

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

**Meeting of
March 6, 2007**

AGENDA TITLE: Agreement No. 00017741 with State of California Office of Systems Integration

DEPARTMENT: Human Services (SS)

DEPT SIGNOFF:

CAO USE ONLY: 2/7

CONTACT: John Litwinovich

John Litwinovich

D Laura Schwartz

DATE: 2/13/2007 **PHONE:** 6163

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

Human Services-Social Services Division recommends the Board adopt a resolution authorizing the Chairman to sign Standard Agreement No. 00017741 in the amount of \$154,989.95, for a term of 24 months from the date of execution by all parties, with State of California Office of Systems Integration (OIS) to enable El Dorado County Information Systems Coordinator Bruce Conroy to provide consultant services to the OIS and participate in the development of a new California Statewide Automated Child Welfare Information System (SACWIS), which will be used by county workers in California's 58 counties to aid them in delivering program services to at-risk children and families.

CAO RECOMMENDATIONS: *Recommend approval. Laura A. Hill 2/21/07*

Financial impact? Yes No

Funding Source: Gen Fund Other

BUDGET SUMMARY:

Other: Federal, State and County

Total Est. Cost	\$154,989.95
Funding	
Budgeted	\$154,989.95
New Funding	_____
Savings*	_____
Other	_____
Total Funding	\$154,989.95
Change in Net County Cost	\$0.00

CAO Office Use Only:

4/5's Vote Required Yes No
 Change in Policy Yes No
 New Personnel Yes No

CONCURRENCES:

Risk Management
 County Counsel *See attached memo*
 Other _____

***Explain**

BOARD ACTIONS:

Vote: Unanimous _____ Or

Ayes:

Noes:

Abstentions:

Absent:

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors

Date: _____

Attest: Cindy Keck, Board of Supervisors Clerk

By: _____



EL DORADO COUNTY
DEPARTMENT OF HUMAN SERVICES
John Litwinovich
Director

February 13, 2007

El Dorado County Board of Supervisors
330 Fair Lane
Placerville, California 95667

Members of the Board:

Title: Agreement No. 00017741 with State of California Office of Systems Integration

Recommendations:

Human Services-Social Services Division recommends the Board adopt a resolution authorizing the Chairman to sign Standard Agreement No. 00017741 in the amount of \$154,989.95, for a term of 24 months from the date of execution by all parties, with State of California Office of Systems Integration (OIS) to enable El Dorado County Information Systems Coordinator Bruce Conroy to provide consultant services to the OIS and participate in the development of a new California Statewide Automated Child Welfare Information System (SACWIS), which will be used by county workers in California's 58 counties to aid them in delivering program services to at-risk children and families.

Reasons for Recommendations:

Under Standard Agreement No. 00017741, the State of California Office of Information Systems (OIS) will reimburse El Dorado County for the consultant services of El Dorado County Information Systems Coordinator Bruce Conroy for a period of two years. Mr. Conroy will perform analytical and technical work relative to the procurement of a contract for a new California Statewide Automated Child Welfare Information System (SACWIS), an on-line State administered case management system that will, under State mandate, be used by county workers in California's 58 counties to aid them in delivering program services to at-risk children and families. Mr. Conroy, under the direction of the State Project Manager of the OIS Child Welfare Services/Case Management System (CWS/CMS) New system Project, will work with the OIS integration staff as part of the team to complete the procurement and assist in the development and implementation of the new system. El Dorado County will benefit from participation in this process by being able to provide direct input in defining the requirements of the new CWS/CMS system that, once implemented, will indirectly affect future CWS allocations to El Dorado County. Mr. Conroy will be the sole technical consultant to the project. El Dorado County and the Department of Human Services will additionally benefit from contacts made with staff from the California Department of Social Services (CDSS) and other counties and from acquiring a better understanding of CDSS program interactions.

County Counsel, Risk Management and Human Resources have approved this Agreement. County Counsel expressed certain concerns detailed in the attached memo from Ed Knapp relative to liability

issues, commute costs and staff substitution. The Department proposes that the benefits of participating in this project outweigh the minimally increased liability risk resulting from the employee commuting to Sacramento and working in a non-County facility. The State has agreed to reimburse travel expenses directly to Mr. Conroy based on their short-term travel policy. Should Mr. Conroy become unable to perform due to illness, resignation or other factors beyond the County's control, the County would be obligated to "make every reasonable effort" to provide suitable personnel, which would necessitate a recruitment effort but does not mandate results. A copy of the document is on file with the Board Clerk.

Fiscal Impact: The State of California OIS will reimburse El Dorado County up to \$154,989.95 for the full cost of Information Systems Coordinator Bruce Conroy's salary and benefits during the two-year term of Standard Agreement No. 00017741. This position is allocated and budgeted each year with Federal, State and County funds. There will be a moderate saving in benefit costs, as the Department will employ extra-help staff for the duration of this Agreement to perform the duties currently performed by Mr. Conroy.

Net County Cost: No change.

Action to be Taken Following Approval:

Board Clerk to provide Department with three (3) certified resolutions and six (6) copies of Standard Agreement 00017741 signed by the Chairman.

Sincerely,



John Litwinovich
Director of Human Services

"URGENT REVIEW"

Contract #: 00017741

CONTRACT ROUTING SHEET

Date Prepared: 1/22/07

Need Date: 2/1/07 RUSH

PROCESSING DEPARTMENT:

Department: Human Services
 Dept. Contact: Jasara Bento
 Phone #: 7312
 Department
 Head Signature: *John Litwinovich*
 John Litwinovich, Director

CONTRACTOR:

Name: State of CA. OSI, CWS/CMS
 Address: 2525 Natomas Park Dr. Ste. 200
Sacramento, CA 95833
 Phone: 916-263-3632

FOR ADD COUNTY COUNSEL
 JAN 22 PM 12:45

Mendel Adversed

CONTRACTING DEPARTMENT:

Human Services

Service Requested: Consultant Agreement for OSI, CWS/CMS - new system Project (to contract for services of EDC Employee Bruce Conroy

Contract Term: 24 months commencing upon execution by all required parties

Contract Value: \$154,989.95

Compliance with Human Resources requirements? Yes: No:

Compliance verified by: PATTI K. BARTEN

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: Date: 1-22-07 By: *[Signature]*
 Approved: Disapproved: Date: _____ By: _____

ASSIGNMENT

DATE: 01/22/2007
 ATTORNEY: [Signature]
 DEPT INDEX NO: 530100
 BY: [Signature]

PLEASE CALL JASARA AT #7312 FOR PICKUP OR HAND CARRY TO RISK MANAGEMENT. RISK TO CALL JASARA WHEN READY FOR PICKUP. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Disapproved: Date: 1/24/07 By: *[Signature]*
 Approved: Disapproved: Date: _____ By: _____

RECEIVED
 HUMAN RESOURCES
 07 JAN 24 PM 2:17

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____
 Approved: _____ Disapproved: _____ Date: _____ By: _____
 Approved: _____ Disapproved: _____ Date: _____ By: _____



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: John Litwinovich, Director
Department of Human Services

FROM: Edward L. Knapp, Chief Ass't. County Counsel *Ek*

DATE: January 23, 2007

RE: Contract #00017741 – State of California OSI Consultant contract.

I have approved the contract referenced above, but write to inform you of some fiscal and administrative issues that you may wish to consider. The contract appears to be on California State forms, and it is not clear whether the existing provisions are the result of prior negotiations or not. Basically the County lends the State the services of a County employee to act as a consultant to perform services “relevant to the procurement of a contract for the operations of a new California Statewide Automated Child Welfare Information System (SACWIS)” for two years. The county employee will work under the direction of the State “New System Project- Project Manager.”

The County employee will be providing services at a state office in Sacramento. I don't see any reference to whether the State will be reimbursing the county for the cost of commuting to Sacramento. You can formally change the employee's duty assignment to Sacramento, in which case the employee is not entitled to mileage reimbursement for the commute, but the employee will incur an additional commute cost that may or may not be acceptable. If the duty station remains Placerville, but the employee is directed to work in Sacramento, then any accident during the commute would be in the course of employment with the County. You can work this out any way you wish, but you should be aware of the risks, and be clear with the employee and the State about the cost of commuting. Also, Exhibit D paragraph 5 says that if the employee is “unable to perform due to illness, resignation or other factors” then the County must provide “suitable personnel,” presumably meaning suitable substitute personnel. This leaves it unclear what happens if the employee takes a day off for sick leave. The provision as worded could be interpreted to mean that you would have to send down a substitute employee for that one day. You may wish to discuss with the State a provision that allows the

John Litwinovich

January 23, 2007

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employee to take the normally-allowed county leaves and vacations without having to provide a substitute employee, and discuss who exactly gets to approve the leave, you or the State. Also, since the employee remains as a county employee even while under the supervision of a state project manager, the County will be responsible for worker's compensation obligations if there is any on the job injury, and the County would be responsible for damages if there is an accident caused by the employee. I don't know whether you considered these hidden costs to be included in the payment the State will be making to the County. Finally, you should check with Human Resources on any meet-and-confer obligations that might be generated by this arrangement.



RESOLUTION NO.

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

WHEREAS, the State of California Office of Systems Integration has made available \$154,989.95 to obtain the consultant services of El Dorado County Information Systems Coordinator Bruce Conroy and has offered Standard Agreement No. 00017741 to the County of El Dorado with a term of 24 months, commencing with execution of said Agreement by all parties, and

WHEREAS, the El Dorado County Board of Supervisors has determined that it is desirable to assist the State with the development of a new California Statewide Automated child Welfare Information System (SACWIS) and is willing to accept the aforementioned agreement, and

WHEREAS, the Chairman of the Board can act on behalf of the County of El Dorado and will sign all necessary documents required to complete the Agreement,

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of El Dorado hereby authorizes the Chairman of the Board enter into Standard Agreement No. 00017741 with the State of Office of Systems Integration, and further authorizes John Litwinovich, Director of the El Dorado County Department of Human Services to execute further documents relating to Standard Agreement No. 00017741 including amendments thereto, contingent upon approval by County Counsel and Risk Management, that do not alter the dollar amount or the term, to sign subsequent required fiscal and programmatic reports and to perform any and all administrative responsibilities in relationship to such Agreement.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the _____ day of _____, 2007, by the following vote of said Board

Attest:
Cindy Keck
Clerk of the Board of Supervisors

Ayes:
Noes:
Absent:

By: _____
Deputy Clerk

Chairman, Board of Supervisors

I CERTIFY THAT:
THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

DATE: _____

Attest: CINDY KECK, Clerk of the Board of Supervisors of the County of El Dorado, State of California.

By: _____

STANDARD AGREEMENT

FOR I.T. GOODS/SERVICES ONLY

REGISTRATION NUMBER	
PURCHASING AUTHORITY NUMBER 9I-0107-HHA-HQ1	AGREEMENT NUMBER 00017741

- This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME	Office of Systems Integration
CONTRACTOR'S NAME	El Dorado County
- The term of this Agreement is: 24 Months commencing upon date of execution by all required parties
- The maximum amount of this Agreement is: \$154,989.95
One Hundred Fifty-Four Thousand Nine Hundred Eighty-Nine dollars and 95 cents
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	2 pages
Exhibit B – Budget Detail and Payment Provisions	4 pages
Exhibit C – Special Terms and Conditions	2 pages
Exhibit D – Additional Provisions	2 pages
Exhibit E – New System Contract Provisions	13 pages
Exhibit F – Information Technology Personal Services Special Provisions *	

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at <http://www.pd.dgs.ca.gov/modellang/itpers.htm>

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.



CONTRACTOR	<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) El Dorado County - Department of Human Services	
BY (Authorized Signature) 	DATE SIGNED(Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING Helen K. Baumann, Chairman, El Dorado County Board of Supervisors	
ADDRESS 3057 A Briw Road Placerville, CA 95667	
STATE OF CALIFORNIA	
AGENCY NAME Office of Systems Integration	
BY (Authorized Signature) 	DATE SIGNED(Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING Trisha Edgerton, Chief, Procurement Center	
ADDRESS 2525 Natomas Park Drive, Suite 200 Sacramento, CA 95833	
<input checked="" type="checkbox"/> Exempt per: MM 03-10	

EXHIBIT A SCOPE OF WORK

1. Contractor agrees to provide to the State consulting services as described herein:

Under the direction of the Project Manager of the Office of Systems Integration, Child Welfare Services/Case Management System (CWS/CMS) New System Project, the County Consultant performs analytical and technical work relative to the procurement of a contract for the operations of a new California Statewide Automated Child Welfare Information System (SACWIS). The New System will be the state administered on-line case management system used by county workers, in California's 58 counties, to aid them in delivering program services to at-risk children and families. The County Consultant, under the direction of the New System Project - Project Manager, will work with the Office of Systems Integration staff as part of the team to complete the procurement and assist in the development and implementation of the New System.

SPECIFIC ASSIGNMENTS

- Participate, analyze, and recommend program requirements during Requirements Validation.
 - Analyze proposed legislation in regard to program impact, and recommend changes.
 - Meet with stakeholders, staff, users, and appropriate persons from various private and/or governmental organizations for the purposes of problem identification and resolution, inclusion of program policy and regulation, and procedure development. Travel as necessary to attend county meetings.
 - Act as liaison to both the State and counties on policy interpretation and implementation.
 - Act in the capacity of Subject Matter Expert (SME) to the State and vendor on business process improvement efforts (including impacts to CWS Program forms and reports to be produced by the system).
 - Identify potential impacts; issues and risks associated with the process improvement effort to the California Department of Social Services (CDSS) CMS Support Branch, county and other State agencies.
 - Act in the capacity of a SME, as needed, in discussions with contracted staff and vendor staff to assist in identification of business process impacts. Review documentation and make recommendations.
 - Assist in development of all required documentation sections relating to program descriptions, needs, or outcomes developed for the New System
 - Identify stakeholder communication needs; assist in the development of appropriate communication and identify communication methods.
 - Assist in review of vendor developed training material for statewide user training.
 - Participate in the bid evaluation process for the System Integrator Request for Proposal.
 - Provide Subject Matter Expertise in the joint development of a Statewide Implementation Plan.
2. The County Consultant shall perform a majority of the above mentioned duties at CDSS located at 744 P Street, Sacramento, California 95814.

**EXHIBIT A
SCOPE OF WORK**

3. The services shall be provided during normal state business hours (8 a.m. to 5 p.m. Monday through Friday), with the exception of state holidays, or within a mutually agreed upon flexible work schedule that could include telecommuting and at other times as required to successfully provide the services described herein.
4. The project representatives during the term of this agreement will be:

State Agency: OSI, CWS/CMS – New System Project	Contractor: El Dorado County
Name: Melody Hayes	Name: Doug Nowka
Phone: (916) 263-1130	Phone: (530) 621-6152
Fax: (916) 263-4284	Fax: (530) 642-9233
Email: melody.hayes@osi.ca.gov	Email: nowka@co.el-dorado.ca.us

Direct all contractual inquiries to:

State Agency: Office of Systems Integration	Contractor: El Dorado County
Section/Unit: Procurement Center	Section/Unit: Department of Human Services Social Services Division
Attention: Tanya LoForte	Attention: Jasara Bento
Address: 2525 Natomas Park Drive, Suite 200 Sacramento, CA 95833	Address: 3057 A Briw Road Placerville, CA 95667
Phone: (916) 263-3632	Phone: (530) 642-7312
Fax: (916) 263-1382	Fax: (530) 626-7734
Email: Tanya.loforte@osi.ca.gov	Email: jasara.bento@co.el-dorado.ca.us

5. The County Consultant is directly supervised by the Project Manager of the CWS/CMS – New System Project.
6. The County officer or employee with responsibility for administering this Agreement on behalf of El Dorado County is Doug Nowka, Assistant Director, Department of Human Services, or successor.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. TABLE 1: COST BREAKDOWN

BRUCE CONROY
SALARY AND EMPLOYEE BENEFITS

UPON EXECUTION BY ALL REQUIRED PARTIES
CONTRACT FOR A TERM OF 24 MONTHS

(Actual months and costs per fiscal year to be adjusted to actual term of Contract)

	FY 2006/07	FY 2007/08	FY 2008/09	TOTAL
	(5 Months)	(12 Months)	(7 Months)	
Salary				
Base Salary	21,190.00	54,733.77	32,726.23	
Total Salary	21,190.00	54,733.77	32,726.23	108,650.00
Benefits				
Group Insurance	4,723.33	11,676.08	7,015.38	
FICA	307.26	793.64	474.53	
Retirement (PERS)	4,163.84	10,755.19	6,430.70	
Total Benefits	9,194.42	23,224.91	13,920.61	46,339.94
Total Salary & Benefits	30,384.42	77,958.68	46,646.85	154,989.95
TOTAL	30,384.42	77,958.68	46,646.85	154,989.95

2. The Contractor shall be reimbursed directly by the State of California for travel expenses based on the State's short-term travel policy.

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS**

3. INVOICING AND PAYMENT

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

**Office of Systems Integration
Attn: Accounts Payable
P.O. Box 138014
Sacramento, CA 95813-8014**

4. BUDGET CONTINGENCY CLAUSE

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

5. FOR CONTRACT WITH FEDERAL FUNDS

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of Congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination were made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the term of this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by Congress which may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS**

- D. OSI has the option to invalidate the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction of funds.

6. FISCAL PROVISIONS

- A. In consideration of the performance of the foregoing in a satisfactory manner, and upon receipt of detailed invoices, the State agrees to pay the Contractor, monthly in arrears, in accordance with Table 1, Exhibit B, Budget Detail Payment Provisions. The total amount of this Agreement shall not exceed \$154,989.95.
- B. All invoices submitted to the State shall identify the Agreement Number 00017741. Invoices that do not contain this information will be returned to the Contractor with a request that the information be added to the invoices.
- C. Should CWS/CMS activities require the Employee to travel to any County, other than the Employee's home County as part of his/her responsibilities under this Agreement, the Employee shall be entitled short term per diem for that period of time when he/she travels to and is temporarily located in that County. Upon submission of a completed Travel Expense Claim by the Employee, the State agrees to pay directly to the Employee all travel and per diem costs incurred by the Employee which are necessary to fulfill the terms of this Agreement. Such reimbursement shall be in accordance with the provisions of Department of Personnel Administration (DPA), Regulation 599.619 as it applies to non-represented State employees. Applicable reimbursement rates and travel claim forms will be provided to the Employee by the State.
- D. Remittance for any claims on this Agreement shall be submitted to:

El Dorado County Department of Human Services
3057 A Briw Road
Placerville, CA 95667

- E. Changes to the line-item budget (Exhibit B, Budget Detail) may be made provided if Contractor adequately documents the need for change and all of the following requirements are met:
- (1) Adjustments in the aggregate to any individual line item cannot exceed \$20,000 or 10 percent of the total Agreement amount, whichever is less;
 - (2) The total amount of the Agreement does not change;
 - (3) Contractor submits a written request to the State Contact for budget/program modification(s); explains the need for change(s), and specifically identifies item(s) to be reduced or increased;

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

(4) The State approves such change(s) in writing prior to implementation. The State reserves the right to deny requests for reimbursement in excess of any line item in the budget; and

(5) Any budget change not meeting the above conditions shall be by made in the form of an amendment to the Agreement.

F. The State reserves the right to review service levels and billing procedures insofar as they impact charges against this Agreement.

G. Final billing under this Agreement must be received by the State within 30 days following the end of the Agreement term.

7. FINAL BILLING

Invoices for services must be received by OSI within 90 days following each state fiscal year or 90 days following the end of the contract term, whichever comes first. The final invoice must include the statement "Final Billing".

**EXHIBIT C
SPECIAL TERMS AND CONDITIONS**

1. EXCISE TAX

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

2. SETTLEMENT OF DISPUTES

In the event of a dispute, the Contractor shall file a "Notice of Dispute" with the Office of Systems Integration (OSI), Director or their Designee, within 10 days of discovery of the problem. Within ten (10) days, the OSI Director or their Designee shall meet with the Contractor and Project Manager for purposes of resolving the dispute. The decision of the Agency Director or their Designee shall be final.

In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

If the Contractor disputes a decision of the State's designated representative regarding the performance of this Agreement or on other issues for which the State's representative is authorized by this Agreement to make a binding decision, the Contractor shall provide written dispute notice to the State's representative within 15 calendar days after the date of the action.

A. The written dispute notice shall contain the following information:

- (1) The decision under dispute;
- (2) The reason(s) the Contractor believes the decision of the State representative to have been in error (if applicable, reference pertinent Agreement provisions);
- (3) Identification of all documents and substance of all oral communication which support the Contractor's position; and
- (4) The dollar amount in dispute, if applicable.

B. Upon receipt of the written dispute notice, the State program management will examine the matter and issue a written decision to the Contractor within 15 calendar days. The decision of the representative shall contain the following information:

- (1) A description of the dispute;
- (2) A reference to pertinent Agreement provisions, if applicable;
- (3) A statement of the factual areas of the agreement or disagreement and

**EXHIBIT C
SPECIAL TERMS AND CONDITIONS**

- (4) A statement of the representative's decision with supporting rationale.
- C. The decision of the representative shall be final unless, within 30 calendar days from the date of the receipt of the State representative's decision, the Contractor files with the State a notice of appeal addressed to:

Office of Systems Integration
Attn: Procurement Section
Post Office Box 138014
Sacramento, CA 95813-8017

Pending resolution of any dispute, the Employee shall diligently continue all work and comply with all of the representative's orders and directions.

3. EVALUATION OF CONTRACTOR

Performance of the Contractor under this Agreement will be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation Sheet (STD 4), and maintained in the Agreement file. For consultant agreements, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, if it is negative and over \$5,000.

4. DEBARMENT AND SUSPENSION

For federally funded agreements in the amount of \$100,000 or more, the Contractor agrees to certify that he/she and their principals are not debarred or suspended from federal financial assistance programs and activities. Contractor agrees to sign and return to OSI the "Certification regarding Debarment, Suspension, Ineligibility and voluntary Exclusion-Lower Tier Transactions". If applicable, a copy of this form is being forwarded to the Contractor with this Agreement. (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17).

**EXHIBIT D
ADDITIONAL PROVISIONS**

1. The Employee shall retain permanent position as an Information Systems Coordinator during the term of this Agreement. The period during which the Employee renders services pursuant to this Agreement shall be credited by the Contractor to the Employee for purposes of determining seniority, promotional status, retirement date, and other employee benefits.
2. The Employee maintains all rights to compete in the Contractor's open and promotional exams and State open exams.
3. Employee shall abide by the State and/or OSI work rules, policies, and/or practices. Where conflicts may occur with the Contractor's work rules, policies, and/or practices, the State and/or the OSI work rules shall apply.
4. The Employee is subject to State Conflict of Interest Programs and, as such, will be required to complete the Statement of Economic Interests, Form 700.
5. In the event that the contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor agrees to make every reasonable effort to provide suitable personnel. The substitute personnel must meet all the requirements and must be approved by the State prior to starting work.
6. Upon termination of this Agreement, the Employee shall return to his/her regular permanent position as an Information Systems Coordinator in the Contractor's Department of Human Services, at the step at which the Employee would have been eligible.
7. The Employee is subject to the following incompatible activities provision of Government Code 1126 during the term of this Agreement:

 “(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency to which he or she is employed. The officer or employee shall not perform any work, service or counsel for compensation outside his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).”
8. Any employment or other arrangement for compensated services by Employee with a CWS/CMS – New System Project contractor, during Employee's assignment to the OSI, shall be deemed an incompatible activity within the meaning of Government Code Section 1126, subsection (a), and is prohibited during the term of this Agreement.
9. The Employee shall not engage in employment or services described in the preceding paragraph while assigned to the CWS/CMS – New System Project.”

**EXHIBIT D
ADDITIONAL PROVISIONS**

10. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
11. This Agreement may be terminated by either party upon 30 calendar days written notice.
12. This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Performance may not commence until such approval has been obtained.

**EXHIBIT E
NEW SYSTEM CONTRACT PROVISIONS**

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work the following terms shall be given the meaning shown, unless context requires otherwise.
 - a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments Incorporated herein by reference and to determine the reliability of the Equipment.
 - b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
 - c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment is not connected by the Contractor.
 - d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - e) **"Buyer"** means the State's authorized contracting official.
 - f) **"Commercial 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.
 - g) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - h) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
 - i) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - j) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
 - k) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.
 - l) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
 - m) **"Designated CPU(s)"** means for each product, if applicable the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
 - n) **"Documentation"** means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.
 - o) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).
 - p) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
 - q) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
 - r) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
 - s) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
 - t) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
 - u) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related Interactions between people and Machines.
 - v) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.

EXHIBIT E NEW SYSTEM CONTRACT PROVISIONS

- w) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- x) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- y) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- z) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- aa) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- cc) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- dd) **"Performance Testing Period"** means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Site License"** means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
- ll) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- mm) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- nn) **"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.
- oo) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- pp) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
- 2. CONTRACT FORMATION:**
- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in paragraph a), above, Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
- 3. COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

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4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
 - The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
 - If this Contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
 - To the extent that this contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
- The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
9. **ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
11. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
- these Provisions (in the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
 - information technology special provisions;
 - statement of work, including any specifications incorporated by reference herein; and
 - all other attachments incorporated in the contract by reference.
12. **PACKING AND SHIPMENT:**
- All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - show the number of the container and the total number of containers in the shipment; and

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- ii) the number of the container in which the packing sheet has been enclosed.
 - b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
 - c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.
- 13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.
- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
 - b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
 - c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
- 14. DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.
- 15. SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.
- 16. INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:
- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
 - b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
 - c) Contractor and its subcontractors 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 as may be reasonably required to perform their inspection.
 - d) All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
 - e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
- 17. SAMPLES:**
- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
 - b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.
- 18. WARRANTY:**

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- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.
- c) Unless otherwise specified in the Statement of Work:
- (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
 - (iii) Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
- (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 19. SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, 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 this Contract in accordance with the default provisions hereof.
- 20. INSURANCE:** When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an Insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.
- 21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefore.
 - b) STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
- 22. TERMINATION FOR THE CONVENIENCE OF THE STATE:**

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

23. TERMINATION FOR DEFAULT:

- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
 - i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii) Perform any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
 - (i) completed Deliverables,
 - (ii) partially completed Deliverables, and,
 - (iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

24. FORCE MAJEURE

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

- a) Acts of God or of the public enemy, and

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

25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

26. LIMITATION OF LIABILITY:

- a) 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 two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

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

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

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

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

29. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item

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

- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (I) the date of acceptance of Deliverables or performance of services; or (II) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
- 32. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.
- 35. NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
- 36. DOCUMENTATION:**
- a) The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
 - b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.
- 37. RIGHTS IN WORK PRODUCT:**
- a) **Software and Modifications**

The State shall retain all ownership rights in any software or modifications thereof and associated documentation designed, developed or installed with Federal Financial Participation (FFP). The U.S. Department of Health and Human Service (HHS) reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and otherwise use and to authorize others to use for Federal Government purposes such software, modifications, and documentation. Proprietary operating and third-party software packages which are provided hereunder at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership and licensing provisions in this Section.
 - b) **Pre-Existing Materials**

Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-existing Materials") are not subject to the ownership and licensing provisions

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of Section (a). However, if Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract will be subject to the ownership and licensing provisions of the previous paragraph, Section 37(a).

c) **Ideas, Concepts, Know-how or Techniques**

The Ideas, concepts, know-how or techniques related to data processing developed during the course of the Contract by the Contractor or jointly by the Contractor and the State can be used by either party in any way deemed appropriate.

d) **Deliverables and Work Product**

1) The State shall own all right, title and interest in and to the Deliverables, including without limitation the Software (excluding Commercial Software for which ownership is not subject to sale). Contractor shall take all actions necessary to transfer ownership of all right, title and interest in and to the Deliverables to the State upon their acceptance.

2) As used herein, "Work Product" includes all products or services performed under this Contract, including without limitation the Deliverables, and excluding (1) Contractor's administrative communications and records relating to this Contract and (2) the ideas, concepts, know-how or techniques identified in the previous paragraph, Section 37(c). All Work Product shall be deemed works made for hire of the State for all purposes of copyright law, and copyright shall belong solely to the State. In the event that any such work is adjudged to be not a work made for hire, Contractor agrees to assign, and hereby assigns, all copyright in such work to the State. Contractor shall, at the expense of the State, assist the State or its nominees to obtain registrations of copyrights, trademarks, or patents, and other rights for all such works in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country trademarks, copyrights, and patents, and other rights, and to transfer or cause to transfer to the State all the right, title and interest in and to such works. Contractor also agrees to waive and not assert any moral rights it may have in any such works. The State shall peacefully and quietly have, hold, possess, and enjoy each Deliverable without suit, molestation, or interruption.

38. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

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

39. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 39a) will be conditional upon the following:

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

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- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
 - c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by Injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
 - d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - (i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,
 - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
 - (iii) The modification by the State of the Equipment furnished hereunder or of the Software; or
 - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
 - e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.
- 40. EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records in good and legible condition for possible audit during the term of the Contract and for a minimum of three (3) years after final payment or until conclusion of any pending matter, unless a longer period of records retention is stipulated. 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. Further, Contractor agrees to include a similar right of the State and federal government to audit records and interview staff in any subcontract related to performance of this Contract.

Contractor also agrees to allow access by the U.S. Department of Health and Human Services (HHS) or the State to ensure compliance with 45 CFR §95.615, the terms of which require the State to allow access to the system in all of its aspects, including design developments, operation, and cost records of contractors and subcontractors at such intervals as are deemed necessary by the HHS to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system.

41. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own Initiative, has already rendered such a final decision. 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. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for Information Technology Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

42. STOP WORK:

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- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

43. FOLLOW-ON CONTRACTS:

To the extent that it would constitute a conflict of interest, the Contractor will not be eligible to serve as the prime or subcontractor in any contract that is the result of the services provided pursuant to this SOW. However, the Contractor will be eligible to serve in a project management role over the prime contractor and its subcontractors on behalf of the State (e.g., independent verification and validation, oversight of the prime contractor's system architect, administration, oversight of the prime contractor's system engineering, and quality assurance). The Contractor will also be eligible to serve in a project management role or as the prime or subcontractor in other contracts, i.e., contracts resulting from activities outside the scope of this SOW.

Federal law requires recipients of Federal Financial Participation (FFP) to be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals, shall be excluded from competing for such procurements.

- 44. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

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

46. NONDISCRIMINATION CLAUSE:

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

- 47. 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 the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

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

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

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- 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.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.
- 49. DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
 - b) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 50. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
- 51. SWEATFREE CODE OF CONDUCT:** Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov and Public Contract Code Section 8108.
- 52. RECYCLING:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12158(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).
- 53. CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that
The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 54. AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).
- 55. ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42480 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
- 56. USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

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- 57. EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.
- 58. DOMESTIC PARTNERS:** For contracts executed or amended after July 1, 2004, the contractor may elect to offer domestic partner benefits to the contractor's employees in accordance with Public Contract Code section 10295.3. However, the contractor cannot require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic partner status.