i) secure replacement Deliverables with Contractor responsible for payment of Costs to Cover, or (ii) terminate that portion of the Contract relating to the deficient Deliverable.

5.9.3 REPLACEMENT OR SUBSTITUTION OF DELIVERABLE BY CONTRACTOR

If Contractor, in an attempt to improve the level of performance, replaces or substitutes a Deliverable that meets all of the Contract requirements, such replacement or substitution shall be at no cost to the State.

5.9.4 REVIEW OF PERFORMANCE

Contractor's requirements will be periodically evaluated in accordance with the service levels for each Service and contract requirements for all Deliverables delivered throughout the term of this Contract.

SECTION 6. INSPECTION, ACCEPTANCE AND REJECTION

6.1 ACCEPTANCE TESTING

Unless otherwise specified in the Statement of Work:

6.1.1 NON-CUSTOMIZED DELIVERABLES

When acquiring Goods, Cloud Services, or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. All Goods may be subject to inspection, test, and acceptance by the State or its authorized representatives at the destination, notwithstanding any payment or inspection at source.

6.1.2 CUSTOMIZED DELIVERABLES

For all other Software, Goods, or Services customized for the State pursuant to the Contract, Contractor will ensure and maintain a quality assurance system acceptable to the State covering such Deliverables and will tender to the State only those Deliverables that have been inspected and found

to conform to this Contract's requirements. All such Deliverables may be subject to inspection, test, and acceptance by the State or its authorized representatives, at destination, notwithstanding any payment or inspection at source.

6.1.3 CONTRACTOR DUTIES

Contractor shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data reasonably required to perform inspection. Contractor shall keep records evidencing inspections and their result and make these records available to the State during Contract term and for 3 years after final payment. 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.

6.2 NOTICE OF REJECTION

The State shall give written notice of rejection ("Rejection Notice") of Deliverables provided, performed, or delivered within a reasonable time after receipt of or performance of such Deliverables. The Rejection Notice will provide information on the Deliverables that do not substantially conform to required specifications. If the State does not provide a Rejection Notice within 30 Days of provision, performance, delivery of the Deliverable or within such time provided in the Contract for inspection, acceptance and rejection, such Deliverable will be deemed to have been accepted.

6.3 ACCEPTANCE

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 the Contract with respect to any nonconformity.

6.4 EXISTING GOODS & TITLE TO GOODS

Unless otherwise specified in the Statement of Work:

- a) Contractor agrees to reasonably accommodate its Customers and utilize existing equipment. Contractor's proposed Services shall reasonably accommodate the use of such existing Customer Equipment.
- b) Title to Goods shall remain with Contractor and assignees, if any, until there is successful completion of the Acceptance Test. Title to Goods provided under this Contract shall not vest in the Customer, unless such items are purchased by the Customer. Any devices and accessories furnished by Contractor hereunder, except those purchased by the Customer, shall accompany the Goods when returned to Contractor.
- c) Title to a special feature installed on a machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the machine on which it was installed.

6.5 SAMPLES AND DEMONSTRATIONS

The State may request samples or demonstrations for inspection and specification testing and Contractor shall furnish samples for free of charge. The samples furnished must be identical to the Goods and Services as set forth in the solicitation response or as specified in the Contract. Samples, if not destroyed by tests, may, upon request at the time the sample is furnished, be returned at Contractor's expense. All demonstrations of Deliverables shall be conducted at no cost to the State.

SECTION 7. SHIPPING AND DELIVERY; TRANSPORTATION COSTS

7.1 PACKING

All Goods shall 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: (a) show the number of the container and the total number of containers in the shipment, and (b) the number of the container in which the packing sheet has been enclosed.

7.2 SHIPMENT

Unless otherwise specified in the Statement of Work, all shipments by Contractor or its subcontractors must include packing sheets identifying: (a)

the State's Contract number; (b) item number; (c) quantity and unit of measure; (d) part number and description of the Goods shipped; and (e) appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.

7.3 TRANSPORTATION COSTS AND OTHER FEES AND EXPENSES

7.3.1 NO ADDITIONAL CHARGES

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.

7.3.2 FREE ON BOARD (F.O.B)

Contractor must strictly follow Contract requirements regarding 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 Buyer.

7.3.3 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 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 or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

7.3.4 PREPAY AND ADD

Unless otherwise specified in the Statement of Work, if "prepay and add" is selected, supporting freight bills are required when over \$50.

7.4 DELIVERY

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. The quantities specified Ordering Document are the only quantities required. If Contractor delivers more than the quantities specified, the State shall not be required to make any payment for the excess Goods and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

7.5 NEWLY MANUFACTURED GOODS

Unless otherwise specified in the Statement of Work, all Goods supplied under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; and used or reconditioned Goods are prohibited.

7.6 SUBSTITUTIONS

For 7.6 Substitutions, any reference to "State" shall mean "CDT" for CALNET Contracts.

If at any time after award of this Contract, Contractor becomes unable to provide any part of its contracted Goods or Services, Contractor must, within ten (10) Business Days of such knowledge, notify the State in writing to seek a potential resolution, and if appropriate, propose a substitution of such Goods or Services that it can no longer provide. Substitution of Goods or Services may not be tendered without thirty (30) days advance written consent of the State. For any substitutions, Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the State. The substitutions must be at no cost, and shall be equivalent to or exceed the proposed contracted Goods or Services that were previously offered and accepted by the State in Contractor's awarded Contract. The State reserves the sole right to determine if the proposed substitution is acceptable. An inability to meet a mandatory Contract requirement may be grounds for Contract termination in whole or in part.

SECTION 8. WARRANTIES AND REPRESENTATIONS

8.1 WARRANTIES' DURATION AND ASSIGNMENT

8.1.1 COMMENCEMENT OF THE WARRANTIES

Unless otherwise specified in the Statement of Work, the warranties in this Section 8 begin upon delivery of the Deliverables (or activation date in case of Software or Cloud Services, as applicable). For clarification, this warranty period shall apply to any Deliverables provided as part of warranty replacement.

8.1.2 DURATION OF THE WARRANTIES

Unless otherwise specified in the Statement of Work, duration of warranty for Deliverables shall be as follows:

- a) Warranty for Goods shall terminate one year after delivery of the Goods.
- b) Warranty for Software, Services, and Cloud Services shall be for the duration of the State's use of the Software, Services, and Cloud Services.

8.1.3 ASSIGNMENT OF THE WARRANTIES

All warranties, including additional warranties specified elsewhere herein, shall inure to the State, its successors, assignees, Buyer, and Users of Deliverables.

8.2 WARRANTIES FOR DELIVERABLES

Contractor warrants that Deliverables:

- a) Will substantially conform to the requirements of the Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work);
- b) Will substantially conform to the manufacturer's published specifications and the requirements of the Contract (including, without limitation, all descriptions, specifications, and drawings identified in the Statement of Work);
- c) Will be free from material defects in materials and workmanship;

- d) Shall provide all material functionality required 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, provided, however, that the State's approval of designs or specifications supplied by Contractor shall not relieve Contractor of its obligations under this warranty; and
- e) will not infringe or violate any U.S. Intellectual Property Rights.

8.3 ADDITIONAL WARRANTY FOR SERVICES

The Services will be performed in a skilled, professional manner by competent personnel and in accordance with the Contract.

8.4 ADDITIONAL WARRANTIES FOR SOFTWARE

8.4.1 ADDITIONAL WARRANTY

Contractor warrants that Software supplied hereunder has been tested in accordance with industry standards to minimize the risk, at the time of delivery, of harmful code (e.g., 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). Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a new or clean install of the Software, at no additional cost to the State.

8.4.2 LIMITATIONS

Unless otherwise specified in the Statement of Work:

- a) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
- b) Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from: (i) a modification made by the State unless such modification is approved or directed by Contractor; (ii) use of Software in combination with or on products other than as specified by Contractor; or (iii) misuse or unauthorized use by the State.

8.5 ADDITIONAL WARRANTIES FOR CLOUD SERVICES

8.5.1 ADDITIONAL WARRANTY

Unless otherwise specified in the Statement of Work, Contractor warrants Cloud Services and all support for Cloud Services will be performed in a skilled, professional manner by competent personnel and in accordance with the Contract. Contractor shall ensure that the Service Provider applies anti-malware controls to the Cloud 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.

8.5.2 LIMITATIONS

Unless otherwise specified in the Statement of Work:

- a) Any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last for one year from the start of the Cloud Services warranty;
- b) The Cloud Services warranty does not cover problems caused by the State's accident, abuse or use in a manner inconsistent with the Contract or any applicable service agreement, or resulting from events beyond Contractor's reasonable control;
- c) The Cloud Services warranty does not apply to components of Software that the State may be permitted to redistribute;
- d) The Cloud Services warranty does not apply to free, trial, pre-release, or beta services; and
- e) The Cloud Services warranty does not apply to problems caused by the State's failure to meet minimum system requirements.

8.6 PASS-THROUGH WARRANTIES

8.6.1 GOODS

In addition to the warranties set forth herein, any Goods provided by Contractor shall be covered by the manufacturer's consumer warranty that will be passed through to the State. Contractor shall provide the

manufacturer's warranty information (e.g., terms and conditions, provider, etc.) to the State with all Goods at the time of delivery. Where Contractor resells Goods it purchased from a third-party, Contractor, to the extent it is legally able to do so, will pass through any such third-party warranties to the State and will reasonably cooperate in enforcing them. Contractor shall facilitate Goods replacement or in resolving any disputes with the Goods manufacturer.

8.6.2 CLOUD SERVICES' SOFTWARE

Any Software provided by the Service Provider or Contractor shall be covered by the software developer's consumer warranty that will be passed through to the State.

8.6.3 CONTRACTOR'S OBLIGATIONS

Contractor agrees that the warranty pass-through set forth herein shall not relieve Contractor from Contractor's warranty obligations set forth herein.

8.7 REMEDIES FOR BREACH OF WARRANTY

Unless otherwise specified in the Statement of Work, the State's remedy for any breach of the warranty provided in this Section 8 shall include, at the State's sole discretion: (a) State's right to re-performance, repair, or replacement of the nonconforming Deliverables (including without limitation an infringing Deliverable); or (b) State's right to terminate the Contract, either in whole or in part, and a refund of all amounts paid by the State for the nonconforming Deliverable 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 Deliverable of equivalent capability, function, and performance. If Contractor fails to re-perform, repair, replace, or refund fees paid for the Deliverable as appropriate, the State may terminate the Contract.

8.8 DISCLAIMER

EXCEPT FOR THE WARRANTIES SPECIFIED IN THIS CONTRACT, CONTRACTOR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

SECTION 9. RIGHTS IN WORK PRODUCT AND GOVERNMENT PURPOSE RIGHTS

9.1 OWNERSHIP AND RIGHTS IN WORK PRODUCT

9.1.1 WORK PRODUCT

Unless otherwise specified in the Statement of Work (or as required for federally funded projects), all inventions, discoveries, intellectual property, technical communications, and records originated or prepared by Contractor pursuant to the 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, "Work Product"), shall be Contractor's exclusive property.

9.1.2 PRE-EXISTING MATERIAL

Software, Services, components and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates Derivative Works of Pre-Existing Materials, the elements of such Derivative Works created pursuant to the Contract constitute Work Product, but other elements do not. "Derivative Works" means any work that is based upon the Work Product, such as an enhancement, update, translation, abridgment, summary, or aggregation. Nothing in this Section will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.

9.1.3 JOINTLY DEVELOPED WORK PRODUCT

The ideas, concepts, know-how, techniques, customizations, or configurations, relating to data processing, developed during the Contract by Contractor or jointly by Contractor and the State may be used by either Party without obligation of notice or accounting.

9.1.4 PROPRIETARY PRODUCTS

This Contract shall not preclude 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 the Contract.

9.2 GOVERNMENT PURPOSE RIGHTS

The State will have Government Purpose Rights to Work Product.

“Government Purpose Rights” are the unlimited, irrevocable, worldwide, perpetual, royalty-free, and 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, U.S. tribal governments, 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.

9.3 FEDERALLY FUNDED PROJECTS

This Section and the rights hereunder may be modified in the Statement of Work as required for federally funded projects pursuant to federal law or regulations, including, but not limited to, 7 CFR 277.18 and 45 CFR 95.617.

SECTION 10. CONFIDENTIALITY; DATA RIGHTS

10.1 CONFIDENTIALITY OBLIGATIONS

10.1.1 CONFIDENTIALITY OBLIGATIONS

Each Party will ensure that access to the other Party's confidential information is provided only to those individuals who need access to such information to fulfill their obligations under this Contract. With regards to the State, confidential information includes State Data.

10.1.2 EXCEPTION TO CONFIDENTIALITY OBLIGATIONS

Confidential information does not include information that: (a) is or enters the public domain without breach of this Contract; (b) came into the receiving Party's possession from a third party entitled to disclose such information without an obligation of confidentiality; (c) is independently developed by the receiving Party without use or reference to the disclosing

party's confidential information; or (d) required to be produced in compliance with statute, regulation or court order, provided that Contractor provides advance written notice of such disclosure to the State.

10.2 CONFIDENTIALITY OF STATE DATA

State Data, including 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 Contractor in order to carry out the Contract, or which become available to Contractor in carrying out the Contract, shall be protected by 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 Contractor. Contractor shall comply and ensure compliance by the Service Provider with the Security and Data Protection provisions set forth in these General Provisions - Telecommunication. Contractor shall not be required under this Section to keep confidential any data or information that meet the exceptions set forth in Section 10.1 (Confidentiality Obligations).

10.3 CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS

Contractor shall have appropriate agreements in place to ensure confidentiality and security of State Data required pursuant to the Contract. Contractor shall ensure that all Contractor and Service Provider personnel with access to the State's confidential information (including State Data) shall comply with the security and confidentiality obligations set forth in the Contract.

10.4 RIGHTS TO STATE DATA

All intellectual property rights, in and to State Data shall remain the exclusive property of the State. Contractor has a limited, non-exclusive license to access and use the State Data solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the State Data, including User tracking and exception data within the System, by implication, estoppel or otherwise, under U.S. Intellectual Property Rights, to any third-party.

10.5 RESTRICTIONS ON USE OF STATE DATA

10.5.1 RESTRICTION ON USE

Unless otherwise specified in the Statement of Work, or if such use is required under State or federal law or regulation, Contractor shall not collect, use, disclose, retain, or maintain (collectively, "Use") State Data except as necessary and proportionate to perform Contractor's obligations under the Contract. Contractor shall not mine or process State Data that is stored or transmitted during the performance of the Service or by the System for unrelated purposes, advertising or advertising-related purposes, or for any other purpose that is not authorized by the Contract. Contractor shall not use State Data for machine learning. Any unauthorized use of State Data by Contractor or third parties is prohibited.

10.5.2 ADDITIONAL RESTRICTIONS ON SALE, COLLECTION AND CHANGES

Contractor shall not: (a) transfer, share, rent, barter, trade, sell, loan, lease or otherwise distribute or make available to any third party any State Data except as expressly permitted by the Contract; (b) copy, modify, destroy or delete State Data during the Contract term; and (c) shall not sell or share State Data or Personal Information collected in performance of the Service of the Contract with the State. For the purposes of this Section 10.5: (a) "collect" and "collected" have the meaning provided in Civil Code Section 1798.140, subdivision (f); and (b) "sell" has the meaning provided in Civil Code Section 1798.140, subdivision (ad)(1).

10.6 PROTECTION OF CONTRACTOR'S PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA AND MATERIALS

All material appropriately marked or identified in writing as proprietary, and supplied hereunder are provided for the State's exclusive use for the purposes of the Contract only. All such proprietary materials (including proprietary data) shall remain the property of Contractor. Subject to the California Public Records Act, or other applicable law or legal process, the State agrees to: (a) take all reasonable steps to ensure that such proprietary data and materials are not disclosed to others; (b) provide prior written notice to Contractor in sufficient time to seek a protective order (unless such notice is prohibited by law); (c) ensure, prior to disposing of any media, that any licensed materials have been erased, destroyed or otherwise sanitized; and (d) take

appropriate action by instruction, agreement or otherwise, with its employees and other persons permitted access to licensed Software and other proprietary data to satisfy its obligations in the Contract with respect to use, copying, modification, protection, and security of proprietary Software and other proprietary materials.

10.7 LEGAL REQUESTS

Contractor shall notify the State by the fastest means available, no later than 48-hours of receipt, of any subpoena, warrant, court order, service of process, California Public Records Act (Gov. Code, § 7920.00 et seq.) request, and or other legal request ("Requests"), which seeks access to confidential information including State Data or information about the State's use of the Deliverables, unless such notification is prohibited by law. Unless otherwise prohibited by law, Contractor shall:

- a) Not respond to such Requests unless authorized in writing to do so by the State;
- b) Not respond to such Requests directed at Contractor regarding the Contract without first notifying the State in writing;
- c) Provide written notice to the Customer and its Chief Information Security Officer (CISO) or designee of the contracting agency; and
- d) Provide the State with its intended responses to such Requests with adequate time for the State to review, revise and, if necessary, seek a protective order.

10.8 RETURN OR DESTRUCTION CONFIDENTIAL INFORMATION

In case of expiration or termination of the Contract, or at any time upon the request of the State, Contractor shall return or destroy, at the option of the State or Buyer, all confidential information including State Data in Contractor's possession or control. If any confidential information including State Data cannot be returned or destroyed, as mutually agreed between the Parties, Contractor will continue to comply with its confidentiality obligations with respect to the retained State Data in accordance with the Contract.

SECTION 11. INDEMNIFICATION

11.1 PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY

11.1.1 CONTRACTOR'S IP INDEMNIFICATION OBLIGATIONS

Notwithstanding Section 12 (Limitation of Liability), Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third-party claims, costs, expenses (including without limitation reasonable attorneys' fees), fines, penalties, deficiencies, liabilities and losses (including settlements and judgments) arising from or related to any allegation that the Deliverables violate, misappropriate or infringe of any U.S. Intellectual Property Right.

11.1.2 PASS-THROUGH INDEMNITY FOR THIRD PARTY OBLIGATIONS

With respect to such claims arising from Deliverables provided by a third party and supplied by Contractor to the State, 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 a third-party manufacturer fails to honor any Third-Party Obligation, Contractor will indemnify, defend, and save harmless the State, its officers, agents and employees, to the same extent as the Third-Party Obligation, subject to any applicable limitation of liability in Section 12 (Limitation of Liability).

11.1.3 NOTICE OF AND REMEDY FOR IP INFRINGEMENT

- a) Should the Deliverables whether provided by Contractor or manufactured by a third party, become, or in Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, Contractor shall provide the State with written notice of the circumstances giving rise to such claim or likely claim. If the State receives notice of a claim of infringement, or is made party to, or is threatened with such claim, the State will provide Contractor with notice of such claim or threat.
- b) Following receipt of such notice, Contractor will either (at Contractor's expense): (i) procure for the State the right to continue using the Deliverables; or (ii) replace or modify the same so that the Deliverables become non-infringing. If none of these options can reasonably be exercised, Contractor shall take back such Goods or

other Deliverables and terminate any infringing Services and make every reasonable effort to assist the State in procuring substitute Deliverables for the State, and pay the State any additional amounts necessary to equal the State's Cost to Cover. If none of the foregoing options is reasonably acceptable to the State, the State shall have the right to terminate the Contract, in whole or in part, without damage, penalty, termination charge, or further obligation and Contractor agrees to refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- c) Contractor shall have no liability to the State under any provision of this Section 11.1 with respect to any claim of patent, copyright or trade secret infringement which is based upon the following and which is not otherwise authorized by Contractor: (i) the combination or utilization of Goods supplied hereunder with non-Contractor supplied Goods; or (ii) the combination or utilization of Services not made or supplied by Contractor, and which is introduced into the State's computing environment; (iii) the modification initiated by the State, or a third party at the State's direction, of any Deliverables furnished hereunder; (iv) the combination or utilization of other Deliverables furnished hereunder with non-Contractor supplied other Deliverables; or (v) the State's unauthorized use, or continuing infringing use after notification, of the Deliverables supplied hereunder.
- d) 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.

11.1.4 INDEMNIFICATION FOR INJURY OR DAMAGE

Contractor shall 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 Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers supplying work, services, materials or supplies in connection with the performance of this Contract.

11.2 INDEMNIFICATION PROCESS

11.2.1 NOTIFICATION AND COOPERATION REQUIREMENTS

Unless a Third-Party Obligation provides otherwise, the defense and payment obligations for indemnification under Section 2.3 and Section 11 are conditioned on the following:

- a) The State will notify Contractor promptly in writing of any demand for indemnification and, in the notification, describe the circumstances giving rise to the demand. Notwithstanding the foregoing, if Contractor is not notified of a claim in a timely manner, Contractor is still obligated to indemnify the State, unless such delay causes material prejudice to Contractor.
- b) Contractor will have sole control of the defense of any 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 required by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); or
 - 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,
- c) The State will reasonably cooperate in the defense and in any related settlement negotiations.

11.2.2 SETTLEMENT APPROVAL

CDT must approve any settlement or compromise.

SECTION 12. LIMITATION OF LIABILITY

12.1 LIMITATION OF LIABILITY

12.1.1 DIRECT DAMAGES

- a) Except as may be otherwise approved by CDT's OSTP Deputy Director 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. "Purchase Price" means 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) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.

- b) 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 above.

12.1.2 NO CONSEQUENTIAL DAMAGES

IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES, EXCEPT (A) TO THE EXTENT THAT CONTRACTOR'S LIABILITY FOR SUCH DAMAGES IS SPECIFICALLY SET FORTH IN THE STATEMENT OF WORK OR (B) TO THE EXTENT THAT CONTRACTOR'S LIABILITY FOR SUCH DAMAGES FALLS UNDER ONE OF THE EXCEPTIONS IN SECTION 12.2 BELOW (C) FOR CONTRACTOR'S LIABILITY FOR BREACH OF CONFIDENTIALITY OBLIGATIONS.

12.1.3 SOVEREIGN IMMUNITY

Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

12.2 EXCEPTIONS TO LIMITATION OF LIABILITY

The foregoing limitation of liability in Section 12.1 shall not apply to: (a) any liability under Section 2.3 (Compliance with Statutes and Regulations); (b) liability under Section 11.1 (Patent, Copyright and Trade Secret Indemnity) or to any other liability (including, without limitation, indemnification obligations) for infringement of third-party intellectual property rights; (c) liability under Section 11.1.4 (Indemnification for Injury or Damage); (d) costs or attorney's fees that the State becomes entitled to recover as a prevailing Party in any action; or (e) direct costs of mitigation, remediation, third-party claims, and notification obligations resulting from any Security Incident or Data Breach attributable to Contractor's acts or omissions (including the acts or omissions

of Contractor's employees, contractors or agents). Nothing herein shall prevent the Parties from determining the appropriate amounts attributable to the direct costs of Security Incident or Data Breach notification, credit monitoring, and other obligations set forth in Civil Code § 1798.29 as further specified in Section 21.11 (Data Breach).

SECTION 13. STATUTORY AND REGULATORY REQUIREMENTS; CONTRACTOR CERTIFICATIONS

The following provisions are required by law and cannot be edited or removed from the Contract.

13.1 NONDISCRIMINATION CLAUSE

During the performance of this Contract, Contractor and its subcontractors: (a) 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; (b) shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment; (c) shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285.0 et seq.) and (d) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990, subdivisions (a) through (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. Contractor shall include the nondiscrimination and compliance provisions of this provision in all subcontracts to perform work under the Contract.

13.2 ACCESSIBILITY

To the extent that the Contract falls within the scope of Government Code Section 11135, Contractor shall respond to, and resolve any complaint brought to its attention regarding accessibility of its products or services, in accordance with Government Code Section 7405.

13.3 AMERICANS WITH DISABILITIES ACT

Contractor shall comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq).

13.4 PRIORITY HIRING CONSIDERATIONS

If this Contract includes Services over \$200,000, 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.

13.5 FOLLOW-ON CONTRACTS

13.5.1 RESTRICTIONS

If this Contract fits the definition of a "consulting services contract" within the meaning of PCC Section 10335.5, Contractor may be prohibited from bidding on or being awarded a subsequent contract in accordance with the provisions of PCC Section 10365.5, subject to the provisions of PCC Section 10430.

13.5.2 WAIVER OF THE FOLLOW-ON RESTRICTIONS

- a) To the extent permissible by law, the Director of CDT (CDT Director), or their designees, may waive the restrictions set forth in this Section by written notice to Contractor if the CDT Director determines their application would not be in the State's best interest.
- b) The restrictions of this Section will not apply: (a) 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 (b) 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 Contractor's own products.
- c) 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 13.5.2, even if enacted after execution of this Contract.

13.6 CHILD SUPPORT COMPLIANCE ACT

For any Contract in excess of \$100,000, Contractor acknowledges, in accordance with PCC Section 7110, that: (a) they recognize 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) 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.

13.7 LOSS LEADER

Contractor shall comply with the PCC Section 12104.5, subdivision (b) and shall not engage 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.

13.8 GOVERNMENT PROCUREMENT AGREEMENT

If the value of this Contract exceeds the US dollar procurement threshold determined by the US Trade Representative (as set forth in the Federal Register), this Contract shall be subject to the requirements of the World Trade Organization Government Procurement Agreement.

13.9 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, Contractor 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 (Bus. & Prof. Code, Chapter 2, commencing with § 16700 et seq.), 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 Contractor;

- 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. 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.

13.10 EXECUTIVE ORDER N-6-22-RUSSIA SANCTIONS

Contractor shall comply with Executive Order N-6-22 ("EO") regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of the Contract. The State shall provide Contractor prior written notice of termination, allowing Contractor at least 30-Days to provide a written response. Termination shall be at the State's sole discretion.

13.11 NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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 Contractor within the immediately preceding 2-year period because of 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.

13.12 DRUG-FREE WORKPLACE CERTIFICATION

Contractor certifies that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 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, subdivision (a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355, subdivision (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, subdivision (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.

13.13 SWEAT FREE CODE OF CONDUCT

Contractor certifies 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, in compliance with PCC Section 6108.

Contractor certifies 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. 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 this provision.

13.14 DOMESTIC PARTNERS

For Contracts over \$100,000 executed or amended after January 1, 2007, Contractor certifies that they comply with PCC Section 10295.3.

13.15 RECYCLED CONTENT REQUIREMENTS

Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material in the Goods offered or sold to the State that fall under any of the statutory categories regardless of whether the Goods meets the requirements of PCC Section 12209. Contractor shall provide the certification, even if the 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 PCC Section 12156, subdivision (e), the certification required by this subdivision shall specify that the cartridges so comply (PCC, § 12205). The Buyer's 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, recycled content products (PCC, § 12203, subd. (d)).

13.16 ELECTRONIC WASTE RECYCLING ACT OF 2003

To the extent the Contract involves the purchase or lease of electronic devices, 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. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

13.17 FOUR-DIGIT DATE COMPLIANCE

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables to the State. "Four Digit Date Compliant" Deliverables 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 the Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

13.18 COVENANT AGAINST GRATUITIES

Contractor certifies that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of the State under this Section 13.18 are not exclusive and are in addition to any other rights and legal or equitable remedies.

13.19 EXPATRIATE CORPORATIONS

Contractor certifies 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.

13.20 COMMUNICATIONS ACT OF 1934

Contractor, in conducting its business as required by the Contract (including the Solicitation) and agreed to in the proposal, shall comply with the Communications Act of 1934, as amended (including, but not limited to, the Telecommunications Act of 1996 and subsequent Acts), and as interpreted and applied by the applicable regulatory authorities and courts and any applicable rules, regulations and decisions of the FCC and the CPUC.

SECTION 14. CONTRACTOR RESPONSIBILITIES

14.1 INSURANCE

Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. 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 the Contract. Any required endorsements requested by the State must be separately

provided; merely referring to such coverage on the certificates(s) is insufficient for this purpose. When performing work on State owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.

14.2 ACCIDENT PREVENTION

If performing work under this Contract on the State's premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. 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 the Contract for default.

14.3 CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

Contractor shall be liable for damages arising out of injury to the person or damage to the real or tangible property of the State, State employees, persons designated by the State for training, or any other person(s) other than agents or employees of Contractor, designated by the State for any purpose, prior to, during, or subsequent to the delivery, installation, acceptance and use of the Deliverables either at Contractor's site or at the State's place of business, provided that the injury or damage was caused by Contractor's fault or negligence.

Contractor shall not be liable for damages arising out of, or caused by, an alteration or an Attachment not made or installed by Contractor, or for damage to alterations or Attachments that may result from the normal operation and Maintenance of the Deliverables provided by Contractor during the Contract.

14.4 CONTRACTOR PERSONNEL

14.4.1 PERFORMANCE OF DUTIES ON-PREMISES

- a) When Contractor needs access to Customer's premises to perform the required Services under this Contract, Contractor personnel shall perform their duties during Customer's regular workdays and normal work hours, except as may be specifically agreed to otherwise by the Customer and Contractor.

- b) The State or applicable Customer reserves the right to disapprove the continuing assignment of Contractor personnel working on Customer premises. If the State or applicable Customer exercises this right, and Contractor cannot immediately replace the disapproved personnel, the State or applicable Customer agrees to an equitable adjustment in schedule or other terms that may be affected hereby.

14.4.2 CONTRACTOR PERSONNEL ASSIGNMENTS

- a) Contractor will make every effort consistent with sound business practices to honor the specific request of the State, or applicable Customer with regard to assignment of its employees. If a Contractor's employee is unable to perform due to illness, resignation or other factors beyond Contractor's control, Contractor will make every reasonable effort to provide suitable substitute personnel.
- b) Contractor represents that the individual designated as a Contract Manager in the Contract are, and promises that any subsequent Contract Manager shall be, experienced professionals, possessing the appropriate knowledge, skills and expertise to perform properly their assigned duties. If any Contract Manager is reassigned, or unable to perform the functions or responsibilities assigned to such person, Contractor shall promptly replace such person with another person at least as well qualified to perform such functions and responsibilities as the person being replaced, and the State shall have the right to interview (in the presence of a Contractor representative) and provide input to Contractor concerning each such replacement.
- c) The parties acknowledge that qualifications for Contractor personnel and manager include a mix of experience and education and that equally qualified individuals may have different mixes thereof. Contractor shall cause its subcontractors to comply with this provision with respect to any of individuals of such subcontractors that are designated as Contract Manager.

14.4.3 NON-EXCLUSIVE RELATIONSHIP

Contractor personnel providing Services under this Contract may perform similar Services from time to time for others, subject to the above paragraph. This Contract shall not prevent Contractor from performing

such similar Services or restrict Contractor from using the personnel provided to the State under this Contract, provided that such use does not conflict with the performance of Services under this Contract.

14.5 CONTRACTOR COMMITMENTS AND REPRESENTATIONS

Any written commitment by a duly authorized representative of Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill any such commitment shall render Contractor liable for performance deficiency charges or other damages due to the State as set forth herein.

14.6 UNANTICIPATED TASKS

For OSTP Contracts only

Unless otherwise specified in the Statement of Work:

14.6.1 UNLISTED, INHERENT TASKS

Any Services, functions, requirements, developments or responsibilities not specifically described in this Contract that are (i) consistent with industry standards, (ii) an inherent, necessary or customary part of the Services or (iii) consistent with industry standards, required for proper performance or provision of the Services in accordance with this Contract shall be deemed part of the Services and Contractor shall provide them as part of the Services without additional charge.

14.6.2 UNANTICIPATED TASKS

- a) In the event that any other work must be performed which was wholly unanticipated and is not specified in the Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined for particular Deliverable(s), the procedures outlined in this Section will be employed.
- b) For each item of wholly unanticipated work not specified in the Statement of Work, a Work Authorization will be prepared. An unanticipated task amounts over 10% of the base Contract must be approved by OSTP.

- c) The Parties to this Contract agree that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization. Such Work Authorization shall in no way constitute a Contract other than as provided pursuant to this Contract and shall not in any way amend or supersede any of the other provisions of this Contract.
- d) Each Work Authorization shall consist of a detailed statement including (i) a justification of the need for the wholly unanticipated work, (ii) a description of the work to be accomplished by Contractor, (iii) the job classification or approximate skill level of the personnel to be made available by Contractor, (iv) an identification of all significant material to be developed by Contractor and delivered to the State, (v) an identification of all significant material to be delivered by the State to Contractor, (vi) an estimated time schedule for the provision of the work by Contractor, (vii) completion criteria for the work to be performed, (viii) the name or identification of Contractor personnel to be assigned, (ix) Contractor's estimated work hours per person (or estimated subtotal of rates and charges per Deliverable(s)) required to accomplish the work, (xi) Contractor's billing rates per work hour per person (or estimate rates and charges per unit for Deliverable(s)) required to accomplish the work, and (xii) Contractor's estimated total cost of the Work Authorization.
- e) All Work Authorizations must be in writing prior to beginning work and signed by Contractor and the State.
- f) The State has the right to require Contractor to stop or suspend work on any Work Authorization pursuant to the provisions of Section 18.1, Stop Work, of this Contract.
- g) For any unanticipated tasks approved through a Work Authorization, personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:
 - i. If, in the performance of the work, Contractor determines that a Work Authorization to be performed under this Contract cannot be accomplished within the estimated work hours, Contractor will immediately notify the State in writing of Contractor's estimate of the work hours which will be required to complete the Work Authorization in full. Upon receipt of such notification, the State may elect to:

- a. Authorize Contractor to expend the estimated additional work hours in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization will not be unreasonably withheld),
 - b. Terminate the Work Authorization, or
 - c. Alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining originally estimated work hours.
- ii. The State will notify Contractor in writing of its election with respect to the excess work hours within seven (7) calendar days after receipt of Contractor's notification. If the notice of the election is given to proceed, Contractor may expend the estimated additional work hours. The State agrees to reimburse Contractor for such additional work hours.

14.7 REPORTS, DATA AND INVENTORY

- a) Contractor shall provide all reports required by this Contract or otherwise requested by State. Upon the State's request, at intervals and for any reason related to the Contract and the Deliverables provided under the Contract, during the Contract term, Contractor shall provide to the State all data and documentation and all other information as requested by State. The export data formats and storage media type will be defined by the State.
- b) Unless otherwise specified in the Statement of Work, Contractor agrees to provide monthly fiscal management reports identifying Services in accordance with this Contract.

14.8 SUBCONTRACTORS

Unless otherwise specified in the Statement of Work:

14.8.1 AUTHORIZED SUBCONTRACTORS

Contractor shall not subcontract all or any part of the Service without the prior written consent of the State, which will not be unreasonably withheld; provided, however, that Contractor may subcontract for internal infrastructure support, not specifically for this Contract, without notice to or consent from the State.

14.8.2 PERFORMANCE OF SERVICES BY SUBCONTRACTORS

- a) Each subcontractor will perform only the specific Services described with regard to such subcontractor in a written request submitted by Contractor to the State when seeking such consent; and no change may be made to the specific Services performed by a particular subcontractor, and no substitution, replacement, or change of subcontractors may be made, without the advance written consent of the State, which will not be unreasonably withheld. All performance of Services by each subcontractor shall at all times be in accordance with the terms and conditions of this Contract.
- b) Contractor covenants that its arrangements with subcontractors shall not prohibit or restrict any such subcontractor from, at any time, entering into direct agreements with the State. The State's consent with respect to Contractor's use of a particular proposed subcontractor, shall be given or withheld in writing within Contractor's reasonably requested timeframe, and, if such consent is withheld, the State's notice thereof to Contractor shall set forth the reasons for such withholding of consent.
- c) If the State determines in good faith and in a commercially reasonable manner that the performance or conduct of any subcontractor is unsatisfactory, the State may notify Contractor of its determination in writing, indicating the reasons therefore, in which event Contractor shall promptly take all necessary actions to remedy the performance or conduct of such subcontractor or to replace such subcontractor by another third party or by Contractor personnel.

14.8.3 SUPERVISION AND JOINTLY AND SEVERALLY LIABLE

Nothing contained in the Contract, or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve Contractor of Contractor's responsibilities and obligations hereunder. Contractor shall be solely and exclusively responsible for supervising the activities and performance of each subcontractor and of persons either directly or indirectly employed by the subcontractor as it is for the acts and omissions of persons directly employed by Contractor. Contractor and each such subcontractor shall be jointly and severally responsible for any act or omission of such subcontractor engaged to provide Deliverables, requirements, and

Services under this Contract. Notwithstanding the fact that a subcontractor may be the party actually performing a particular Service or providing a particular Deliverable hereunder, Contractor shall at all times: (i) constitute the primary obligor for all of Contractor's duties and obligations hereunder; and (ii) be liable and responsible as a principal for the performance of all of the duties and obligations of Contractor hereunder that Contractor may elect to subcontract to any of its subcontractors or to any other third party. Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to Contractor. As a result, the State shall have no obligation to pay any moneys to any subcontractor.

14.9 CONTRACTOR COMMUNICATIONS

14.9.1 MEETINGS

Unless otherwise specified in the Statement of Work:

During the Term, representatives of the State and Contractor shall meet periodically or as requested by the State to discuss matters arising under this Contract. Contractor shall bear its own costs in connection with its attendance and participation in such meetings.

14.10 UNITED STATES (U.S.) BASED SERVICES

Unless otherwise specified in the Statement of Work:

14.10.1 SERVICES LOCATION

All Services must be provided from facilities located in the United States or U.S. Territories. Contractor personnel's management or administrative access to servers, the network, or network Equipment directly associated with any Service shall only be accessed within the confines of the United States or U.S. Territories. No personnel located at non-U.S. locations shall be allowed access.

14.10.2 PERSONNEL LOCATION

All Contractor direct technical and administrative support personnel must be located within the United States or U.S. Territories.

SECTION 15. INVOICES, PAYMENT AND TAXES; AUDIT

15.1 INVOICES

15.1.1 INVOICE REQUIREMENTS

- a) Any approved Service taxes, fees, surcharges and surcredits shall be separately identified on each invoice as applicable.
- b) Each invoice shall be in the form specified by the State (including whether issued as a single, aggregate invoice or separate invoices for different Services or entities) and shall (i) comply with all applicable legal, regulatory and accounting requirements, (ii) allow a Customer to validate volumes and charges, (iii) permit a Customer to chargeback internally, and (iv) meet the State's billing requirements in accordance with the Statement of Work.
- c) Invoices with a name other than that established in the original Contract (including approved Subcontractors or Affiliates) cannot be paid prior to execution of a Contract Amendment.
- d) The data underlying each invoice shall also be delivered to a Customer electronically in a form and format specified in the Statement of Work but also the format shall be compatible with all other applicable State's accounting systems as necessary.
- e) Invoices for all contracted Deliverables shall not be subject to late payment charges prior to the Contract defined due date.

15.1.2 ACCEPTANCE

- a) Acceptance procedures to initiate payments will be as set forth in the Customer's Scope of Work or Ordering Documents. A Customer shall be deemed to have accepted each Deliverable either (i) upon its issuance of written notice of such acceptance or (ii) thirty (30) calendar days after the Installation Date (collectively "Acceptance"), unless otherwise specified in the Scope of Work or at or before the time the Customer gives Contractor written notice of rejection or requests additional time. No payment will be due before Acceptance thereof, except to the extent required by progress payment terms and/or progress payment requirements in the Statement of Work, if applicable.

- b) Any notice of rejection will explain how the Deliverable fails to substantially conform to the functional and performance specifications of the Statement of Work and the Customer's Scope of Work. Contractor will, upon receipt of such notice, investigate the reported deficiency and exercise reasonable best efforts to remedy it promptly. The Customer, in its sole discretion, will have the option to re-perform the Acceptance Test. If Contractor is unable to remedy the deficiency within thirty (30) calendar days of notice of rejection, the Customer shall have the option of terminating for default the Ordering Document that relates to such Deliverable, or accept a substitute Deliverable or other remedy provided in the SOW business requirements. the State, at its sole discretion, shall have the option to terminate in part or in full the Contract for default if Contractor is unable to remedy the deficiency as described above.

15.2 REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act (Act) (Gov. Code, § 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: (a) the date of acceptance of Deliverables; or (b) receipt of an undisputed invoice, whichever is later.

15.3 TAXES

15.3.1 SERVICE TAXES, FEES, SURCHARGES AND SURCREDITS

- a) The State government Customers of this Contract shall be subject to service taxes, fees, surcharges and surcredits that are mandated by the government of the State of California (including the CPUC), and the federal government (including the FCC), as applicable. The Non-State Customers shall be subject to Service taxes, fees, surcharges and surcredits mandated by the State and federal governments, and also as mandated by California local government jurisdictions and political subdivisions, as applicable. Mandates in effect at the time of award and as hereafter mandated may be recovered from Customers of the applicable Service.

- b) The State reserves the right to verify, and if necessary, challenge Contractor and the applicable regulatory authority, the application by Contractor of Service taxes, fees, surcharges, and surcredits referred to in subsection (a) above. Should the State consider the application of such items to be inappropriate, the State and Contractor shall meet and confer regarding the applicability of such items. If thereafter a dispute exists regarding the proper application of such items, the Parties may resolve such disputes in accordance with Section 17 (Dispute Resolution). Either party may seek guidance or clarification from the applicable regulatory authority regarding the appropriate application of such items. If the application of such items is deemed inappropriate by the regulatory authority, Contractor shall cease or revise the application of such items and, if appropriate, issue retroactive credits to the impacted Customer(s).
- c) All charges under this Contract are exclusive of applicable federal, state and local sales, use, excise, utility, and gross receipt taxes, other similar tax-like charges and surcharges. Contractor will provide the State the tax exemption certificates that comply with the requirements of the Internal Revenue Code and Regulations (i.e., see Internal Revenue Regulations Section 49.4253-11 and IRS Publication 510 or their current equivalent versions). Contractor agrees to exempt all Buyers from federal excise taxes and E-9-1-1 taxes as of the date Contractor receives a duly authorized and valid exemption certificate. Contractor agrees, for the purpose of federal exemption, that the State will act as the authorized agent for this Contract in submitting exemption requests on behalf of all Buyers.
- d) The State of California government Customers are exempt from Service taxes, fees, surcharges or surcredits imposed by local government and political subdivision entities, as applicable. Contractor shall not apply Service taxes, fees or surcharges imposed by local governments and political subdivisions to the State as applicable. The State shall not be required to submit certificates of exemption in order to claim or confirm local government and political subdivision exemptions.

15.3.2 USE TAX COLLECTION

Contractor shall comply with Section 7101 of the Revenue and Taxation Code. Contractor shall immediately notify the State in writing of any change in its retailer's seller's permit, certification of registration, applicable

affiliate's seller's permit or certificate of registration as described in PCC Section 10295.1.

15.4 EXAMINATION AND AUDIT

Unless otherwise specified in the Statement of Work:

15.4.1 EXAMINATION AND AUDIT OF RECORDS

- a) Without limiting any examination or audit rights, or other rights of the State set forth in the Contract, Contractor agrees that the State, or its designated representative, shall have the right, at any tier or level, to audit, review and copy any records and supporting documentation pertaining to performance of and invoicing under this Contract.
- b) Contractor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment and five (5) years for Federal Universal Service Fund ("E-rate") funded projects, unless a longer period of records retention is stipulated or required by law.
- c) Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. The State agrees to take all reasonable steps to ensure that such information is not disclosed to third parties, subject to the California Public Records Act or other lawful process (e.g. in response to a subpoena).
- d) For avoidance of doubt, audits may include those conducted by personnel of the State, or its designated representative, in performance of Contract oversight responsibilities in reviewing invoices, monthly fiscal management or other required reports, as well as the application of Service taxes, fees, surcharges and surcredits on invoices.
- e) Subject to Section 17 (Dispute Resolution), if an audit reveals that Contractor has overcharged the State or Customers for Deliverable(s) during the period to which the audit relates, then Contractor shall promptly refund such overcharges to the State or Customer as appropriate or provide a credit equal to the amount of such overcharge plus interest from the date of Contractor's receipt of such overcharge at a rate which is consistent with the rate

provided in the California Prompt Payment Act, Government Code Section 927 et seq. If the amount of the overcharge (offset by any undercharges revealed by such audit) is more than five percent (5%) of Contractor's charges to the State or Customer for such Deliverable(s) for such period, the reasonable cost of such audit (including any imputed costs of the State for audits performed by the State itself) shall be borne by Contractor.

- f) If any audit reveals an inadequacy or insufficiency of Contractor's performance, including performance in connection with any security obligations of Contractor as set forth in this Contract, Contractor shall promptly develop and provide to the State, for approval, a reasonable and detailed corrective action plan and promptly thereafter implement such plan in accordance with its terms. In addition, the cost of such audit, and subsequent related audits or audit activity, shall be borne by Contractor in the event that: (i) the State specifically identifies a particular deficiency with respect to Contractor's performance of any particular Deliverable; and (ii) Contractor either denies or fails to cure such identified deficiency within thirty (30) calendar days. Further, Contractor agrees to include an equivalent right of the State to audit records and interview staff in any subcontract related to performance of and invoicing under this Contract.
- g) Notwithstanding anything to the contrary in this Section, the State or any auditing body or its designated representative, agrees that it will not exercise the audit rights described in this Section more than once per calendar year, however, any follow-up reviews or other investigations related to an audit initiated under this Section may be conducted at any time and upon reasonable notice.
- h) Where Contractor conducts an internal audit of Contractor's performance under this Contract which shows any significant failures by Contractor to meet its obligations hereunder, Contractor shall provide to the State a written summary describing in reasonable detail such findings of such internal audit.
- i) Contractor agrees that (i) the State or its designees will have the right to obtain, copy and review all billing records of public or local government entities purchasing under this Contract, provided that notice of such rights is included within the Authorization to Order (ATO) used by non-State Agencies Buyers purchasing under the

Contract; and (ii) the State may forward audit results showing call rate discrepancies to the CPUC.

15.5 SOFTWARE LICENSE AUDIT

15.5.1 AUDIT REQUIREMENTS

The State is responsible for monitoring compliance with the terms and conditions of use for any licensed Software delivered pursuant to the Contract. The State agrees that, upon 45 days' prior written notice, Contractor or an independent third party designated by Contractor, may audit the State's compliance with applicable license requirements. License audits requiring on-site presence at the State's facilities shall require the State's express written consent, which shall not be unreasonably withheld. Contractor agrees to limit such license audits to one audit per calendar year. The State, Contractor or independent third party shall cooperate in good faith with such audit, which Contractor agrees will be confidential, and commercially reasonable in scope and duration. Each Party shall bear its own costs for such license audits (including the cost of any independent third parties).

15.5.2 REVIEW OF AUDIT FINDINGS

The State shall have the opportunity to review the results of any license audit and, within 60 Days of receiving such results, shall notify Contractor of any disputed findings. Should the State dispute any findings, the Parties shall work in good faith to resolve the matter and, if the Parties are unable to resolve the matter after 30 Days, Contractor may initiate the dispute resolution process described in Section 17 (Dispute Resolution). If the State accepts the audit findings, within 60 Days of receiving such results, the State shall order sufficient quantities of licenses at the contracted rate.

15.6 CLOUD SERVICE OVERAGE CHARGES

This 15.5 Cloud Service Overage Charges Section does not apply to CALNET Contracts.

15.6.1. NOTIFICATION REQUIREMENT

- a) Contractor shall promptly notify the State when the State's usage of Cloud Services reaches the percentage of the allocated limit specified in the Contract. Such notification will include an estimate

of potential Cloud Services Overage Charges based on projected usage and recommendations for managing or reducing usage. Overages shall be billed at the Contract price.

- b) Upon the State's usage of Cloud Services exceeding the maximum amount allocated within the Contract, Contractor shall promptly notify the State. Such notice shall include an estimate of the amount of usage of Cloud Services in excess of the maximum allocated amount specified in the Contract, as well as an estimate of the Cloud Service Overage Charges based on the exceedance.

15.6.2 REVIEW AND ADJUSTMENT

The State shall have the opportunity to review the notification of any Cloud Service Overage Charges and, within 60 Days of receiving such notification, shall notify Contractor of any disputed findings. Should the State dispute any of the findings included in the notice, the Parties shall work in good faith to resolve the matter and, if the Parties are unable to resolve the matter after 30 Days, Contractor may initiate the dispute resolution process described in Section 17 (Dispute Resolution). If the State accepts the notification, within 60 Days of receiving such notification, the Parties shall amend the Contract to account for the additional Cloud Services usage.

15.6.3 CAP ON CLOUD SERVICES OVERAGE CHARGES

The maximum amount of Cloud Services Overage Charges that may be incurred by the State shall not exceed the amount specified in the Statement of Work.

15.6.4 CLOUD SERVICES STOP WORK

If the Cloud Services Overage Charges exceed the cap specified above, the State may issue a Stop Work order to prevent further charges until a resolution is reached.

15.7 PRICE GUARANTEE PERIOD

Contractor shall provide the State with the immediate benefit of any decrease in market pricing or allowable discount for Goods or Services. Additionally, for the CALNET Contracts only, the Parties may negotiate

Individual Price Reductions ("IPR") as described in Section 15.13 below or the SOW, as applicable.

15.8 SET-OFF RIGHTS

Notwithstanding anything to the contrary in this Contract, and in addition to the other rights of the State or the applicable Customer hereunder with respect to disputing invoices or withholding amounts, the State or the applicable Customer, in its sole discretion, may set off against any and all amounts otherwise payable to Contractor pursuant to any of the provisions of this Contract: (a) any and all amounts claimed by the State or the applicable Customer in good faith to be owed by Contractor to the State or the applicable Customer pursuant to any of the provisions of this Contract; and (b) any and all amounts that the State or the applicable Customer believes in good faith that it does not owe to Contractor pursuant to any of the provisions of this Contract. Within 20 calendar days after any such set-off by the State or applicable Customer, the State or applicable Customer shall provide Contractor with a written accounting of such set-off, a written statement of the reasons therefore, and a reasonable opportunity to meet and discuss the claimed set-off. In the event Contractor does not agree with the set-off applied, Contractor or applicable Customer may contact the CDT to seek equitable resolution or exercise its rights under applicable law.

15.9 CHARGES

Unless otherwise specified in the Statement of Work,

15.9.1 MINIMUM CHARGES

Contractor agrees that the Customers are not subject to any minimum monthly usage charges for any Services contracted under this Contract.

15.9.2 INVOICING AND CHARGES OF UNRELATED SERVICES

Contractor agrees that Services not identified in this Contract may not be provided nor charged to any Customer pursuant to this Contract, but that Contractor may use the invoicing process of this Contract so as to allow for invoicing of Services not related to this Contract, provided that such items are clearly identified as not related to this Contract.

15.9.3 COMPLIANCE WITH MOST FAVORED NATIONS CLAUSE

Contractor agrees that the charges shall comply with Section 15.14, "Most Favored Nation" Status of State.

15.10 ADMINISTRATIVE FEE

Unless otherwise specified in the Statement of Work, if applicable:

15.10.1 ADMINISTRATIVE FEE DETERMINATION, PAYMENT AND USE

CDT shall be authorized to establish a fee-based access to applications, data, documentation or Services provided under the Contract, provided that the administrative fees are established on a cost recovery basis and not for profit. Contractor agrees to pay CDT an administrative fee as required and established by CDT. The administrative fee shall be used to fund only the CDT activities, or the CDT funded CDT offices and activities. CDT is entitled to an administrative fee increase in order to achieve cost recovery of the CDT program operations. The administrative fee will be based on the CDT costs to manage this Contract as well as perform other mandated functions and may be adjusted annually or as otherwise deemed necessary by the State, based on fiscal year projected requirements, upon reasonable notice to Contractor. Administrative fees shall be determined upon Contract award.

15.10.2 INVOICING, COLLECTION AND REMITTANCE

Contractor will bill, collect and remit a Contract administrative fee to CDT as set forth in the Statement of Work. The administrative fee may be applied to any and all contracted items. This fee shall appear separately on the Customer's invoice. The administrative fee reimbursement amount shall appear on the detailed fiscal management reports referenced in this Contract to be delivered to the CDT.

15.11 PRICING AND SERVICE REVIEW

For the purpose of maintaining competitiveness throughout the Contract term, Contractor agrees to a joint review of its pricing and the Goods or Services functionality at the State's request, no more frequently than annually, to ensure the State and its Customers will receive cost-competitive and technologically competitive Goods and Services. The State shall notify Contractor in writing of any pricing adjustments and Goods or Service related

issues as a result of the analysis. Contractor shall have 15 calendar days to confirm and respond to the State's request for pricing reductions or other Goods or Service related changes. The effective date for the mutually agreed rate(s) shall be 15 calendar days from written notification by the State. Once an amendment has been issued, Contractor shall issue rebates or billing credits back to the effective date of the new rate(s). Contractor agrees that requests for amendments to this Contract to reduce statewide rates may be submitted throughout the term.

15.12 GOODS AND SERVICES COSTS

Any Contractor's list of Goods and Services descriptions accepted by the State shall correlate the Services to the associated Contract rates as applicable under this Contract. All costs will include all monthly recurring and usage charges, volume discounts, and non-recurring charges as applicable. Listed pricing will include all elements necessary to configure an instance of working Goods or Services including activation, delivery, and training. Any no-cost items will be clearly identified and any Goods or Services elements without associated pricing will be considered no charge items.

15.13 INDIVIDUAL PRICE REDUCTIONS

For CALNET Contracts only, Contractor may enter into negotiations with the Customers resulting in an IPR. IPRs can result in a price reduction only or price reduction for a limited duration commitment. At no time will any other Contract term and condition be modified. IPRs commitments shall not exceed the Contract Term.

15.14 "MOST FAVORED NATION" STATUS OF STATE

Unless otherwise specified in the Contract, Contractor agrees to give State or CDT the "Most Favored Nation" status, in that Contractor agrees that no other similarly situated public customer of Contractor or any of its affiliates will receive rates for a substantially similar Goods, Service, or suite of Services, offered under substantially similar terms and conditions that are lower than the statewide rates provided hereunder when the volume of business from the other public customer is equal to or less than the volume of the business delivered under this Contract. Contractor agrees to promptly bring to the State or CDT's attention instances in which other public customers of Contractor or any of its affiliates may receive lower rates for substantially similar Services. For comparison purpose, all rates used for comparison shall

not include administrative fees, service taxes, use tax, fees, surcharges, or surcredits (Section 15.10, Administrative Fee, or Section 15.3.1, Service Taxes, Fees, Surcharges, and Surcredits). If Contractor or its affiliates offer lower rates to any other public customer for the same or a substantially similar Goods, Service, or suite of Services, offered under substantially similar terms and conditions, Contractor shall adjust the Contract rates prospectively to match or beat such rates. If Contractor offers a bundled package of Deliverables under substantially similar terms and conditions to other public customers at a rate lower than the rate(s) charged for such Deliverables provided under this Contract, State or CDT reserves the right to amend the Contract to add a similarly bundled package of Deliverables at such lower rate. At the end of each Contract year, an executive level officer with authority to represent Contractor shall certify in writing to State or CDT that Contractor has complied with this provision. If Contractor is not in compliance with this Section, Contractor and State or CDT shall make adjustments or payment as necessary and described Section 20.8 (Liquidated Damages) or Section 15.11 (Pricing and Service Review), as applicable. Nothing herein shall be construed to require Contractor to offer, provision, or sell Goods or Services in a manner that conflict with applicable laws or regulations.

15.15 FEDERAL UNIVERSAL SERVICE FUND

Federal Grant programs are available to schools, libraries, government run healthcare facilities and other eligible Customers under the Universal Service Fund. To the extent such programs are applicable to the Goods or Services under this Contract, as determined by CDT, or required by law, Contractor agrees to:

- a) Be certified as a Universal Service Administrative Company (USAC);
- b) Meet Federal requirements for timeliness and accuracy in processing E-rate and other USAC program requests and invoicing;
- c) Ensure that CDT has pre-approved the use of Contract Services by Customers otherwise qualified for the Federal Universal Service Fund; and
- d) Provide Contract telecommunications Services to public entities qualified for Universal Service Fund Support and pre-approved by CDT for use of Contract Services.

15.16 STATE COST RECOVERY

The State is authorized to provide fee-based access to an application built upon Software, hardware, Services or Documentation to eligible Customers through a website, internet service or otherwise, provided that the fees are established on a cost recovery basis.

SECTION 16. TERMINATION

16.1 TERMINATION FOR NON-APPROPRIATION OF FUNDS

16.1.1 NON-APPROPRIATION OF FUNDS

The State's obligation to proceed with the Contract is contingent on the appropriation of funds for such purpose by the California Legislature or, if applicable, the United States Congress. The State will have the right to terminate the Contract without damage, penalty, cost, or further obligation in the event funding is not appropriated, and Contractor agrees to take back any affected Goods supplied under the Contract and terminate any Services supplied to the State under this Contract. 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 the Contract.

16.1.2 RETURN OF UNPAID COMMERCIAL HARDWARE AND SOFTWARE

IF TERMINATION OCCURS UNDER THIS SECTION, THE STATE SHALL RETURN TO CONTRACTOR COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE SHALL PAY FOR PACKING, CRATING, AND TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND SHALL REIMBURSE CONTRACTOR FOR EXPENSES INCURRED FOR CONTRACTOR'S ASSISTANCE IN SUCH PACKING AND CRATING.

16.2 TERMINATION FOR CONVENIENCE

16.2.1 TERMINATION FOR CONVENIENCE NOTICE

The State may terminate the performance of work under this Contract for its convenience, in whole or in part, if the CDT OSTP Deputy Director, or designee, determines that termination is in the State's interest. If such a determination is made, the CDT OSTP Deputy Director, or designee, shall provide Contractor a Notice of Termination ("Termination Notice") specifying the extent of termination and the effective termination date ("Termination Date"), which date shall be no less than 15 Days from the delivery of the Termination Notice.

16.2.2 EFFECT OF TERMINATION FOR CONVENIENCE

After receipt of a Termination Notice, and except as directed by the State, Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this Section. Contractor shall:

- a) Stop work as specified in the Termination Notice (except as required by any Disentanglement);
- b) Place no further subcontracts for Goods, materials, Services, or facilities, except as necessary to complete the continuing portion of the Contract;
- c) Terminate all subcontracts to the extent they relate to the work terminated; and
- d) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.

16.2.3 TERMINATION PROPOSAL

After termination, Contractor shall submit a final termination settlement proposal to the State and Customer in the form and with the information prescribed by the State. Contractor shall submit the proposal promptly, but no later than 90 days after the Termination Date, unless otherwise provided in the Termination Notice. Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under Section 16.2.4 below.

16.2.4 PAYMENTS IN EVENT OF TERMINATION.

Unless otherwise specified in the Statement of Work, upon the termination for convenience, the State shall have no obligation to pay the Contractor any amount other than, in accordance with the terms of the Contract, the agreed upon price for Deliverables accepted by the State.

16.3 TERMINATION FOR DEFAULT

16.3.1 NOTICE FOR DEFAULT REQUIREMENTS

Subject to Section 20.3 (Force Majeure) and to Section 16.3.2 below, CDT may, by written notice of default to Contractor, terminate the Contract, in whole or in part, if Contractor fails to:

- a) Deliver or perform the Deliverables within the time specified in the Contract or any amendment thereto;
- b) Make progress, so that the lack of progress endangers performance of this Contract; or
- c) Perform any of the other provisions of this Contract.

The State's right to terminate this Contract under this Section may be exercised if the failure constitutes a material breach of the Contract and Contractor fails to cure such default within the time stated in the cure notice, which in no event will be less than fifteen (15) Days, unless otherwise specified in the Statement of Work.

16.3.2 EFFECT OF TERMINATION FOR DEFAULT

- a) If the State terminates the Contract in whole or in part for default pursuant to this Section:
 - i. The State may acquire, under the terms and in the manner the State considers appropriate, Deliverables similar to those terminated and Contractor will be liable to the State for any excess costs for those Deliverables, including without limitation costs charged by third party vendors for such Deliverables. However, Contractor shall continue the work not terminated.
 - ii. The State may require Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the State, any: 1) completed Deliverables; 2)

partially completed Deliverables; and 3) subject to Section 16.3.3 below, any other Deliverables related to the terminated portion of the Contract.

- b) Nothing in this Section will be construed to grant the State rights to Deliverables that it would not have received had the Contract been fully performed. Upon direction of the State, Contractor shall also protect and preserve property in its possession in which the State has an interest.

16.3.3 PAYMENT IN THE EVENT OF DEFAULT

- a) The State shall pay the Contract price for completed and accepted Deliverables and items the State requires Contractor to transfer under Section 16.3.2 above. Subject to the State's rights and remedies under the Contract. Unless otherwise specified in the Statement of Work, Contractor and the Buyer shall attempt to agree on the amount of payment for Deliverables accepted by the State for the protection and preservation of the property; provided that where Contractor has billed the State for any Deliverables, no additional charge will apply. Failure to agree will constitute a dispute under Section 17 (Dispute Resolution). 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.
- b) If, after termination, it is determined by a final decision that 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.

16.3.4 RIGHTS AND REMEDIES OF STATE FOR DEFAULT

- a) In the event any Deliverables should fail to conform to the contractual requirements herein or to the sample submitted by Contractor (if applicable), the State may reject the same, and Contractor shall reclaim and remove the Goods promptly (including providing the State with the appropriate instructions for returning the Goods), or correct the performance of the Services, without expense to the State, and immediately replace all such rejected Goods or re-perform Services, as applicable, with Deliverables conforming to the Contract.

- b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Contractor. Any loss or damage sustained by the State in procuring any items which Contractor agreed to supply shall be borne and paid for by Contractor, (but subject to the clause titled "Limitation of Liability").
- c) 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 Contractor therefore.
- d) Both parties, upon any termination for default, have a duty to mitigate the damages suffered by it. The rights and remedies of the State in this Section are in addition to any other rights and legal or equitable remedies available under law, or provided under this Contract, subject to Section 12 (Limitation of Liability).

SECTION 17. DISPUTES

17.1 NOTICE OF POTENTIAL DISPUTES

Unless otherwise specified in the Statement of Work, before communicating any interpretation of this Contract to any entity receiving or eligible to receive Deliverables under this Contract regarding CDT or any Customer's alleged violation or breach of this Contract, Contractor shall first provide written notice of such interpretation to CDT.

17.2 DISPUTE RESOLUTION

17.2.1 INFORMAL DISPUTE RESOLUTION

The parties shall deal in good faith and attempt to resolve potential disputes informally.

17.2.2 FORMAL DISPUTE RESOLUTION

- a) Buyer and Contractor Dispute Resolution Regarding Buyer Purchases
If the dispute persists, Contractor shall submit to the Buyer's Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the

Parties regarding the 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 Buyer's Department Director or designee shall have thirty (30) Days after receipt of Contractor's written demand invoking this Section, to render a written decision. If a written decision is not rendered within thirty (30) Days after receipt of Contractor's demand, it shall be deemed a decision adverse to Contractor's contention.

- b) CDT and Contractor Dispute Resolution Regarding Buyer Purchases
 - i. If Contractor is not satisfied with the decision of the Buyer's Department Director or designee, Contractor may appeal the decision, in writing, within fifteen (15) Days of its issuance (or the expiration of the thirty (30) Day period if no decision is rendered by Buyer), to CDT, Deputy Director, OSTP, or designee, who shall have thirty (30) Days to render a final decision. CDT OSTP Deputy Director, or designee may extend the time to issue a final decision, in their sole discretion, by written notification to Contractor. The time to issue a final decision shall not exceed sixty (60) days. If Contractor does not appeal the decision of the Buyer's Department Director or designee, the decision shall be conclusive and binding regarding the dispute and Contractor shall be barred from commencing an action in court, or with the Government Claims Board, for failure to exhaust Contractor's administrative remedies.
 - ii. Any final decision of the CDT shall be expressly identified as such, shall be in writing, and shall be signed by CDT OSTP Deputy Director, or designee if an appeal was made. If the CDT OSTP Deputy Director, or designee fails to render a final decision within thirty (30) Days after receipt of Contractor's appeal for a final decision, or sixty (60) Days after receipt of Contractor's appeal for a final decision if the time to issue a final decision is extended, then the failure to render a final decision shall be deemed a final decision adverse to Contractor's contentions.

iii. CDT's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action, in the appropriate forum to contest such decision within sixty (60) Days following the date of the final decision. Contractor shall exhaust all administrative remedies, as applicable, prior to commencing an action in the appropriate forum.

c) CDT and Contractor Dispute Resolution Regarding CDT Purchases

For disputes involving purchases made by CDT, Contractor shall submit to the CDT 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 CDT 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 Contractor's demand, it shall be deemed a final decision adverse to Contractor's contention. The final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in the Government Claims Board to contest such decision within sixty (60) Days following the date of the final decision.

d) Performance During Dispute Resolution

Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of the Contract in accordance with the State's instructions regarding this Contract, unless work is stopped pursuant to Section 18 (Stop Work), or by mutual written agreement.

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.

SECTION 18. STOP WORK

18.1 STOP WORK

The State may, at any time, by written Stop Work Order to Contractor, require Contractor to stop all, or any part, of the work called for by this Contract for a period up to ninety (90) Days after the Stop Work Order is delivered to 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 Section. Upon receipt of the Stop Work Order, 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 ninety (90) Days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the Parties shall have agreed, the State shall either: (a) cancel the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided for in Section 16.2 (Termination for Convenience) or Section 16.3 (Termination for Default).

18.2 CANCELLATION OR EXPIRATION OF STOP WORK ORDER

18.2.1 ADJUSTMENTS FOR CANCELED OR EXPIRED STOP WORK ORDER

If a Stop Work Order issued under this Section is canceled or the period of the Stop Work Order or any extension expires, 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: (a) the Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Contract; and (b) 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 the Contract.

18.2.2 PAYMENT RELATED TO A RETAINED STOP WORK ORDER

If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated pursuant to Section 16.2 (Termination for Convenience), the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

18.2.3 NO LIABILITY FOR LOSS OF PROFIT

The State shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this Section.

SECTION 19. SMALL BUSINESS PARTICIPATION AND DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION REPORTING REQUIREMENTS

THE FOLLOWING PROVISIONS ARE REQUIRED BY LAW AND CANNOT BE EDITED OR REMOVED FROM THE CONTRACT.

19.1 SMALL BUSINESS PARTICIPATION

If, for this Contract, Contractor made a commitment to achieve small business ("SB") participation, then Buyer requires Contractor upon completion of this Contract (or within such other period as may be specified elsewhere in the Contract) to report the actual percentage of SB participation that was achieved. (Govt. Code, § 14841).

19.2 DVBE PARTICIPATION

For purposes of this Section 19.2 only, "Prime Contractor" means the same as Contractor as defined in the Contract.

19.2.1 DVBE CRITERIA

If, for this Contract, Contractor made a commitment to achieve the disabled veteran business enterprise ("DVBE") participation goal, then, pursuant to Military & Veterans Code, Section 999.5, subdivision (d), upon completion of the Contract, Buyer will require Contractor to certify using the Prime Contractor's Certification – DVBE Subcontracting Report (STD 817), all of the following:

- a) The total amount the Prime Contractor received under the Contract;
- b) The name, address, Contract number and certification ID number of the DVBE(s) that participated in the performance of the Contract;
- c) The amount and percentage of work the Prime Contractor committed to provide to one or more DVBE(s) under the requirements of the Contract and the total payment each DVBE received from the Prime Contractor;
- d) That all payments under the Contract have been made to the DVBE(s); and
- e) The actual percentage of DVBE participation that was achieved.

19.2.2 DVBE PROOF OF PAYMENT

Upon request, the Prime Contractor shall provide proof of payment for the work as required as 19.2.1 DVBE Criteria (d).

19.2.3 WITHHOLDING FROM FINAL PAYMENT

Until Contractor complies with the certification requirements above, Buyer will withhold \$10,000 from the final payment, or the full final payment if less than \$10,000. A Contractor that fails to comply with the certification requirement shall, after written notice from Buyer, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 Days but not more than 30 Days from the date of written notice, the Prime Contractor refuses to comply with the certification requirements, Buyer shall permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. (Mil. & Vets. Code, § 999.7).

19.2.4 COMPLIANCE WITH DVBE PROGRAM

Contractor shall comply with the rules, regulations, ordinances, and statutes that apply to the DVBE program as defined in Section 999 of the Military & Veterans Code, including, but not limited to, the requirements of Section 999.5, subdivision (d). (PCC, § 10230). A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code, § 999.5, subd. (d); Gov. Code, § 14841).

SECTION 20. GENERAL TERMS

20.1 INDEPENDENT CONTRACTOR

Contractor, its officers, employees, and agents, in the performance of the Contract, shall act in an independent capacity and not as officers, employees or agents of the State.

20.2 NO PUBLICITY

Unless otherwise specified in the Statement of Work, any news releases, endorsements, advertising, marketing, or social media content and any other form of publicity pertaining to the Contract shall not be made without prior written approval of the State.

20.3 FORCE MAJEURE

Except for defaults of subcontractors at any tier and any Contractor responsibilities concerning disaster recovery and/or business continuity, 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 Contractor. Examples of such causes include: a) acts of God or of the public enemy, and b) acts of the federal or the 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 Contractor and subcontractor, and without the fault or negligence of either, Contractor shall not be liable for any excess costs for failure to perform.

20.4 NOTICE OF INSOLVENCY

Contractor shall notify the State immediately in writing if Contractor files any federal bankruptcy action or state receivership action, or if any federal bankruptcy or state receivership action is commenced against Contractor, Contractor is adjudged bankrupt, or a receiver is appointed. Should any such event occur, the State may, pursuant to Section 16.2 (Termination for Convenience), terminate the Contract.

20.5 COMPLETE INTEGRATION

This Contract, including any documents incorporated by reference, is intended to be a complete integration and there are no prior, contemporaneous, different, or additional agreements pertaining to the subject matter of the Contract. No oral understanding or contract not incorporated in the Contract is binding on any of the Parties.

20.6 ASSIGNMENT

Contractor shall not assign the Contract, in whole or in part, without the written consent of the State, which consent shall not be unreasonably withheld or delayed. The State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

20.7 NO WAIVER; REMEDIES CUMULATIVE

The failure of the State to enforce any provision or exercise rights under the Contract, shall not be construed to be a waiver by the State of its rights to enforce that provision or exercise any right in the future. Except as specifically set forth in Section 8 (Warranties and Representations), all rights and remedies of the State herein are cumulative and are in addition all other available rights or legal or equitable remedies.

20.8 LIQUIDATED DAMAGES

Unless otherwise specified in the Statement of Work:

20.8.1 LIQUIDATED DAMAGES CRITERIA

General liquidated damages (including but not limited to performance deficiency charges or service level agreements) are intended to encourage timely delivery of Deliverables and the provision of reliable and responsive Services by the Contractor. The purpose of this liquidated damages provision is to ensure adherence to the requirements of the Contract and to set an amount in advance of contractual non-compliance to compensate CDT or the Customer for damages that are impractical or extremely difficult to estimate, but which would be sustained by CDT or the Customer in the event the Contractor fails to perform Services as agreed. The liquidated damages are intended to be a reasonable estimate of the damages and costs CDT or the Customer would sustain as a result of noncompliance to the terms of the Contract. These are not punitive. CDT and the Contractor, therefore, agree that in the event the Contractor fails to perform certain agreed upon Services in a timely manner as specified in the Contract or service levels, CDT or the Customer may assess such amounts set forth in the Statement of Work as liquidated damages, and not as a penalty.

20.8.2 PAYMENT OF LIQUIDATED DAMAGES

- a) The State or the Customer may deduct liquidated damages from Contractor's invoices or may assess such liquidated damages by a separate invoice at any time during the Contract or within thirty (30) Days after the contractual period ends. The State or the Customer will notify Contractor in writing of any claim for liquidated damages pursuant to this Section on or before the date the State or the

Customer deducts such sums from money payable to Contractor. If the State or the Customer imposes liquidated damages, upon notification by the State or the Customer, Contractor shall show the liquidated damages as a subtracted item from its invoice(s). Contractor shall also be liable for actual damages above liquidated damages payment. The State or the Customer may withhold the amount of the liquidated damages from any other money owed to Contractor, in addition to any other remedies available to the State or the Customer.

Imposition of liquidated damages does not constitute a waiver of the State or Customer's right to issue a Stop Work Order (Section 18), the State's right to terminate the Contract pursuant to Section 16.3 (Termination for Default) or the State or Customer's to exercise its rights under the service level agreement terms. In the event of such a termination, the State or the Customer shall be entitled at its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract.

20.9 AMENDMENTS

No amendment or modification of the terms of this Contract shall be valid unless made in writing, signed by the Parties and approved as required. Any change to Contractor's name will require a Contract amendment. The State, upon notification and receipt of legal documentation indicating the name change from Contractor, will process the required amendment, assuming no other change has been made to the business entity.

20.10 SEVERABILITY

If any provision of the Contract is unenforceable, invalid, or conflicts with applicable law, then 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.

20.11 APPLICABLE LAW; JURISDICTION AND VENUE

20.11.1 APPLICABLE LAW, JURISDICTION AND VENUE FOR ANY ACTION

This Contract shall be governed by the laws of the State of California, exclusive of any choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. Any action regarding this Contract shall be subject to the exclusive jurisdiction and venue of the state and federal courts in the City and County of Sacramento, California.

20.11.2 CPUC JURISDICTION

To the extent Services in this Contract are subject to the jurisdiction of the CPUC, the CPUC shall have jurisdiction over this Contract, and Contract and related Services may be subject to modification from time to time as the CPUC may so order in the exercise of their lawful jurisdiction.

20.11.3 APPLICABILITY OF UNITED NATIONS CONVENTION ON CONTRACTS

The United Nations Convention on Contracts for the International Sale of Equipment shall not apply to this Contract.

20.12 SURVIVAL

Upon expiration or termination of the Contract, this Section and the following provisions will survive: Section 2.2 (Contractor's Power and Authority); Section 2.3 (Compliance with Statutes and Regulations); Section 8 (Warranties and Representations), Section 9 (Rights in Work Product and Government Purpose Rights), Section 10 (Confidentiality; Data Rights); Section 11 (Indemnification), Section 12 (Limitation of Liability), Section 13 (Statutory and Regulatory Requirements; Contractor Certifications); Section 15.4 (Examination and Audit), and Section 21.13 (Transition Period). Further, any other Contract term that expressly states or by its nature should survive, shall survive.

20.13 NON-EXCLUSIVE AGREEMENT

Nothing in this Contract shall be construed as a requirements contract or interpreted as preventing the State from obtaining, consistent with CDT policy,

any portion, component, subset or all of the Deliverables offered under the terms and conditions of this Contract, or any other Deliverables (analogous, similar, comparable or otherwise) from third parties, or providing the same to itself. Nor shall anything in this Contract be construed or interpreted as limiting the State's right or ability during the term of this Contract to increase or decrease its demand for Deliverables hereunder. To the extent the State, consistent with CDT policy, obtains from third parties, or provides to itself, replacement Deliverables for any of the Deliverables hereunder, the amount to be paid to Contractor by the State for the remaining Deliverables will be equitably adjusted downward, to the extent necessary, to reflect the portion of the Deliverable that Contractor will not be providing or performing, regardless of whether such Deliverables were priced individually or as a bundle with any of the remaining Deliverables.

SECTION 21. DATA PROTECTION PROVISIONS

21.1 ACCESS TO STATE SYSTEMS

In the course of providing the Deliverables, Contractor may gain access to State Data and State's Systems, and electronic communications networks, including but not limited to, voicemail, email, databases, and internet/intranet systems. Access to such State Data and State's Systems is intended for legitimate business use related to the fulfillment of the Contract. Contractor acknowledges it has no expectation of privacy regarding the use of the State's Systems and that all use of, or access to, the State's Systems made by or on behalf of Contractor is subject to the State's scrutiny and oversight at all times during the term of the Contract.

21.2 COMPLIANCE WITH DATA PROTECTION LAWS, POLICIES AND REGULATIONS

21.2.1 DATA PROTECTION LAWS, POLICIES AND REGULATION

Subject to Section 21.3 below but notwithstanding anything to the contrary in the Contract, Contractor shall comply with the data protection laws, regulations, and policies relating to the collection, maintenance, transmission, use, receipt, storage, disclosure, retention, destruction, unavailability, security, or other use or processing of State Data in connection with Contractor's provision of Deliverables under the Contract, including and to the extent applicable:

- a) The California Information Practices Act (Civil Code § 1798 et seq.),

- b) Federal Privacy Act of 1974,
- c) Health Insurance Portability and Accountability Act of 1996,
- d) IRS 1075 regulations,
- e) Health Information Technology for Economic and Clinical (HITECH) Act,
- f) Criminal Justice Information Services (CJIS) Security Policy,
- g) Social Security Administration (SSA) Electronic Information Exchange Security Requirements,
- h) Payment Card Industry (PCI) Data Security Standard (DSS),
- i) NIST Special Publications,
- j) California State Administrative Manual (SAM) (Chapters 4983, 5100, 5300), and
- k) California Statewide Information Management Manual (SIMM) Sections 5305A, 5310A and B, 5315-B, 5325A and B, 5340 A and C, and 5360B.

21.2.2 COMPLIANCE OBLIGATION

Contractor shall not take, or fail to take, any action that would put the State in violation of such data protection laws, policies, and regulations.

21.3 DATA CLASSIFICATION STANDARDS

CDT must seek prior written approval of the State CISO or designee for any modifications to the Data Classification Standards set forth in this Section 21.3 and such modifications shall be set forth in the Statement of Work.

Unless otherwise specified in the Statement of Work, security requirements designated in these Telecommunications General Provisions are assuming a National Institute of Standards and Technology (NIST) MODERATE classification. For a higher or lower data classification standard, State shall:

- a) Classify their data pursuant to the State Administrative Manual (SAM) 5305.5; and
- b) Obtain approval from the State Chief Information Security Officer (CISO) or User's CISO prior to modifying this Section of the GSPD – ITGP (Cloud) through the SOW to meet the needs of the Contract.

21.3.1 NIST SP 800-53

Contractor shall comply with the current version of the NIST Special Publication (SP) 800-53 Security and Privacy Controls for Systems and Organizations.

21.3.2 CLASSIFICATION

Controls shall be applied at the MODERATE level.

21.3.3 ISO 27001 CERTIFICATION

Subject to the prior written approval of the State CISO or designee, Contractor may submit a current ISO 27001 certification in satisfaction of the foregoing requirements of this subsection.

21.3.4 NIST 800-171

Contractor shall comply with NIST 800-171, if applicable, and shall implement and maintain a system security plan with respect to any System that Contractor has assisted the State to implement and any of Contractor's systems that in any way interact with the State's System or State Data. Contractor shall ensure such plan is reviewed annually.

21.4 DATA SAFEGUARDS

Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with applicable laws, policies, and regulations at all times during the Contract term to secure State Data from Data Breach, and protect State Data and State's Systems, Services, and components thereof, from unauthorized or unlawful use, access or modification, disclosure, damage or destruction, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access.

21.5 ENCRYPTION

Contractor shall implement end-to-end encryption for all Personal Information and Non-Public Data that is transmitted, stored or accessed both inside and outside the secure internal network, including Contractor's servers, unless otherwise mutually agreed in the Scope of Work by Contractor and Buyer. All Non-Public Data or Personal Information must be encrypted at rest and in

transit with validated cryptography standards as referenced in FIPS 140-3 (or higher).

21.6 FEDERAL TAX INFORMATION

21.6.1 NO ACCESS TO FTI

The Parties acknowledge that information transmitted by the State to Contractor 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 or Service Provider under the Contract. The State further acknowledges that Contractor or Service Provider does not require any "access" to, or "receipt" or "storage" of FTI to perform the Cloud Services under the Contract. Contractor or Service Provider further acknowledge that Contractor 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 Cloud Services.

21.6.2 INCIDENTAL ACCESS TO FTI

To the extent that Contractor's or Service Provider's access to FTI is "incidental" to Contractor's provision of Cloud Services, it is the parties' view that such incidental exposure should not legally subject Contractor or Service Provider to the Internal Revenue Service (IRS) requirements set forth in IRS Publication 1075, Section 11.2. However, if the IRS ultimately takes a contrary position, and determines that Contractor, Service Provider or the State should have nevertheless complied with the requirements of IRS Publication 1075, the Parties will immediately evaluate the feasibility of continued performance under the Contract.

21.7 CLOUD SERVICES AVAILABILITY

The minimum standards for Cloud Services Availability are set forth below. Nothing herein precludes the State from specifying a higher standard for Cloud Services Availability in the Statement of Work. The State shall request written approval of the State CISO prior to Contract execution for a lower Cloud Services Availability standard.

- a) The Cloud Services shall be available 24 hours per day, 365 Days per year, excluding agreed-upon Maintenance downtime ("Cloud Services Availability").

- b) If the monthly Cloud Services Availability averages less than 99.9% (excluding agreed-upon Maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies set forth in the Statement of Work.
- c) If the monthly Cloud Services Availability averages less than 99.9% (excluding agreed-upon Maintenance downtime), for 3 or more months in a rolling 12-month period, the State may terminate the Contract for material breach in accordance with Section 16.3 (Termination for Default).
- d) Contractor shall provide advance written notice to the State in the manner set forth in the Statement of Work of any agreed upon Maintenance downtime that will affect the Cloud Services Availability.

21.8 DATA AVAILABILITY

The minimum standards for State Data Availability are set forth below. Nothing herein prevents the State from specifying a higher standard for State Data Availability in the Statement of Work. The State shall request written approval of the State CISO prior to Contract execution for a lower State Data Availability standard.

- a) The State Data shall be available 24 hours per day, 365 Days per year, excluding agreed-upon Maintenance downtime ("State Data Availability").
- b) If the monthly State Data Availability averages less than 99.9% (excluding agreed-upon Maintenance downtime), the State shall be entitled to recover damages, apply credits, or use other contractual remedies as set forth in the Statement of Work if the State is unable to access the State Data as a result of:
 - i. Acts or omissions of Contractor;
 - ii. Acts or omissions of third parties working on behalf of Contractor;
 - iii. Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions; or

- iv. Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If the monthly Data Availability averages less than 99.9% (excluding agreed-upon Maintenance downtime), for 3 or more months in a rolling 12-month period, the State may terminate the Contract for material breach in accordance with Section 16.3 (Termination for Default).

21.9 DATA LOCATION AND ACCESS

21.9.1 DATA CENTER LOCATION IN US

The physical location of Contractor's data center where State Data is stored shall be within the continental United States, unless otherwise specified in the Statement of Work and the State has written approval of the State CISO prior to Contract execution.

21.9.2 DATA ACCESS

Contractor shall not allow its personnel or subcontractors to store State Data on portable devices, including personal computers, except for devices that are used and kept only at its data centers located in the continental United States. Remote access to State Data from outside the continental United States, including remote access to State Data by authorized Services support staff in identified support centers, is prohibited unless the State has written approval of the State CISO prior to Contract execution.

21.10 SECURITY INCIDENT

Upon identification of a Security Incident affecting the Contract or State Data, Contractor shall provide information directly related to the Security Incident including Indicators of Compromise to enable the State to complete a timely and cooperative investigation.

21.11 DATA BREACH

21.11.1 NOTIFICATION OF THE DATA BREACH

Unless otherwise specified in the Statement of Work, upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available, as well as in writing, with additional notification provided to the State CISO or designee of the Buyer. Contractor shall provide such notification immediately after Contractor reasonably believes there has been such a Data Breach, in no event greater than 48-hours after such determination.

21.11.2 NOTIFICATION CRITERIA

Contractor's notification shall identify, to the full extent known to Contractor:

- a) The nature of the Data Breach;
- b) The State Data improperly accessed, used or disclosed;
- c) The number of individual records improperly accessed, used or disclosed if Personal Information is involved;
- d) The person(s) who improperly accessed, used, disclosed or received State Data;
- e) What Contractor has done or will do to quarantine and remediate the Data Breach; and
- f) What corrective action(s) Contractor has taken or will take to prevent future Data Breaches.

21.11.3 UPDATES TO STATE REGARDING THE DATA BREACH

Contractor will provide daily updates, or more frequently as required by the State, regarding findings and actions performed by Contractor until the Data Breach has been effectively resolved to the State's satisfaction.

21.11.4 MITIGATION

Contractor shall contain and mitigate the Data Breach and ensure secure access to State Data in accordance with the service level agreement set forth in the Statement of Work, if applicable.

21.11.5 NOTIFICATION TO INDIVIDUALS OF DATA BREACH

If Contractor experiences a Data Breach, the State's CISO or designee, shall determine whether notification to any individuals whose State Data has been improperly accessed, lost or breached is appropriate. If Personal Information is reasonably believed to have been improperly accessed or acquired by an unauthorized person as a result of a Data Breach that is not due to the fault of the State or any person or entity under the control of the State, Contractor shall bear any and all costs associated with the State's notification obligations and other obligations set forth in Civil Code Section 1798.29, subdivision (d), as well as the cost of credit monitoring, subject to the dollar limitation, if any, agreed to by the State and Contractor in the Statement of Work. These costs may include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach of the security of such personal information.

21.11.6 INVESTIGATION OF DATA BREACH

Contractor shall investigate the Data Breach and shall share the investigation report with the State. The State or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.

21.11.7 DATA INQUIRIES

Contractor shall promptly refer to the State any inquiries received by Contractor regarding Contractor's information security or privacy practices relating to the State Data.

21.12 SECURITY AND POLICIES

Unless otherwise specified in the Statement for Work:

21.12.1 CUSTOMER SECURITY POLICIES COMPLIANCE

- a) At all times during the Term, in addition to any other requirements in the Contract, and as further delineated in subsequently executed orders, at all times during the Term, Contractor shall provide all Services, use all resources related thereto, and use, operate, support, and maintain any systems, in an appropriately secure

manner and in accordance with the Customer's security requirements, policies, and procedures as communicated, modified, supplemented, or replaced by the Customer from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective ("Security Policies").

- b) In addition, all Contractor personnel (including personnel of any subcontractors) shall be subject to, and shall at all times conform to, all of the Customer's policies, procedures, rules, and requirements regarding the protection of premises, materials, equipment, and personnel, as the Customer shall provide (in writing or electronically) in advance to Contractor. Contractor shall, and shall cause Contractor personnel and subcontractors to, fully comply with and abide by all such Security Policies provided in advance to Contractor at all times during the Term. Any violation or disregard of such Security Policies by an individual shall be cause for denial of access of such individual to the Customer's property.
- c) Contractor shall exercise due care and diligence to prevent any injury to person or damage to property while on the Customer's premises. The operation of Contractor vehicles or private vehicles of Contractor personnel on the Customer's property shall conform to posted and other regulations and safe driving practices. Vehicular accidents on the Customer's property and involving Contractor personnel shall be reported promptly to the appropriate Customer personnel.
- d) Contractor shall, and shall cause Contractor personnel and subcontractors, to not exceed (or attempt to exceed) the level of authorized access, if any, to any networks, computer or electronic data storage systems of the Customer that may be granted during the term of the Contract for purposes only of performing the Services hereunder.

21.13 TRANSITION PERIOD

21.13.1 TRANSITION PERIOD

Unless otherwise specified in the Statement of Work, for ninety (90) Days prior to the expiration date of the Contract, or upon notice of termination

of the Contract and for ninety (90) Days thereafter, Contractor shall assist the State in extracting or transitioning all State Data in the format determined by the State ("Transition Period").

21.13.2 ACCESS TO STATE'S SYSTEM, SERVICES AND STATE DATA

During the Transition Period, State's System, Services and State Data access shall continue to be made available to the State without alteration. The State, at its option, may purchase additional transition Services as specified in the Statement of Work.

21.13.3 DESTRUCTION OF STATE DATA

Unless otherwise specified in the Statement of Work, Contractor shall permanently destroy or render inaccessible any portion of State Data in the possession or control of Contractor (including the possession or control of Contractor's agents, affiliates and subcontractors) following the expiration of all obligations in this Section. Within thirty (30) Days, Contractor shall issue a written statement to the State confirming the destruction or inaccessibility of State Data.

21.13.4 COMPENSATION FOR DAMAGES AND LOSSES

Contractor shall compensate the State for damages or losses the State incurs as a result of Contractor's failure to comply with this Section subject to any applicable limitation of liability.

21.14 DISASTER RECOVERY AND BUSINESS CONTINUITY

21.14.1 DISASTER RECOVERY PLAN

Unless otherwise provided in the Statement of Work, Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic data in the event of an emergency. Emergency means any circumstance or situation that causes normal system operations to become unavailable for use in performing the work required under the Contract for more than 24 hours. Contractor shall make the disaster recovery plan available to the State upon request.

21.14.2 DATA BACKUP PLAN

Unless otherwise provided in the Statement of Work, Contractor must have established documented procedures to securely backup the System to maintain retrievable exact copies of all data. The backups shall be encrypted in accordance with Section 21.5 (Encryption). The plan must include a regular system backup schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore should it be lost. At a minimum, full onsite data backup must be performed weekly. Full offsite storage of backup data must be performed monthly.

21.14.3 NOTIFICATION AND RECOVERY

- a) Unless otherwise specified in the Statement of Work, in the event of a disaster or catastrophic failure that results in loss of State Data or extended loss of access to State Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the State CISO or designee of the Buyer. Contractor shall provide such notification within 24 hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:
 - i. The scale and quantity of the State Data loss;
 - ii. What Contractor has done or will do to recover State Data and mitigate the effect of the State Data loss; and
 - iii. Corrective action(s) Contractor has taken or will take to prevent future State Data loss.
- b) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under the Contract.

21.14.4 REPAIR AND RESTORE

Contractor shall repair and restore continuity of State's System, Services or data, in accordance with the Recovery Point Objective ("RPO") and Recovery Time Objective ("RTO"), as needed to meet the performance requirements stated in the service level agreement, if applicable. Failure to do so may result in the State exercising its options for assessing damages or

other remedies under this Contract. RPO is the point in time to which State Data can be recovered and/or systems restored when service is restored after an interruption. RPO expressed as a length of time between the interruption and the most proximate backup of State Data immediately preceding the interruption. RTO is the period within which information technology services, systems, applications, and functions must be recovered following an unplanned interruption.

21.15 INSPECTION AND AUDIT OF CONTRACTOR'S SYSTEMS

21.15.1 INSPECTION AND AUDIT

- a) Upon advance written request, Contractor agrees that the State or its designated representative shall have access to Contractor's system, data, operational documentation, records, and databases, including online inspections, that relate to the System, Service or data purchased by the State under the Contract. The online inspection shall allow the State, its authorized agents, or a mutually acceptable third party, to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
 - i. Operating system/network vulnerability scans;
 - ii. Web application vulnerability scans;
 - iii. Database application vulnerability scans; and
 - iv. Any other scans to be performed by the State or its authorized representatives.
- b) Upon written request, Contractor shall provide the results of any independent tests performed by Contractor including the results of any penetration testing. The State shall maintain the confidentiality of any information provided by Contractor pursuant to this Section.

21.15.2 REMEDIATION

Contractor shall remediate vulnerabilities and correct flaws identified through testing and assessments within the State's designated time periods, or a mutually agreed upon time period with Contractor. Contractor will notify the State once corrections and remediation have been completed. Contractor shall implement security, policies, procedures, and practices to protect State Data as required by the Contract.

21.15.3 POST-BREACH OR DISASTER AUDIT

After any Data Breach or after any disaster or catastrophic failure that results in a loss of State Data, Contractor shall, at its expense, have an independent, industry-recognized, State-approved third party perform an information security audit. State approval of the auditor will not be unreasonably withheld. The audit results shall be shared with the State within 7 days of Contractor's receipt of such results. Within 30 days of receiving the results of the audit, Contractor will provide the State with written evidence of planned remediation and promptly modify its security measures to meet its obligations under this Contract.

21.16 DATA CENTER AUDIT

Unless otherwise provided in the Statement of Work, for all Contracts requiring NIST SP 800-53 MODERATE or higher-level Security and Privacy Controls for Systems and Organizations, Contractor shall undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 18 Service Organization Control (SOC) 2 Type II audit (or successor), at its own expense, of: (1) Contractor and its subcontractor's data centers, and (2) Cloud Services that in any way interact with the State's System or Non-Public Data. Contractor shall provide a redacted version of audit reports and Contractor's plan to correct any negative findings upon request. Contractor may remove its proprietary information from the redacted version.

21.17 ACCESS TO SECURITY LOGS AND REPORTS

Unless otherwise provided in the Statement of Work:

21.17.1 FOR IAAS ONLY

Upon request, Contractor shall provide reports to the State directly related to the infrastructure Contractor controls upon which the State account resides. Contractor 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 Contractor. The report will be sufficient to enable the State to perform security analysis, resource change tracking and compliance auditing.

21.17.2 FOR PAAS ONLY

Upon request, Contractor shall provide reports to the State in a format as specified in the Statement of Work or service level agreement and agreed to by both Contractor 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 the Contract.

21.17.3 SOFTWARE BILL OF MATERIALS

Contractor shall maintain a software bill of materials that includes, at a minimum, the details and supply chain relationships of the components used in the Software or Services. Contractor shall provide a copy of the software bill of materials to the State upon request.

21.17.4 ATTESTATION

Contractor shall maintain a U.S. Cybersecurity & Infrastructure Security Agency Secure Software Development Attestation Form, or equivalent attestation, and provide a copy of the attestation to the State upon request. The attestation shall state, at a minimum, that:

- a) The Software will be developed and built in secure environments that are secured by, at a minimum; separating and protecting each environment involved in developing and building the Software; regularly logging, monitoring, and auditing trust relationships used for authorization and access to any Software development and build environments, as well as among components within each environment; enforcing multi-factor authentication and conditional access across the environments relevant to developing and building the Software in a manner that minimizes security risk; taking consistent and reasonable steps to document, as well as minimize use or inclusion of software products that create undue risk within the environments used to develop and build the Software; encrypting sensitive data, such as credentials, to the extent practicable and based on risk; implementing defensive cybersecurity practices, including continuous monitoring of operations and alerts and, as necessary, responding to suspected and confirmed cyber incidents;
- b) Contractor will make good-faith efforts to maintain trusted source code supply chains by employing automated tools or comparable

processes to address the security of internal code and third-party components and manage related vulnerabilities.

- c) Contractor will maintain provenance for internal code and third-party components incorporated into the Software to the greatest extent feasible.
- d) Contractor will employ automated tools or comparable processes that check for security vulnerabilities; Contractor operates these processes on an ongoing basis and prior to product, version, or update releases; Contractor has a policy or process to address discovered security vulnerabilities prior to product release; and Contractor operates a vulnerability disclosure program and accepts, reviews, and addresses disclosed Software vulnerabilities in a timely fashion and according to any timelines specified in the vulnerability disclosure program or applicable policies.
- e) Contractor and the State recognize that security responsibilities are shared. Contractor is responsible for providing a secure infrastructure, as applicable. Specific shared responsibilities are identified within the Statement of Work or service level agreement.

21.18 BACKGROUND CHECKS

Unless otherwise provided in the Statement of Work, and as permitted or required by law, Contractor 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 one (1) year is an authorized penalty. Contractor shall promote and maintain an awareness of the importance of securing the State's Data among Contractor's employees and agents.

21.19 SYSTEM SECURITY CONTROLS

21.19.1 PATCH MANAGEMENT

Unless otherwise provided in the Statement of Work, all of Contractor's workstations, laptops, and other systems that process or store State Data must have operating system and application security patches applied, with system reboot if necessary. Contractor shall maintain a documented patch management process which determines installation timeframe based on

risk assessment. At a minimum, emergency (vulnerability and active exploit) patches must be applied immediately, while critical (vulnerability and no exploit known) patches must be applied within 30 Days of release. All other applicable patches must be installed within 90 Days of release.

21.19.2 ENDPOINT PROTECTION STANDARD

All Contractor workstations, laptops, and other systems used to process or store State Data must install and actively use a comprehensive endpoint protection solution that will at minimum comply with SIMM 5335-A.

SECTION 22. GENERATIVE ARTIFICIAL INTELLIGENCE

22.1 DISCLOSURE OBLIGATIONS

- a) Contractor must immediately notify the State in writing if it is: (1) providing previously unreported GenAI as a Deliverable to the State; or (2) utilizing previously unreported GenAI, including unreported GenAI from third parties, to complete all or a portion of any Deliverable that materially impacts: (i) functionality of the System, (ii) risk to the State, or (iii) Contract performance. For avoidance of doubt, the term “materially impacts” as used in this Section shall have the meaning set forth in State Administration Manual (SAM) Chapter 4986.7.
- b) Such notification shall be provided to the State designee identified in this Contract.
- c) Upon notification by Contractor of GenAI as required hereunder, the State will conduct its own risk assessment related to use of such GenAI. If the State, in its sole discretion, concludes that such GenAI use has moderate or high risk, the GenAI Special Provisions attached to the Contract shall apply to such GenAI.
- d) At the direction of the State, Contractor shall discontinue the provision to the State of any previously unreported GenAI that results in a material impact to the functionality of the System, risk to the State, or Contract performance, as determined by the State.
- e) If the use of previously undisclosed GenAI is approved by the State, then Contractor will update the Deliverable description, and Parties will amend the Contract accordingly.

22.2 FAILURE TO DISCLOSE OR DISCONTINUE GENAI USE

The State, at its sole discretion, may consider Contractor's failure to disclose or discontinue the provision or use of GenAI as described above, to constitute a material breach of Contract when such failure results in a material impact to functionality of the System, risk to the State, or Contract performance. The State is entitled to seek any and all remedies available to it under law as a result of such breach, including but not limited to the State exercising the right to terminate the Contract, for default pursuant to Section 16.3 (Termination for Default).

22.3 CONTRACTOR'S OBLIGATIONS FOR RESPONSIBLE USE

- a) Contractor shall ensure that it has obtained all necessary consents, permissions, and licenses from data subjects and third parties to use the GenAI for this Contract. Subject to Section 11 (Indemnification), Contractor represents and warrants, it has the appropriate U.S. Intellectual Property Rights associated with any GenAI used in the Deliverables provided under the Contract.
- b) Contractor shall ensure that the GenAI included, or made available as part of the Deliverables is equitable, non-discriminatory, and reasonably well-designed to avoid harmful, offensive, dangerous, and unlawful impact (Government Code 11549.63). Contractor shall be liable for any Hallucination produced by the GenAI that has an adverse impact on Generated Data or a Deliverable.
- c) Contractor shall comply with all applicable laws and regulations, including as set forth in Section 13.1 above and these General Provisions in relation to the provision or use of any GenAI in the Deliverables.

22.4 GENAI TRAINING DATA OWNERSHIP

Except as otherwise agreed to by the Parties, Contractor shall retain all ownership and intellectual property rights in the GenAI Training Data it provides.

22.5 RIGHTS TO STATE GENERATED DATA

In addition to Government Purpose Rights set forth in Section 9, the Parties agree that Generated Data created from a State-provided Prompt is not a

derivative work of the GenAI Training Data. Notwithstanding the preceding sentence, in the event a court of competent jurisdiction determines that Generated Data created from a State-provided Prompt constitutes a derivative work of the GenAI Training Data, Contractor agrees to grant the State an unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive right, and license to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Generated Data for any State Government Purpose Rights.

22.6 CONTRACTOR'S USE OF STATE DATA

Contractor shall not incorporate any Non-Public State Data into GenAI Training Data and shall not otherwise utilize Non-Public State Data to train, tune, maintain, improve, or develop GenAI, except with the express written authorization from the State specifying the Non-Public State Data that may be used along with the acceptable scope of such usage.