

|   |            |
|---|------------|
| <b>Board Office Use: Legislative File Info.</b> |            |
| File ID Number                                  | 18-1534    |
| Introduction Date                               | 6/27/18    |
| Enactment Number                                | 18-1228    |
| Enactment Date                                  | 6/27/18 os |



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
 Marcus Battle, Chief Business Official  
 Susan Beltz, Chief Technology Officer *SB*

**Board Meeting Date** June 27, 2018

**Subject** Approval of the contract for Palo Alto Security Appliances between Oakland Unified School District, Fortnet Security, Inc. and IBM Global Financing

**Action Requested** Approval of the contract to purchase two Palo Alto Security Appliances and for a continuance of support for the term of 7/23/18 to 7/22/2023 in the amount of \$392,989.65 between Oakland Unified School District and Fortnet Security, Inc. and IBM Global Financing.

**Background** The Technology Services Department strives to provide a standardized, equitable, and supportable instructional environment to all staff and students. As a part of that goal we work to also meet the district's requirements to provide continued support of the bandwidth for online testing, Children's Internet Protection Act (CIPA) Compliance and the California State Standards for teaching and learning activities.

In 2017-18 Technology Services has been seeking to find solutions to reduce the overall cost of providing these services to the district. Costs have been rapidly rising and we are about to encounter a rise from \$79,723.74 to \$109,000 for 2018-19 to renew services for our old firewalls. One option that we can take advantage of is to enter into a lease agreement for the purchase of new firewalls. We can purchase the license and maintenance at the time of this contract for a significant discount over annual renewals.

We determined that we could purchase new firewalls under a lease agreement and maintain our services for \$85,278.50 per year. With this purchase we will be keeping our annual payments equal for 5 years which shelters the district from more cost increases during the course of the lease. We believe that making this purchase under a lease agreement is the right thing to do and will save the district over \$125,000 over the next five years (using 2017-18 and 2018-19 costs).

**Discussion**

The district wishes to purchase two Palo Alto NextGen Firewalls, one for each data center, including annual maintenance and licensing for firewall services, premium support, threat prevention and internet filtering. These services are required to protect the internal digital assets of the district and to comply with CIPA requirements. Licensing is necessary to the operation of the equipment.

The quote includes the purchase of two Palo Alto Networks PA-5250 Firewalls, five years of maintenance and licensing to provide redundancy between our district datacenters, enable OUSD to continue to maintain an easy-to-administer secure 10 Gb connections to the Internet that enable support for CAASPP and Illuminate assessments and the activities that accompany teaching and learning now and into the future. The additional benefit of purchasing these firewalls is their ability to allow the district to increase internet bandwidth as instructional requirements change. Our current firewalls are not able to achieve higher speeds which would force us to upgrade the hardware at a less opportune time to meet these challenges.

**Recommendation**

Approval of the contract to purchase two Palo Alto Security Appliances and for a continuance of support for the term of 7/23/18 to 7/22/2023 in the amount of \$392,989.65 between Oakland Unified School District and Fortnet Security, Inc. and IBM Global Financing.

**Fiscal Impact**

Funding Resource: Measure J Bond Fund and Licensing-9999994701

**Attachments**

- Justification Form
  - FortNET Security PAN Quote 2018-2022
  - Board Item 17-1903 Purchase Order - Fortnet Security Inc.
  - IBM Global Financing
-



## CONTRACT JUSTIFICATION FORM

**This Form Shall Be Submitted to the Board Office  
With *Every* Consent Agenda Contract.**

**Legislative File ID No.** 18-1534

**Department:** Technology Services

**Vendor Name:** Palo Alto Security, Inc.

**Contract Term:** Start Date: 7/23/18 End Date: 7/22/2023

**Annual Cost:** \$ 392,989.65

**Approved by:** Susan Beltz

**Is Vendor a local Oakland business?** Yes  No

**Why was this Vendor selected?**

This vendor was selected by the State of California and is contractor with NASPO and has provided excellent service to the district under our prior contracts with them.

**Summarize the services this Vendor will be providing.**

Vendor will provide two Palo Alto firewalls including five years of support, and annual licensing for threat prevention and URL filtering for CIPA compliance.

**Was this contract competitively bid?** Yes  No

If No, answer the following:

1) How did you determine the price is competitive?

Vendor has provided pricing below the NASPO contract price.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**



**PRICE QUOTATION**

Louis Bisbiglia  
 Sales Manager  
[Louis@fsi.tech](mailto:Louis@fsi.tech)  
 Office: 916-670-1072 Fax: 408-519-6552  
 7411 Carnoustie Court, Gilroy CA 95020

|  |  |  |   |
|--|--|--|---|
| <b>CONTACT INFORMATION:</b>  |  | <b>SHIP TO:</b>  | <b>BILL TO:</b>   |
| Company: Oakland School District<br>Primary Contact: Colleen Calvano<br>Phone: (510) 838-1525<br><br>E-mail: <a href="mailto:colleen.calvano@ousd.org">colleen.calvano@ousd.org</a><br>Technical Contact:<br>Phone:<br>E-mail: |  | Name:<br>Company:<br>Address: 1000 Broadway<br>Oakland, CA 94607<br><br>Special Notes: | Name: Same as ship to<br>Company:<br>Address:<br><br>Special Notes: |

| SUBMITTED BY    | Office         | Quote Date | Exp Date | Shipping | PAYMENT TERMS |
|-----------------|----------------|------------|----------|----------|---------------|
| Louis Bisbiglia | Carmichael, CA | 05/24/18   | 06/30/18 |          | Net-30        |

| ITEM   | DESCRIPTION   | Part #                   | MSRP         | # UNITS | EXTENDED PRICE |
|--|---|--------------------------|--------------|---------|----------------|
| 1  | Palo Alto Networks PA-5250 with redundant AC power supplies               | PAN-PA-5250-AC           | \$200,000.00 | 2       | \$114,634.00   |
| 2  | Threat prevention subscription for device in an HA pair year 5, PA-5250   | PAN-PA-5250-TP-5YR-HA2   | \$123,200.00 | 2       | \$78,791.00    |
| 3  | PANDB URL filtering subscription for device in an HA pair year 5, PA-5250 | PAN-PA-5250-URL4-5YR-HA2 | \$123,200.00 | 2       | \$78,791.00    |
| 4  | Premium support year 5, PA-5250   | PAN-SVC-PREM-5250-5YR    | \$128,000.00 | 2       | \$109,930.00   |
| Professional Services for Installation Quoted Separately |   |                          |              |         |                |
|  |   |                          | \$574,400.00 |         | \$382,146.00   |

**NOTES:**

**CMAS 3-18-70-3039B**

CMAS Term Dates: May 29, 2018 through June 26, 2022

|              |                     |
|--------------|---------------------|
| SUBTOTAL     | \$382,146.00        |
| Tax          | TBD                 |
| SHIPPING     | \$240.00            |
| <b>TOTAL</b> | <b>\$382,386.00</b> |

Thanks,

Louis Bisbiglia  
 FORTNET Security  
 Office 916-670-1072  
 Fax 408-519-6552

---



---



---



---



---



Colleen Calvano <colleen.calvano@ousd.org>

**FW: CMAS Application**

Louis Bisbiglia <louis@fsi.tech>  
Reply-To: Louis@fsi.tech  
To: Colleen Calvano <colleen.calvano@ousd.org>  
Cc: Kevin Marin <kmarin@paloaltonetworks.com>

Tue, Jun 12, 2018 a

Hi Colleen,

Attached are all the docs. The price list is bgl, so I have listed the line item number that match our quote

Line Item 2171

PAN-PA-5250-AC Palo Alto Networks PA-5250 with redundant AC power supplies Each \$94,;

Total price for two appliance 188413.10

Line Item 2192

PAN-PA-5250-TP-5YR Threat prevention subscription 5-year prepaid, PA-5250 Each \$75,;

Total price for two licenses 150730.48

Line Item 2216

PAN-PA-5250-URL4-5YR PANDB URL filtering subscription 5-year prepaid, PA-5250 Each \$75,;

Total price for two licenses 150730.48

Line Item 4521

PAN-SVC-PREM-5250-5YR Premium support 5 year prepaid, PA-5250 Each \$62,;

Total price for two licenses \$124582.36

We are lower on all items.

Best Regards,

Louis Bisbiglia



Office: 916-870-1072

Email: [Louis@FSI.Tech](mailto:Louis@FSI.Tech) - Web: [www.FSI.Tech](http://www.FSI.Tech)

(Please note we have abbreviated our name from Fortnet Security Inc / FortNetSec.Com to FSI / FSI.Tech and have changed our email address)

Did you know millions of virus signatures are released every year, but less than 5 exploits techniques are developed every year? If you block the exploit techniques you block the infinite that try and use these exploit techniques. Talk to us to show you how Advance Endpoint protection protects your endpoint vs traditional anti-virus solutions.

**From:** Brij Patel [mailto:[Brij@fsi.tech](mailto:Brij@fsi.tech)]  
**Sent:** Tuesday, June 12, 2018 1:18 AM  
**To:** 'Louis Bisbiglia'  
**Subject:** FW: CMAS Application  
**Importance:** High

State of California  
**MULTIPLE AWARD SCHEDULE**  
**FSI – Fortnet Security Inc.**  
(Formerly Fortnet Security, Inc)

|                                |   |
|--------------------------------|---|
| CMAS NUMBER:                   | <b>3-18-70-3039B</b>  |
| CMAS TERM DATES:               | 5/29/2018 through 6/26/2022   |
| CMAS CATEGORY:                 | Information Technology Goods & Services   |
| APPLICABLE TERMS & CONDITIONS: | March 15, 2018  |
| MAXIMUM ORDER LIMIT:           | State Agencies: <b>See Purchasing Authority Dollar Threshold provision</b><br>Local Government Agencies: <b>Unlimited</b> |
| FOR USE BY:                    | State & Local Government Agencies   |
| BASE GSA SCHEDULE NO.:         | GS-35F-0511T  |
| BASE SCHEDULE HOLDER:          | EC America, Inc.  |

This CMAS provides for the purchase and warranty of hardware, software, and hardware maintenance. (See page 2 for the specific brand and restrictions applicable to this CMAS.)

NOTICE: Products and/or services on this CMAS may be available on a Mandatory Statewide Contracts. If this is the case, the use of this CMAS is restricted unless the State agency has an approved exemption as explained in the Statewide Contract User Instructions. Information regarding Statewide Contracts can be obtained at the website: [www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.pdf](http://www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.pdf). This requirement is not applicable to local government entities.

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

The services provided under this CMAS are only in support of the products covered by this CMAS.

The most current Ordering Instructions and Special Provisions, CMAS Terms and Conditions, and products and/or services are included herein. All purchase orders issued by State agencies under this CMAS shall incorporate these Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated March 15, 2018.

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

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

Original Signature On File Effective Date: **5/29/2018**  
**BRYAN DUGGER, Program Analyst, California Multiple Award Schedules Unit**

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

**CMAS PRODUCT & SERVICE CODES**

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

Brand-Palo Alto Networks  
Firewall-Network Security  
Security-IT Network

**AVAILABLE PRODUCTS AND/OR SERVICES**

Only products from the manufacturer(s) listed below are available within the scope of this CMAS:

Palo Alto Networks

The ordering agency must verify all products and/or services are currently available on the base GSA schedule at the GSA eLibrary. Access the GSA eLibrary at [www.gsaelibrary.gsa.gov](http://www.gsaelibrary.gsa.gov).

**EXCLUDED PRODUCTS AND/OR SERVICES**

Hardware repair, software maintenance, continuous diagnostics and mitigation tools, training courses, Information Technology (IT) consulting services, and electronic commerce and subscriptions services are not available under this CMAS.

**CMAS BASE CONTRACT**

**This CMAS is based on some or all of the products and/or services and prices from GSA Schedule No. GS-35F-0511T (EC AMERICA, INC.) with a GSA term of 6/27/2007 through 6/26/2022 including modification 3296.**

Replace "EC America, Inc." with "FSI – Fortnet Security Inc." where "EC America, Inc." is referenced in the federal GSA multiple award Contract Terms and Conditions.

**ISSUE PURCHASE ORDER TO**

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

**FSI – Fortnet Security Inc.  
7411 Carnoustie Court  
Gilroy, CA 95020  
Attn: Brij Patel**

**Fax: (408) 519-6552  
E-mail: [brij@fsi.tech](mailto:brij@fsi.tech)**

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

**Contact: Brij Patel  
Phone: (408) 907-4157 ext. 101  
E-mail: [brij@fsi.tech](mailto:brij@fsi.tech)**

**CALIFORNIA SELLER'S PERMIT**

FSI – Fortnet Security Inc.'s California Seller's Permit No. is 100211738. Prior to placing an order with this company, agencies must verify that this permit is still valid at the following website: [cdtfa.ca.gov/](http://cdtfa.ca.gov/).

**CMAS PRICES**

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

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

**WARRANTY**

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

**DELIVERY**

30 days after receipt of order, or as negotiated between agency and CMAS contractor and included in the purchase order, or as otherwise stipulated in the contract.

**SHIPPING INSTRUCTIONS**

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

**PURCHASING AUTHORITY DOLLAR THRESHOLD**

Unless otherwise determined by individual ordering agency purchasing authority, order limits for the purchase of goods and/or services is:

Information Technology Goods and Services:  
\$500,000

No CMAS order may be executed by a State agency that exceeds that agency's purchasing authority threshold. State agencies with approved purchasing authority, along with their dollar thresholds can be obtained at:  
[www.dgs.ca.gov/pd/Programs/Delegated.aspx](http://www.dgs.ca.gov/pd/Programs/Delegated.aspx).



**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

**HOW TO USE CMAS**

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

- Develop a Request for Offer, which includes a Scope of Work (SOW), and Bidder Declaration form. For information on the Bidder Declaration requirements, see the SCM, Volume 2, Section 3.5.7 and Volume 3, Section 3.4.7.
- Search for potential CMAS contractors at [www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx](http://www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx), select "Find a CMAS Contractor."
- Solicit offers from a minimum of 3 CMAS contractors including one small business and/or DVBE, if available, who are authorized to sell the products and/or services needed.
- If soliciting offers from a certified DVBE, include the Disabled Veteran Business Enterprise Declarations form (Std. 843) in the Request for Offer. This declaration must be completed and returned by the DVBE prime contractor and/or any DVBE subcontractors. (See the SCM Volumes 2, 3, and FI\$Cal, Chapter 3).
- This is not a bid transaction, so the small business preference, DVBE incentives, protest language, intents to award, evaluation criteria, advertising, etc., are not applicable.
- If less than 3 offers are received, State agencies must document their file with the reasons why the other suppliers solicited did not respond with an offer.
- Assess the offers received using best value methodology, with cost as one of the criteria.
- Issue a Purchase Order to the selected CMAS contractor.
- For CMAS transactions under \$10,000 only one offer is required if the State agency can establish and document that the price is fair and reasonable. The fair and reasonable method can only be used for non-customizable purchases.

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

**SPLITTING ORDERS**

Splitting orders to avoid any monetary limitations is prohibited.

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

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

**MINIMUM ORDER LIMITATION**

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

**ORDERING PROCEDURES**

**1. Purchase Orders**

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

**1. State Departments:**

Std. 65 Purchase Documents – State departments not transacting in FI\$Cal must use the Purchasing Authority Purchase Order (Std. 65) for purchase execution. An electronic version of the Std. 65 is available at the DGS-PD website at [www.dgs.ca.gov/pd/Forms.aspx](http://www.dgs.ca.gov/pd/Forms.aspx) (select Standard STD Forms).

FI\$Cal Purchase Documents – State departments transacting in FI\$Cal will follow the FI\$Cal procurement and contracting procedures.

**2. Local Governmental Departments:**

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

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

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

**2. Service and Delivery after CMAS Expiration**

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

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

**3. Multiple CMAS Agreements on a Single Purchase Order**

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

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

**4. Amendments to Agency's Purchase Orders**

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

The SCM, Volumes 2 & 3, Chapter 6.A5.0 and SCM, Volume FISCAL, Chapter 5.A4.0 provides the following direction regarding amendments to all types of CMAS purchase orders:

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

Amendments unique to non-IT services are covered in the SCM, Volume 2, Chapter 6.B2.9 and SCM, Volume FISCAL, Chapter 5.A4.1 as follows:

If the original contract permitted amendments, but did not specify the changes (e.g., quantity or time), it may be amended, per Public Contract Code (PCC) § 10335 (d)(1). This only applies to the first amendment. The time shall not exceed one year, or add not more than 30% of the original order value and may not exceed \$250,000. If the original contract did not have language permitting amendments, the NCB process must be followed.

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

**CMAS CONTRACTOR OWNERSHIP INFORMATION**

FSI – Fortnet Security Inc. is a large certified small business enterprise. Their Office of Small Business and DVBE Services (OSDS) certification #1715680 expires on 7/31/2019.

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

**SMALL BUSINESS MUST BE CONSIDERED**

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

The following website lists CMAS small business and Disabled Veteran Partners: [www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx](http://www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx) then select "Find a CMAS Contractor".

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

See the current fees in the DGS Price Book at: [www.dgs.ca.gov/ofs/Pricebook.aspx](http://www.dgs.ca.gov/ofs/Pricebook.aspx).

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

**SMALL BUSINESS/DVBE - TRACKING**

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

**SMALL BUSINESS/DVBE - SUBCONTRACTING**

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

**NEW EQUIPMENT REQUIRED**

The State will procure new equipment. All equipment must be new (or warranted as newly manufactured) and the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

Where Federal Energy Management Program (FEMP) standards are available, all State agencies shall purchase only those products that meet the recommended standards. All products displaying the Energy Star label meet the FEMP standards.

**SPECIAL MANUFACTURED GOODS**

Any CMAS for goods to be manufactured by the CMAS contractor specifically for the State and not suitable for sale to others may require progress payments.

**TRADE-IN EQUIPMENT**

Trade-ins at open market price may be considered. The product description and trade-in allowance must be identified on the purchase order.

Agencies are required to adhere to State Administrative Manual (SAM) § 3520 through 3520.6, Disposal of Personal Property and Surplus Personal Property, as applicable, when trade-ins are considered. A Property Survey Report, Std. 152, must be submitted for approval prior to disposition of any State-owned personal property, including general office furniture regardless of the acquisition value, or if the property was recorded or capitalized for accounting purposes.

**ELECTRONIC WASTE RECYCLING**

State agencies are required to recycle state owned surplus electronic equipment that has no useful life remaining (E-Waste), to the maximum extent possible. State agencies shall dispose of E-Waste using the services of the California Prison Industry Authority (CALPIA), unless the agency meets the pickup quantity and location exemption criteria detailed in State Administrative Manual (SAM) § 3520.10. Electronic equipment that is usable and still retains value is not considered E-Waste and must be reutilized through the DGS, Office of Fleet and Asset Management (OFAM) Surplus Personal Property Warehouse. State agencies shall determine which equipment meets the definition of E-Waste or reusable Electronic Equipment, per the definitions provided in the State Administrative Manual Management Memo MM 17-06. OFAM will validate that equipment meets the appropriate definition when reviewing the submitted Property Survey Report (STD. 152).

Please see State Administrative Manual (SAM) § 3520.10 for more information on this policy.

Information for submitting a STD 152 can be found on the DGS OFAM surplus property website:  
[www.dgs.ca.gov/ofam/Programs/StSurplus/Reutilization/CSPS.aspx](http://www.dgs.ca.gov/ofam/Programs/StSurplus/Reutilization/CSPS.aspx)

Information on the CALPIA E-Waste Program can be found at:  
[www.calpia.ca.gov/products-services/e-waste-recycling-computer-refurbishing](http://www.calpia.ca.gov/products-services/e-waste-recycling-computer-refurbishing)

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

The E-Waste Exemption Request Form EWR-F029 can be found at:

[www.calpia.ca.gov/calpia/assets/File/ewaste/E-Waste%20Exemption\\_EWR-F029.pdf](http://www.calpia.ca.gov/calpia/assets/File/ewaste/E-Waste%20Exemption_EWR-F029.pdf)

The electronic waste recycling fee must be shown as a line item on the agency purchase order before the CMAS contractor can include it on their invoice.

**PRODUCTIVE USE REQUIREMENTS**

The customer in-use requirement applies to all procurements of information technology equipment and software, per the SCM, Volume 3, Chapter 2, Section 2.B6.2 and SCM, Volume FI\$Cal, Chapter 2, Section 2.E3.2.

Each equipment or software component must be in current operation for a paying customer and the paying customer must be external to the contractor's organization (not owned by the contractor and not owning the contractor).

To substantiate compliance with the Productive Use Requirements, the CMAS contractor must provide upon request the name and address of a customer installation and the name and telephone number of a contact person.

The elapsed time such equipment or software must have been in operation is based upon the importance of the equipment or software for system operation and its cost. The following designates product categories and the required period of time for equipment or software operation prior to approval of the replacement item on CMAS.

**Category 1 - Critical Software:** Critical software is software that is required to control the overall operation of a computer system or peripheral equipment. Included in this category are operating systems, data base management systems, language interpreters, assemblers and compilers, communications software, and other essential system software.

| <u>Cost</u>              | <u>Installation</u> | <u>Final Bid Submission</u> |
|--------------------------|---------------------|-----------------------------|
| More than \$100,000      | 8 months            | 6 months                    |
| \$10,000 up to \$100,000 | 4 months            | 3 months                    |
| Less than \$10,000       | 1 month             | 1 month                     |

**Category 2 - All Information Technology Equipment and Non-Critical Software:** Information technology equipment is defined in State Administrative Manual (SAM) § 4819.2.

| <u>Cost</u>              | <u>Installation</u> | <u>Final Bid Submission</u> |
|--------------------------|---------------------|-----------------------------|
| More than \$100,000      | 6 months            | 4 months                    |
| \$10,000 up to \$100,000 | 4 months            | 3 months                    |
| Less than \$10,000       | 1 month             | 1 month                     |

**OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS**

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

**NOT SPECIFICALLY PRICED (NSP) ITEMS**

CMAS contractors must be authorized providers of the hardware, software and/or services they offer under the Not Specifically Priced (NSP) Items provision.

Agency and CMAS contractor use of the NSP provision is subject to the following requirements:

1. Purchase orders containing only NSP items are prohibited.
2. A purchase order containing NSP items may be issued only if it results in the lowest overall alternative to the State.
3. NSP items shall be clearly identified in the order. Any product or service already specifically priced and included in the base contract may not be identified as an NSP item.
4. NSP Installation Services: The CMAS contractor is fully responsible for all installation services performed under the CMAS. Product installations must be performed by manufacturer authorized personnel and meet manufacturer documented specifications. The prime contractor, as well as any subcontractors, must hold any certifications and/or licenses required for the project. The total dollar value of all installation services included in the purchase order cannot exceed the dollar value of the products included in the purchase order, nor can they exceed the NSP Maximum Order Limitation.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

5. Maximum Order Limitation: For orders \$250,000, or less, the total dollar value of all NSP items included in a purchase order shall not exceed \$5,000. For orders exceeding \$250,000, and at the option of the contractor, the total dollar value of all NSP items in a purchase order shall not exceed 5% of the total cost of the order, or \$25,000 whichever is lower.
6. An NSP item included in an order issued against a CMAS is subject to all of the terms and conditions set forth in the contract.
7. Trade-ins, upgrades, involving the swapping of boards, are permissible, where the contract makes specific provisions for this action. In those instances where it is permitted, the purchase order must include the replacement item and a notation that the purchase involves the swapping of a board.

The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under this CMAS:

1. Items not intended for use in directly supporting the priced items included in the same order. An NSP item must be subordinate to the specifically priced item that it is supporting. For example, a cable, which is not otherwise specifically priced in the base contract, is subordinate to a specifically priced printer or facsimile machine, and is eligible to be an NSP item subject to that cable meeting the remaining NSP requirements. However, a printer or facsimile machine, which is not otherwise specifically priced in the base contract, is not subordinate to a specifically priced cable, and is not eligible to be an NSP item.
2. Supply type items, except for the minimum amount necessary to provide initial support to the priced items included in the same order.
3. Items that do not meet the Productive Use Requirements for information technology products, per the SCM, Volume 3, Chapter 2, Section 2.B6.2 and SCM, Volume F1\$Cal, Chapter 2, Section 2.E3.2.
4. Any other item or class of items specifically excluded from the scope of this CMAS.
5. Public Works components NOT incidental to the total purchase order amount.
6. Products or services the CMAS contractor is NOT factory authorized or otherwise certified or trained to provide.
7. Follow-on consultant services that were previously recommended or suggested by the same CMAS contractor.

The CMAS contractor is required to reject purchase orders containing NSP items that do not conform to the above requirements. The CMAS contractor will promptly notify the agency issuing the non-conforming order of its non-acceptance and the reasons for its non-acceptance.

**STATE AND LOCAL GOVERNMENTS CAN USE  
CMAS**

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

**UPDATES AND/OR CHANGES**

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

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

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

**SELF-DELETING FEDERAL GSA TERMS AND  
CONDITIONS**

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

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

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

**ORDER OF PRECEDENCE**

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

**APPLICABLE CODES, POLICIES AND GUIDELINES**

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

**PAYMENTS AND INVOICES**

**1. Payment Terms**

Payment terms for this CMAS are net 45 days.

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

**2. Payee Data Record (Std. 204)**

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

**3. DGS Administrative and Incentive Fees**

**Orders from State Agencies:**

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

See the current administrative fees in the DGS Price Book at: [www.dgs.ca.gov/ofs/Pricebook.aspx](http://www.dgs.ca.gov/ofs/Pricebook.aspx).

**Orders from Local Government Agencies:**

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

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

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

**4. Contractor Invoices**

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

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

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

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

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

**5. Advance Payments**

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (Government Code (GC) § 11256 – 11263 and 11019).

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

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

**6. Credit Card**

FSI – Fortnet Security Inc. does not accept the State of California credit card (CAL-Card).

**7. Lease/Purchase Analysis**

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (State Administrative Manual (SAM) § 3710).

For short-term rental equipment, the lease/purchase analysis must be approved by the Department of General Services, Office of legal Services.

The lease/purchase analysis for all other purchases must be approved by the Department of General Services, GS \$Mart State Financial Marketplace. Buyers may contact the GS \$Mart™ Administrator, Patrick Mullen by phone at (916) 375-4617 or via e-mail at [patrick.mullen@dgs.ca.gov](mailto:patrick.mullen@dgs.ca.gov) for further information.

**8. Leasing**

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

Buyers may contact the GS \$Mart™ Administrator, Patrick Mullen by phone at (916) 375-4617 or via e-mail at [patrick.mullen@dgs.ca.gov](mailto:patrick.mullen@dgs.ca.gov) for further information.

**9. Maintenance Tax**

The Board of Equalization has ruled that in accordance with Section 1546 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For agreements that provide for only maintenance services (i.e., the furnishing of labor and parts necessary to maintain equipment), the charges for the provision of maintenance services are not taxable.
2. For agreements that provide for both maintenance services and consumable supply items (i.e., toner, developer, and staples, for example), the provision of the consumable supplies is considered a taxable sale of tangible personal property. Therefore, State agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies used during the performance period of the maintenance contract.

The Contractor will be required to itemize the consumables being taxed for State accounting purposes.

**CONTRACTOR QUARTERLY REPORT PROCESS**

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

This report shall be mailed to:

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

Reports that include checks for incentive fees must be mailed and shall not be e-mailed. All other reports may be e-mailed to the attention of Quarterly Report Processing as follows:

CMAS Unit E-Mail: [cmas@dgs.ca.gov](mailto:cmas@dgs.ca.gov)

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

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

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

- A report is required for each CMAS, each quarter, even when no new purchase orders are received in the quarter.
- A separate report is required for each CMAS.
- **Each purchase order must be reported only once in the quarter identified by the purchase order date, regardless of when the services were performed, the products were delivered, the invoice was sent, or the payment was received.**
- Purchase orders from State and local government agencies must be separated on the report, as shown in the instructions.
- CMAS contractors must report the sales activity for all resellers listed on their CMAS.
- Any report that does not follow the required format or excludes required information will be deemed incomplete and returned to the CMAS contractor for corrections.
- Taxes and freight must not be included in the report.
- CMAS contractors who are not California certified small businesses must attach to their quarterly report a check covering the required incentive fee for all CMAS sales to local government agencies (see more information below).
- New CMAS agreements, renewals, extensions, and modifications will be approved only if the CMAS contractor has submitted all required quarterly reports and incentive fees.

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

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

**CONTRACTOR QUARTERLY INCENTIVE FEES**

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

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

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

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

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

**OBTAINING COPY OF ORIGINAL CMAS AND SUPPLEMENTS**

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

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

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

**CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED**

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



**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)  
FSI – FORTNET SECURITY INC.  
CMAS NO. 3-18-70-3039B**

**AGENCY RESPONSIBILITY**

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

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

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

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

**CONFLICT OF INTEREST**

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

**FEDERAL DEBARMENT**

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

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

**LIQUIDATED DAMAGES FOR LATE DELIVERY**

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

**ACCEPTANCE TESTING CRITERIA**

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

**AMERICANS WITH DISABILITY ACT (ADA)**

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

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

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

**DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER**

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

Phone # (916) 375-4365

## ATTACHMENT A

### ADA NOTICE

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

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

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

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

The Procurement Division TTY telephone numbers are:

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

The California Relay Service Telephone Numbers are:

Voice 1-800-735-2922  
TTY: 1-800-735-2929

**ATTACHMENT B  
CMAS QUARTERLY BUSINESS ACTIVITY REPORT**

Company Name: \_\_\_\_\_

CMAS Number: \_\_\_\_\_

For Questions Regarding This Report Contact:

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Reporting Calendar Year: \_\_\_\_\_ Revision

Reporting Quarter: Q1 (Jan-Mar)

Q2 (Apr-Jun)

Q3 (Jul-Sep)

Q4 (Oct-Dec)

Check Here if No New Orders for This Quarter

**STATE AGENCY PURCHASES**

| State Agency Name | Purchase Order Number | Purchase Order Date | Total Dollars Per Purchase Order | Agency Contact | Agency Address | Phone Number |
|-------------------|-----------------------|---------------------|----------------------------------|----------------|----------------|--------------|
|                   |                       |                     |                                  |                |                |              |
|                   |                       |                     |                                  |                |                |              |
|                   |                       |                     |                                  |                |                |              |

Total State Agency Dollars Reported for Quarter: \$ \_\_\_\_\_

**LOCAL GOVERNMENT AGENCY PURCHASES**

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

**ATTACHMENT B**  
**CMAS QUARTERLY BUSINESS ACTIVITY REPORT**

---

|  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|

**Total Local Government Agency Dollars for Quarter: \$ \_\_\_\_\_ 1% Remitted to DGS (does not apply to CA certified S/Bs): \$ \_\_\_\_\_**

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

**ATTACHMENT B**  
**CMAS QUARTERLY BUSINESS ACTIVITY REPORT**

---

**Instructions for completing the CMAS Quarterly Business Activity Report**

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

**Notes:**

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

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

---

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

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

---

- controls, simulation, electronic commerce, and all related interactions between people and Machines.
- w) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- x) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- y) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- z) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- aa) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- bb) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- cc) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- dd) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- ll) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- nn) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
2. **CONTRACT FORMATION:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

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

---

5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
  - b) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
  - d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
  - e) To the extent that this Contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
9. **CMAS -- ASSIGNMENT:**
- a) This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
  - b) Should the State desire financing of the assets provided hereunder through GS\$Mart, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
11. **CMAS -- ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
- a) These General Provisions – Information Technology (In the instances provided herein where the paragraph begins:



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

---

"Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);

- b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) Other Special Provisions;
- d) Federal GSA (or other multiple award) terms and conditions;
- e) Statement of work, including any specifications incorporated by reference herein; and
- f) All other attachments incorporated in the Contract by reference.

### 12. PACKING AND SHIPMENT:

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

### 13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

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

own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

- 14. **DELIVERY:** The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

- 15. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

- 16. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:

- a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State

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

---

does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

### 17. SAMPLES:

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products offered and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

**18. CMAS -- WARRANTY:** The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base Contract used to establish this CMAS Contract. When there is a conflict between the language, the following warranty language overrides.

- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- a) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered

hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.

- b) Unless otherwise specified in the Statement of Work:
  - (i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
  - (ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
  - (iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.
- c) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
  - i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
  - ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**19. SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

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

---

- 20. INSURANCE:** The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificate(s) is insufficient for this purpose. When performing work on state owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.
- 21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
  - b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
  - c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR, SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
- 22. TERMINATION FOR THE CONVENIENCE OF THE STATE:**
- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
  - b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
    - (i) Stop work as specified in the Notice of Termination.
    - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
    - (iii) Terminate all subcontracts to the extent they relate to the work terminated.
    - (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
  - c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
  - d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
  - e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
    - (i) The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
    - (ii) The total of:
      - A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
      - B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
      - C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
  - f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.
- 23. TERMINATION FOR DEFAULT:**
- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:

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

---

- i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
  - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
  - iii) Perform any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under sub-section a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
- (i) completed Deliverables,
  - (ii) partially completed Deliverables, and,
  - (iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."
- 24. FORCE MAJEURE:** Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:
- a) Acts of God or of the public enemy, and
  - b) Acts of the federal or State government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.
- 25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
  - b) In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
  - c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
  - d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.
- 26. LIMITATION OF LIABILITY:**
- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g.,

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

---

a Master Agreement or Multiple Award Schedule Contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.

- b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations"; (ii) to liability under the General Provisions entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.
- 27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.
- 28. INDEMNIFICATION:** The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or

any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
- 32. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral

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

---

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 without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

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

**36. DOCUMENTATION**

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

reproduced, in accordance with copyright instructions to be provided by the Contractor.

**37. RIGHTS IN WORK PRODUCT:**

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

**38. SOFTWARE LICENSE:** Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable,

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

---

royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").

- a) The State may use the Software Products in the conduct of its own business, and any division thereof
  - b) The license granted above authorized the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machined-readable form, on any other State CPU until the designated CPU is returned to operation.
  - c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
  - d) Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.
- 39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:** The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act. The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.
- 40. RIGHT TO COPY OR MODIFY:**
- a) Any Software Product provided by the Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any time without prior consent of the Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.
  - b) The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of the Contract.
- 41. FUTURE RELEASES:** Unless otherwise specifically provided in the Contract, or the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State's option at a price not greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.
- 42. ENCRYPTION/CPU ID AUTHORIZATION CODES:**
- a) When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the Contractor will provide all codes to the State with delivery of the Software.
  - b) In case of an inoperative CPI, the Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.
  - c) When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, the Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.
- 43. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**
- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that

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

---

called for in the first sentence of this Section. The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

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

- i) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- ii) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - (i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
  - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating

- Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
- (iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or
  - (iv) The combination or utilization of Software furnished hereunder with non-Contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

#### 44. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the Department of General Services, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting Department Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the



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

---

- Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in the subsection a above. The Department Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention. The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later. The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.
- 45. STOP WORK:**
- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- (i) Cancel the Stop Work Order; or
  - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
- (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
  - (ii) The Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
- 46. EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.
- 47. FOLLOW-ON CONTRACTS:**
- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
  - (ii) will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
  - (ii) development or design of test requirements;
  - (iii) evaluation of test data;
  - (iv) direction of or evaluation of another Contractor;

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

---

- (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
- (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
- (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
- (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.
- 48. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
- 49. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 50. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
- 52. ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting an offer to the State, the supplier offers and agrees that if the offer is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion

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

---

- of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- (i) the assignee has not been injured thereby, or
  - (ii) the assignee declines to file a court action for the cause of action.
- 53. DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
  - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
    - (i) the dangers of drug abuse in the workplace;
    - (ii) the person's or organization's policy of maintaining a drug-free workplace;
    - (iii) any available counseling, rehabilitation and employee assistance programs; and,
    - (iv) penalties that may be imposed upon employees for drug abuse violations.
  - c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
    - (i) will receive a copy of the company's drug-free policy statement; and,
    - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 54. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
- 55. SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. 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](http://www.dir.ca.gov) and Public Contract Code Section 6108.
  - b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).
- 56. RECYCLED CONTENT REQUIREMENTS:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of postconsumer material as defined in the Public Contract Code (PCC) Section 12200-12209, in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).
- 57. CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:
- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
  - b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 58. AMERICAN WITH DISABILITIES ACT:** The Contractor assures the State that the Contractor complies with the

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

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

- 59. ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
- 60. USE TAX COLLECTION:** In accordance with PCC Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
- 61. EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to Contract with the State.
- 62. DOMESTIC PARTNERS:** For Contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that the Contractor is in compliance with Public Contract Code Section 10295.3.
- 63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**
- a) If for this Contract the Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
  - b) If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
- 64. LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as

a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b)).

### ADDITIONAL CMAS TERMS AND CONDITIONS

- 65. CMAS -- CONTRACTOR'S LICENSE REQUIREMENTS:**  
Contracts that include installation or the wording "Furnish and Install" require at the time of Contract award that Contractors possess a valid California State Contractor's License. If sub-Contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for Contract revocation.
- 66. CMAS -- PUBLIC WORKS REQUIREMENTS (LABOR/INSTALLATION):**
- a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the Contract price.
  - b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov](http://www.dir.ca.gov) (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.
  - c) The Contractor hereby certifies by signing this Contract that:
    - i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein;
    - ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of the purchase order.
  - d) Laws to be Observed
    - i) Labor

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

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

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

ii) Worker's Compensation Insurance

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

iii) Travel and Subsistence Payments

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

iv) Apprentices

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

v) Payroll

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

**67. CMAS -- TERMINATION OF CMAS CONTRACT:**

- a) The State may terminate this CMAS Contract at any time upon 30 days prior written notice.

b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the CMAS Contract, the CMAS Contract shall also be considered terminated on the same date.

c) Prior to the expiration of this CMAS Contract, this Contract may be terminated for the convenience of both parties by mutual consent.

d) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

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

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

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

a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.

b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.

c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.

**71. CMAS -- CONFLICT OF INTEREST:**

a) Current State Employees (Public Contract Code Section 10410):

- i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a

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

---

financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.

- ii) No officer or employee shall Contract on his or her own behalf as an independent Contractor with any State agency to provide Goods or services.
- b) Former State Employees (Public Contract Code Section 10411):
- i) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a Contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency.
  - ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a Contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed Contract within the twelve-month period prior to his or her leaving State service.

### 72. CMAS -- SUBCONTRACTING REQUIREMENTS:

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

### 73. CMAS -- RENTAL AGREEMENTS:

The State does not agree to:

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

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

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

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

74. **CMAS -- LEASE (Lease \$Mart™):** If an agency desires to lease through Lease \$Mart™, the Contractor agrees to sell to

lessor the assets at the same price as they agree to sell to the State.

75. **CMAS -- PROGRESS PAYMENTS & RISK ASSESSMENT:** In accordance with PCC 12112 agencies are required to withhold not less than 10 percent of the Contract price until final delivery and acceptance of the Goods or services, for any Contract that provides for progress payments in a Contract for IT Goods or services to be manufactured or performed by a Contractor especially for the State and not suitable for sale to others in the ordinary course of the Contractor's business.

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

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

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

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

---

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

---

THESE SPECIAL PROVISIONS ARE ONLY TO BE USED FOR SOFTWARE AS A SERVICE (SaaS), AS DEFINED BELOW. THESE SPECIAL PROVISIONS ARE TO BE ATTACHED TO THE GENERAL PROVISIONS – INFORMATION TECHNOLOGY AND SHOULD BE ACCOMPANIED BY, A STATEMENT OF WORK (SOW) AND SERVICE LEVEL AGREEMENT (SLA). SECURITY REQUIREMENTS DESIGNATED IN THIS DOCUMENT ARE ASSUMING A NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST) LOW CLASSIFICATION, UNLESS OTHERWISE SET FORTH IN THE SOW. A HIGHER CLASSIFICATION MAY REQUIRE DIFFERENT SECURITY REQUIREMENTS. STATE AGENCIES MUST FIRST:

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

### 1. Definitions

- a) **"Cloud Software as a Service (SaaS)"** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser (e.g., web-based email). The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **"Cloud Platform as a Service (PaaS)"** - The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- c) **"Cloud Infrastructure as a Service (IaaS)"** - The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems; storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- d) **"Data"** - means any information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- e) **"Data Breach"** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- f) **"Encryption"** - Conversion of plaintext to ciphertext through the use of a Federal Information Processing Standards (FIPS) validated cryptographic algorithm. [FIPS 140-2]
- g) **"Recovery Point Objective (RPO)"** - means the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
- h) **"Recovery Time Objective (RTO)"** - means the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.



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

---

### **Terms**

#### **2. SaaS AVAILABILITY:** Unless otherwise stated in the Statement of Work,

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

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

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work if the State is unable to access the Data as a result of:
  - 1) Acts or omission of Contractor;
  - 2) Acts or omissions of third parties working on behalf of Contractor;
  - 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
  - 4) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.

#### **4. SaaS and DATA SECURITY:**

- a) In addition to the Compliance with Statutes and Regulations provision set forth in the General Provisions – Information Technology, Contractor shall certify to the State:
  - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
  - 2) Compliance with the following:
    - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);

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

---

- ii. Current NIST special publications 800-171 Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations. Third party audit results and Contractor's plan to correct any negative findings shall be made available to the State upon request;
  - iii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Third party audit results and Contractor's plan to correct any negative findings and implementation progress reports shall be made available to the State upon request; and
  - iv. Privacy provisions of the Federal Privacy Act of 1974;
- 3) Compliance with industry standards and guidelines applicable to the SaaS services being provided. Relevant security provisions may include, but are not limited to: Health Insurance Portability and Accountability Act of 1996, IRS 1075, Health Information Technology for Economic and Clinical (HITECH) Act, Criminal Justice Information Services (CJIS) Security Policy, Social Security Administration (SSA) Electronic Information Exchange Security Requirements, and the Payment Card Industry (PCI) Data Security Standard (DSS) as well as their associated Cloud Computing Guidelines.
- b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Contract to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data.
  - c) Contractor shall allow the State reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Contract and the State's Data, at no cost to the State.
  - d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
  - e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by the State.
  - f) Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance in writing by:
    - 1) the Agency Information Security Officer, with written notice to the State Chief Information Security Officer, or
    - 2) in the absence of an Agency Information Security Officer, the State Chief Information Security Officer.

**5. ENCRYPTION:** Confidential, sensitive or personal information shall be encrypted in accordance with California State Administrative Manual 5350.1 and California Statewide Information Management Manual 5305-A.

**6. DATA LOCATION:** Unless otherwise stated in the Statement of Work and approved in advance in writing by:

- 1) the Agency Information Security Officer, with written notice to the State Chief Information Security Officer, or
- 2) in the absence of an Agency Information Security Officer, the State Chief Information Security Officer, the physical location of Contractor's data center where the Data is stored shall be within the continental United States.

**7. RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the State, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

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

---

### 8. TRANSITION PERIOD:

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

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

- a) Upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor's notification shall identify:
  - 1) The nature of the Data Breach;
  - 2) The Data accessed, used or disclosed;
  - 3) The person(s) who accessed, used, disclosed and/or received Data (if known);
  - 4) What Contractor has done or will do to quarantine and mitigate the Data Breach; and
  - 5) What corrective action Contractor has taken or will take to prevent future Data Breaches.
- b) Contractor will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Contractor until the Data Breach has been effectively resolved to the State's satisfaction.
- c) Contractor shall quarantine the Data Breach, ensure secure access to Data, and repair SaaS as needed in accordance with the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
- d) Notwithstanding anything to the contrary in the General Provisions - Information Technology, in performing services under this Contract, and to the extent authorized by the State in the Statement of Work, Contractor may be permitted by the State to use systems, or may be granted access to the State systems, which store, transmit or process State owned, licensed or maintained computerized Data consisting of personal information, as defined by Civil Code Section 1798.29 (g). If the Contractor causes or knowingly experiences a breach of the security of such Data, Contractor shall immediately report any breach of security of such system to the State following discovery or notification of the breach in the security of such Data. The State's Chief Information Security Officer, or designee, shall determine whether notification to the individuals whose Data has been lost or breached is appropriate. If personal information of any resident of California was, or is reasonably believed to have been acquired by an unauthorized person as a result of a security breach of such system and Data that is not due to the fault of the State or any person or entity under the control of the State, Contractor shall bear any and all costs associated with the State's notification obligations and other obligations set forth in Civil Code Section 1798.29 (d) as well as the cost of credit monitoring, subject to the dollar limitation, if any, agreed to by the State and Contractor in the

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

---

applicable Statement of Work. These costs may include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach of the security of such personal information.

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

**10. DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work,

- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:
- 1) The scale and quantity of the Data loss;
  - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
  - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
  - 4) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Contract.
- b) Contractor shall restore continuity of SaaS, restore Data in accordance with the RPO and RTO as set forth in the SLA, restore accessibility of Data, and repair SaaS as needed to meet the performance requirements stated in the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
- c) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.

**11. EXAMINATION AND AUDIT:** In addition to the Examination and Audit provision set forth in the General Provisions - Information Technology, unless otherwise stated in the Statement of Work:

- a) Upon advance written request, Contractor agrees that the State or its designated representative shall have access to Contractor's SaaS, operational documentation, records and databases, including online inspections, that relate to the SaaS purchased by the State.
- b) The online inspection shall allow the State, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
- 1) Operating system/network vulnerability scans,
  - 2) Web application vulnerability scans,
  - 3) Database application vulnerability scans, and
  - 4) Any other scans to be performed by the State or representatives on behalf of the State.
- c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, State-approved third party perform an information security audit. The audit results shall be shared with the State within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the State with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

**12. DISCOVERY:** Contractor shall promptly notify the State upon receipt of any requests which in any way might reasonably require access to the Data of the State or the State's use of the SaaS. Contractor shall notify the State by the fastest means

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

---

available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the State unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

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

---

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

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

**1. DEFINITIONS:**

- a. "Authorized Persons" means the Service Provider's employees, Contractors, subcontractors or other agents who need to access the State's Data to enable the Service Provider to perform the services required.
- b. "Data Breach" means the unauthorized access that results in the use, disclosure, destruction, modification, loss or theft of the State's unencrypted Personal Data or Non-Public Data.
- c. "Individually Identifiable Health Information" means Information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- d. "Infrastructure-as-a-Service" (IaaS) means the capability provided to the consumer is to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed application; and possibly limited control of select networking components (e.g., host firewalls).
- e. "Non-Public Data" means data submitted to the Service Provider's IaaS or PaaS Service, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, regulation or policy from access by the general public as public information.
- f. "Personal Data" means data submitted to the Service Provider's IaaS or PaaS Service that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- g. "Platform-as-a-Service" (PaaS) means the capability provided to the consumer to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- h. "Protected Health Information" (PHI) means Individually Identifiable Health Information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA) as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- i. "Security Incident" means the potentially unauthorized access to Personal Data or Non-Public Data the Service Provider believes could reasonably result in the use, disclosure or theft of the State's unencrypted Personal Data or Non-Public Data within the possession or control of the Service Provider. A Security Incident may or may not turn into a Data Breach.
- j. "Service Level Agreement" (SLA) means a written agreement between both the State and the Service Provider that is subject to the terms and conditions in this document that unless otherwise agreed to includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities,

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

---

(4) security responsibilities and notice requirements, how disputes are discovered and addressed, and (6) any remedies for performance failures.

- k. "Service Provider" means the Contractor, subcontractors, agents, resellers, third parties and affiliates who are providing the services agreed to under the Contract.
- l. "State Data" means all data created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State's hardware, the Service Provider's hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Service Provider.
- m. "State Identified Contact" means the person or persons designated in writing by the State to receive Security Incident or Data Breach notification.
- n. "Statement of Work" (SOW) means a written statement in a Contract that describes the State's service needs and expectations.

### 2. DATA OWNERSHIP:

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

### 3. DATA PROTECTION:

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

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

### 4. DATA LOCATION:

The Service Provider shall provide its services to the State and its end users solely from data centers in the continental United States. Storage of

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

---

State Data at rest shall be located solely in data centers in the continental United States. The Service Provider shall not allow its personnel or contractors to store State Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Service Provider shall permit its personnel and contractors to access State Data remotely only as required to provide technical user support or other customer support. The Service Provider may provide technical user support or other customer support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in this Contract.

### 5. SECURITY INCIDENT OR DATA BREACH NOTIFICATION:

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

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

### 6. DATA BREACH RESPONSIBILITIES:

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

- a. The Service Provider, unless otherwise set forth in in the SOW and/or SLA, shall promptly notify the appropriate State Identified Contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is or reasonably believes that there has been a Data Breach. The Service Provider shall (1) cooperate with the State as reasonably requested by the State to investigate and resolve the Data Breach; (2) promptly implement necessary remedial measures, if necessary; and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- b. Service Provider will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Service Provider to the State Identified Contact until the Data Breach has been effectively resolved to the State's satisfaction.
- c. Service Provider shall quarantine the Data Breach, ensure secure access to Data, and repair IaaS and/or PaaS as needed in accordance with the SOW and/or SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
- d. Unless otherwise set forth in the SOW and/or SLA, if a Data Breach is a direct result of the Service Provider's breach of its Contract obligation to encrypt Personal Data and/or Non-Public Data or otherwise prevent its release, the Service Provider shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State (or Federal) law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by the Service Provider based on root cause; all [(1) through (5)] subject to this Contract's Limitation of Liability provision as set forth in the General Provisions -- Information Technology.

### 7. NOTIFICATION OF LEGAL REQUESTS:

Unless otherwise required by law, the Service Provider shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the State's Data under this Contract, or which in any way might reasonably require access



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

---

to State's Data. The Service Provider shall not respond to subpoenas, service of process and other legal requests related to the State without first notifying the State, unless prohibited by law from providing such notice. Unless otherwise required by law, Service Provider agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Service Provider shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

### 8. DATA PRESERVATION AND RETRIEVAL:

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

### 9. BACKGROUND CHECKS:

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

### 10. ACCESS TO SECURITY LOGS AND REPORTS:

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

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

---

**11. CONTRACT AUDIT:**

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

**12. DATA CENTER AUDIT:**

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

**13. CHANGE CONTROL AND ADVANCE NOTICE:**

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

**14. SECURITY PROCESSES:**

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

**15. IMPORT AND EXPORT OF DATA:**

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

**16. RESPONSIBILITIES AND UPTIME GUARANTEE:**

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

**17. RIGHT TO REMOVE INDIVIDUALS:**

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

**18. BUSINESS CONTINUITY AND DISASTER RECOVERY:**

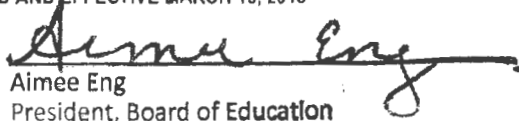
The Service Provider shall provide a business continuity and disaster recovery plan and shall ensure that it achieves the State's Recovery Time Objective (RTO), as agreed to by the parties and set forth in the SOW and/or SLA.

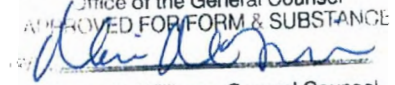
**19. WEB SERVICES:**

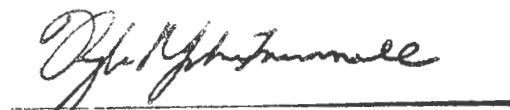
(For PaaS Only) The Service Provider shall use Web services exclusively to interface with State Data in near real time when possible, or as mutually agreed in the SOW and/or SLA.

---

REVISED AND EFFECTIVE MARCH 15, 2018

  
Aimee Eng  
President, Board of Education

PAGE 29 OF 29  
OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
  
Marion McWilliams, General Counsel

  
Kyla R. Johnson-Trammell  
Secretary, Board of Education

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

---

THESE SPECIAL PROVISIONS ARE ONLY TO BE USED FOR SOFTWARE AS A SERVICE (SaaS), AS DEFINED BELOW. THESE SPECIAL PROVISIONS ARE TO BE ATTACHED TO THE GENERAL PROVISIONS – INFORMATION TECHNOLOGY AND SHOULD BE ACCOMPANIED BY, A STATEMENT OF WORK (SOW) AND SERVICE LEVEL AGREEMENT (SLA). SECURITY REQUIREMENTS DESIGNATED IN THIS DOCUMENT ARE ASSUMING A NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST) LOW CLASSIFICATION, UNLESS OTHERWISE SET FORTH IN THE SOW. A HIGHER CLASSIFICATION MAY REQUIRE DIFFERENT SECURITY REQUIREMENTS. STATE AGENCIES MUST FIRST:

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

**1. Definitions**

- a) **"Cloud Software as a Service (SaaS)"** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser (e.g., web-based email). The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **"Cloud Platform as a Service (PaaS)"** - The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- c) **"Cloud Infrastructure as a Service (IaaS)"** - The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems; storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- d) **"Data"** - means any information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- e) **"Data Breach"** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- f) **"Encryption"** - Conversion of plaintext to ciphertext through the use of a Federal Information Processing Standards (FIPS) validated cryptographic algorithm. [FIPS 140-2]
- g) **"Recovery Point Objective (RPO)"** - means the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
- h) **"Recovery Time Objective (RTO)"** - means the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.

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

---

**Terms**

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

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

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

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work if the State is unable to access the Data as a result of:
  - 1) Acts or omission of Contractor;
  - 2) Acts or omissions of third parties working on behalf of Contractor;
  - 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
  - 4) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.

**4. SaaS and DATA SECURITY:**

- a) In addition to the Compliance with Statutes and Regulations provision set forth in the General Provisions – Information Technology, Contractor shall certify to the State:
  - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
  - 2) Compliance with the following:
    - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
    - ii. Current NIST special publications 800-171 Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations. Third party audit results and Contractor's plan to correct any negative findings shall be made available to the State upon request;
    - iii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Third party audit results and Contractor's plan to correct any negative findings and implementation progress reports shall be made available to the State upon request; and

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

---

- iv. Privacy provisions of the Federal Privacy Act of 1974;
- 3) Compliance with industry standards and guidelines applicable to the SaaS services being provided. Relevant security provisions may include, but are not limited to: Health Insurance Portability and Accountability Act of 1996, IRS 1075, Health Information Technology for Economic and Clinical (HITECH) Act, Criminal Justice Information Services (CJIS) Security Policy, Social Security Administration (SSA) Electronic Information Exchange Security Requirements, and the Payment Card Industry (PCI) Data Security Standard (DSS) as well as their associated Cloud Computing Guidelines.
- b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Contract to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data.
- c) Contractor shall allow the State reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Contract and the State's Data, at no cost to the State.
- d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
- e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by the State.
- f) Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance in writing by:
  - 1) the Agency Information Security Officer, with written notice to the State Chief Information Security Officer, or
  - 2) in the absence of an Agency Information Security Officer, the State Chief Information Security Officer.

**5. ENCRYPTION:** Confidential, sensitive or personal information shall be encrypted in accordance with California State Administrative Manual 5350.1 and California Statewide Information Management Manual 5305-A.

**6. DATA LOCATION:** Unless otherwise stated in the Statement of Work and approved in advance in writing by:

- 1) the Agency Information Security Officer, with written notice to the State Chief Information Security Officer, or
- 2) in the absence of an Agency Information Security Officer, the State Chief Information Security Officer, the physical location of Contractor's data center where the Data is stored shall be within the continental United States.

**7. RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the State, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

**8. TRANSITION PERIOD:**

- a) Unless otherwise stated in the SOW, for ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the State in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, SaaS and Data access shall continue to be made available to the State without alteration.

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

---

- d) Contractor agrees to compensate the State for damages or losses the State incurs as a result of Contractor's failure to comply with this section in accordance with the Limitation of Liability provision set forth in the General Provisions - Information Technology.
- e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
- f) The State at its option, may purchase additional transition services as agreed upon in the SOW.

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

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

**10. DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work,

- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided

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

---

to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:

- 1) The scale and quantity of the Data loss;
  - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
  - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
  - 4) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Contract.
- b) Contractor shall restore continuity of SaaS, restore Data in accordance with the RPO and RTO as set forth in the SLA, restore accessibility of Data, and repair SaaS as needed to meet the performance requirements stated in the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
- c) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.

**11. EXAMINATION AND AUDIT:** In addition to the Examination and Audit provision set forth in the General Provisions - Information Technology, unless otherwise stated in the Statement of Work:

- a) Upon advance written request, Contractor agrees that the State or its designated representative shall have access to Contractor's SaaS, operational documentation, records and databases, including online inspections, that relate to the SaaS purchased by the State.
- b) The online inspection shall allow the State, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
  - 1) Operating system/network vulnerability scans,
  - 2) Web application vulnerability scans,
  - 3) Database application vulnerability scans, and
  - 4) Any other scans to be performed by the State or representatives on behalf of the State.
- c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, State-approved third party perform an information security audit. The audit results shall be shared with the State within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the State with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

**12. DISCOVERY:** Contractor shall promptly notify the State upon receipt of any requests which in any way might reasonably require access to the Data of the State or the State's use of the SaaS. Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the State unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

# STATE MODEL

## CLOUD COMPUTING SERVICES SPECIAL PROVISIONS

### (Infrastructure as a Service and Platform as a Service)

---

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

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

#### 1. DEFINITIONS:

- a. "Authorized Persons" means the Service Provider's employees, Contractors, subcontractors or other agents who need to access the State's Data to enable the Service Provider to perform the services required.
- b. "Data Breach" means the unauthorized access that results in the use, disclosure, destruction, modification, loss or theft of the State's unencrypted Personal Data or Non-Public Data.
- c. "Individually Identifiable Health Information" means Information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- d. "Infrastructure-as-a-Service" (IaaS) means the capability provided to the consumer is to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed application; and possibly limited control of select networking components (e.g., host firewalls).
- e. "Non-Public Data" means data submitted to the Service Provider's IaaS or PaaS Service, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, regulation or policy from access by the general public as public information.
- f. "Personal Data" means data submitted to the Service Provider's IaaS or PaaS Service that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- g. "Platform-as-a-Service" (PaaS) means the capability provided to the consumer to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- h. "Protected Health Information" (PHI) means Individually Identifiable Health Information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA) as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- i. "Security Incident" means the potentially unauthorized access to Personal Data or Non-Public Data the Service Provider believes could reasonably result in the use, disclosure or theft of the State's unencrypted Personal Data or Non-Public Data within the possession or control of the Service Provider. A Security Incident may or may not turn into a Data Breach.
- j. "Service Level Agreement" (SLA) means a written agreement between both the State and the Service Provider that is subject to the terms and conditions in this document that unless otherwise agreed to includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, how disputes are discovered and addressed, and (6) any remedies for performance failures.
- k. "Service Provider" means the Contractor, subcontractors, agents, resellers, third parties and affiliates who are providing the services agreed to under the Contract.



**STATE MODEL**  
**CLOUD COMPUTING SERVICES SPECIAL PROVISIONS**  
**(Infrastructure as a Service and Platform as a Service)**

---

- l. "State Data" means all data created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State's hardware, the Service Provider's hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Service Provider.
- m. "State Identified Contact" means the person or persons designated in writing by the State to receive Security Incident or Data Breach notification.
- n. "Statement of Work" (SOW) means a written statement in a Contract that describes the State's service needs and expectations.

**2. DATA OWNERSHIP:**

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

**3. DATA PROTECTION:**

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

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

**4. DATA LOCATION:**

The Service Provider shall provide its services to the State and its end users solely from data centers in the continental United States. Storage of State Data at rest shall be located solely in data centers in the continental United States. The Service Provider shall not allow its personnel or contractors to store State Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Service Provider shall permit its personnel and contractors to access State Data remotely only as required to provide technical user support or other customer support. The Service Provider may provide technical user support or other customer support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in this Contract.

**5. SECURITY INCIDENT OR DATA BREACH NOTIFICATION:**

# STATE MODEL

## CLOUD COMPUTING SERVICES SPECIAL PROVISIONS

### (Infrastructure as a Service and Platform as a Service)

---

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

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

#### **6. DATA BREACH RESPONSIBILITIES:**

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

- a. The Service Provider, unless otherwise set forth in in the SOW and/or SLA, shall promptly notify the appropriate State Identified Contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is or reasonably believes that there has been a Data Breach. The Service Provider shall (1) cooperate with the State as reasonably requested by the State to investigate and resolve the Data Breach; (2) promptly implement necessary remedial measures, if necessary; and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- b. Service Provider will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Service Provider to the State Identified Contact until the Data Breach has been effectively resolved to the State's satisfaction.
- c. Service Provider shall quarantine the Data Breach, ensure secure access to Data, and repair IaaS and/or PaaS as needed in accordance with the SOW and/or SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
- d. Unless otherwise set forth in the SOW and/or SLA, if a Data Breach is a direct result of the Service Provider's breach of its Contract obligation to encrypt Personal Data and/or Non-Public Data or otherwise prevent its release, the Service Provider shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State (or Federal) law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by the Service Provider based on root cause; all [(1) through (5)] subject to this Contract's Limitation of Liability provision as set forth in the General Provisions – Information Technology.

#### **7. NOTIFICATION OF LEGAL REQUESTS:**

Unless otherwise required by law, the Service Provider shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the State's Data under this Contract, or which in any way might reasonably require access to State's Data. The Service Provider shall not respond to subpoenas, service of process and other legal requests related to the State without first notifying the State, unless prohibited by law from providing such notice. Unless otherwise required by law, Service Provider agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Service Provider shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

#### **8. DATA PRESERVATION AND RETRIEVAL:**

- a. For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Service Provider shall assist the State in extracting and/or transitioning all State Data in the format determined by the State ("Transition Period").
- b. The Transition Period may be modified in the SOW and/or SLA or as agreed upon in writing by the parties in a Contract amendment.

**STATE MODEL**  
**CLOUD COMPUTING SERVICES SPECIAL PROVISIONS**  
**(Infrastructure as a Service and Platform as a Service)**

- 
- c. During the Transition Period, IaaS and/or PaaS and State Data access shall continue to be made available to the State without alteration.
  - d. Service Provider agrees to compensate the State for damages or losses the State incurs as a result of Service Provider's failure to comply with this section in accordance with the "Limitation of Liability" provision set forth in the General Provisions - Information Technology.
  - e. The State at its option, may purchase additional transition services as agreed upon in the SOW and/or SLA.
  - f. During any period of suspension, the Service Provider shall not take any action to intentionally erase any State Data.
  - g. The Service Provider will impose no additional fees for access and retrieval of State Data by the State during the Transition Period.
  - h. After termination of the Contract and the prescribed retention period, the Service Provider shall securely dispose of all State Data in all forms. State Data shall be permanently deleted and shall not be recoverable, according to NIST-approved methods. Certificates of destruction shall be provided to the State.

**9. BACKGROUND CHECKS:**

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

**10. ACCESS TO SECURITY LOGS AND REPORTS:**

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

**11. CONTRACT AUDIT:**

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

**12. DATA CENTER AUDIT:**

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

**13. CHANGE CONTROL AND ADVANCE NOTICE:**

The Service Provider shall give advance notice (as agreed to by the parties and included in the SOW and/or SLA) to the State of any upgrades (e.g., major upgrades, minor upgrades, system changes) that is expected to materially and negatively impact service availability and performance, as well as any planned downtime for such upgrades. A major upgrade is a replacement of hardware,

**STATE MODEL**  
**CLOUD COMPUTING SERVICES SPECIAL PROVISIONS**  
**(Infrastructure as a Service and Platform as a Service)**

---

software or firmware ware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number. Service Provider may change the features and functionality of the services, without degrading them, to make improvements, address security requirements and comply with changes in law.

**14. SECURITY PROCESSES:**

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

**15. IMPORT AND EXPORT OF DATA:**

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

**16. RESPONSIBILITIES AND UPTIME GUARANTEE:**

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

**17. RIGHT TO REMOVE INDIVIDUALS:**

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

**18. BUSINESS CONTINUITY AND DISASTER RECOVERY:**

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

**19. WEB SERVICES:**

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



February 19, 2014

John Krull  
Information Technology Officer  
Oakland Unified School District  
Technology Services  
1011 Union Street  
Oakland, CA 94607

Dear John:

This letter serves as confirmation that FortNet Security, Inc. is an approved Palo Alto Networks reseller authorized to sell and service Palo Alto Networks next generation firewalls and services.

If you should have any further questions regarding FortNet's business relationship with Palo Alto Networks, Inc. please feel free to contact me.

Regards,

*Tracy A. Pallas*

Tracy A. Pallas  
VP, Americas Channel Sales  
917-991-4646  
tpallas@paloaltonetworks.com

## Lease/Purchase Master Agreement For State and Local Government

**Lease/Purchase Master Agreement No: 076554500G**

This Lease/Purchase Master Agreement For State and Local Government ("Agreement") covers the terms and conditions under which IBM Credit LLC will finance various charges.

This Agreement and its applicable Supplements and Addenda along with any required documents that reference this Agreement or a Supplement and which are listed in the applicable Supplement, are the complete agreement regarding the Financing Transactions and replace any prior oral or written communications between both parties. Any addenda to this Agreement or an applicable Supplement ("Addenda") must be agreed to in writing by both Lessee and Lessor. Any attachment to this Agreement or an applicable Supplement ("Attachment") must be referenced in such Agreement or Supplement. If there is a conflict of terms among the documents, the order of precedence will be as follows: (a) Attachments or Addenda to the Supplement, (b) Supplement, (c) Attachments or Addenda to the Agreement, (d) this Agreement.

By signing below, both parties agree to the terms of this Agreement. Once signed, any reproduction of this Agreement or a Supplement made by reliable means (for example, photocopy or facsimile) is considered an original.

### **Part 1 - Definitions**

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"**Agreement**" means this Lease/Purchase Master Agreement.

"**Commencement Date**" is the date when the term of a Financing Transaction and Lessee's obligation to pay Lease Payments for such Financing Transaction commence, which date shall be set forth in each Lease/Purchase Supplement.

"**Equipment**" means, collectively, the equipment lease/purchased pursuant to this Agreement, and with respect to each Lease/Purchase Supplement, the equipment described in each Lease/Purchase Supplement, and all repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.1 or Part 9.

"**Event of Default**" is defined in Section 13.1.

"**Financed Items**" means any software program licenses, maintenance, services, and other one-time charges to be lease/purchased pursuant to this Agreement, and with respect to each Lease/Purchase Supplement, such items described therein.

"**Financing Transaction**" means the lease/purchase transaction for Property set forth in any Lease/Purchase Supplement entered into pursuant to this Agreement.

"**Lease/Purchase Supplement**" or "**Supplement**" means a Lease/Purchase Supplement in the form attached hereto.

"**Lease Payments**" means the Lease Payments payable by Lessee under Part 6 of this Agreement and with respect to each Lease/Purchase Supplement, the Payment Amounts set forth in each Lease/Purchase Supplement in Exhibit 1 thereto.

"**Lease Payment Dates**" means the dates for the Lease Payments as set forth in the Payment Schedules for each Lease/Purchase Supplement.

"**Lease Term**" means, with respect to a Financing Transaction, the Original Term and all Renewal Terms. The Lease Term for each Financing Transaction entered into hereunder shall be set forth in a Lease/Purchase Supplement, as provided in Section 4.2.

"**Lessee**" or "**Customer**" means the entity identified as such on the signature line below, and its permitted successors and assigns.

"**Lessor**" means the entity identified as such on the signature line below, and its successors and assigns.

"**Nonappropriation Event**" is defined in Section 6.6.

"**Original Term**" means, with respect to a Financing Transaction, the period from the Commencement Date until the end of the budget year of Lessee in effect at the Commencement Date.

"**Payment Schedule**" means, with respect to a Financing Transaction, one or more schedules of lease payments for the Original Term and all Renewal Terms that indicates the Payment Due Date, the Lease Payment, the Interest Component and the Prepayment Price as set forth in each Payment Schedule.

"**Property**" means, collectively, the Equipment and Financed Items lease/purchased pursuant to this Agreement, and with respect to each Lease/Purchase Supplement, the Equipment and Financed Items described in such Lease/Purchase Supplement.

"**Purchase Price**" means the amount that Lessee may, in its discretion, pay to Lessor to purchase the Property under a Lease/Purchase Supplement, as provided in Section 11.1 and as set forth in the Lease/Purchase Supplement.

"**Renewal Terms**" means the renewal terms of a Financing Transaction, each having a duration of one year and a term coextensive with Lessee's budget year.

"**State**" means the state or commonwealth where Lessee is located.

## Lease/Purchase Master Agreement For State and Local Government

"Supplier" means International Business Machines Corporation "IBM", or any other manufacturer, vendor or provider of the Property leased/purchased by Lessee.

### Part 2 - Separate Financings

Each Supplement executed and delivered under this Agreement shall be a separate financing, distinct from other Supplements. Without limiting the foregoing, upon the occurrence of an Event of Default or a Nonappropriation Event with respect to a Supplement, Lessor shall have the rights and remedies specified herein with respect to the Property financed and the Lease Payments payable under such Supplement, and except as expressly provided in Section 12.2 below, Lessor shall have no rights or remedies with respect to Property financed or Lease Payments payable under any other Supplements unless an Event of Default or Nonappropriation Event has also occurred under such other Supplements.

### Part 3 - Lessee's Covenants

As of the Commencement Date for each Supplement executed and delivered hereunder, Lessee shall be deemed to represent, covenant and warrant for the benefit of Lessor as follows:

- a. Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to enter into this Agreement and the Supplement and the transactions contemplated thereby and to perform all of its obligations thereunder. Lessee has a substantial amount of one or more of the following sovereign powers: (i) the power to tax, (ii) the power of eminent domain, and (iii) the police power.
- b. Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Lessee should merge with another entity under the laws of the State, Lessee agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Lessee's rights and shall assume Lessee's obligations hereunder.
- c. Lessee has been duly authorized to execute and deliver this Agreement and the Supplement by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Supplement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the Supplement and the acquisition by Lessee of the Property thereunder. On or before the Commencement Date, Lessee shall cause to be executed an Opinion of Lessee's Counsel in substantially the form attached to the form of the Supplement as Exhibit 2 and a Lessee's Certificate in substantially the form attached to the form of the Supplement as Exhibit 3.
- d. During the Lease Term for the Supplement, the Property thereunder will perform and will be used by Lessee only for the purpose of performing essential governmental uses and public functions within the permissible scope of Lessee's authority.
- e. Lessee will provide Lessor with current financial statements, budgets and proof of appropriation for the ensuing budget year and other financial information relating to the ability of Lessee to continue this Agreement and the Supplement in such form and containing such information as may be requested by Lessor.
- f. Lessee will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Lease Payments under the Supplement and will not use or permit the use of the Property in such a manner as to cause a Supplement to be a "private activity bond" under Section 141(a) of the Code. Lessee covenants and agrees that no part of the proceeds of the Supplement shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Supplement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Supplement.
- g. The execution, delivery and performance of this Agreement and the Supplement and compliance with the provisions hereof and thereof by Lessee does not conflict with, or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease of, or other instrument to which Lessee is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Lessee or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Lessee or to which it is subject.
- h. Lessee's exact legal name is as set forth on the first page of this Agreement. Lessee will not change its legal name in any respect without giving thirty (30) days' prior notice to Lessor.

### Part 4 - The Transactions

**4.1 Lease of Property.** On the Commencement Date of each Financing Transaction executed in the Supplement hereunder, Lessor will be deemed to demise, lease and let to Lessee, and Lessee will be deemed to rent, lease and hire from Lessor, the Property described in such Supplement, in accordance with this Agreement and such Supplement, for the Lease Term set forth in such Supplement.



## Lease/Purchase Master Agreement For State and Local Government

**4.2 Lease Term.** The term of each Financing Transaction shall commence on the Commencement Date set forth in the Certificate of Acceptance and shall terminate upon payment of the final Lease Payment set forth in such Payment Schedule and the exercise of the Deemed Purchase described in Section 11.1, unless terminated sooner pursuant to this Agreement or the Supplement.

**4.3 Delivery, Installation and Acceptance of Property.** Lessee shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Supplement, and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement for the acquisition of the Property, such funds shall be disbursed as provided therein. When the Property described in such Supplement is delivered, installed and accepted as to Lessee's specifications, Lessee shall immediately accept the Property and evidence said acceptance by executing and delivering to Lessor the Certificate of Acceptance substantially in the form attached to the Supplement.

**4.4 Assignment to Lessor.** With respect to Property, Lessee assigns for security purposes to Lessor, effective upon Lessor signing the Supplement, its right to purchase the Property from its Supplier. Although Lessor shall have the obligation to pay the Supplier for the Property, not to exceed the principal amount set forth in the Supplement, title to the Property shall pass directly from Supplier to Lessee subject to Lessor's right under Section 7.3 hereunder, or unless otherwise provided. All other rights and obligations as defined in the agreement between Lessee and Lessee's Supplier governing the purchase of the Property ("Purchase Agreement") shall remain with Lessee. Lessee represents that it has reviewed and approved the Purchase Agreement. Lessor will not modify or rescind the Purchase Agreement.

**4.5 Credit Review.** For each Financing Transaction, Lessee consents to a reasonable credit review by Lessor.

### **Part 5 - Lessor's Rights of Access**

**5.1 Enjoyment of Property.** Lessee shall during the Lease Term peaceably and quietly have, hold and enjoy the Property, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. Neither Lessor nor its successors or assigns shall interfere with such quiet use and enjoyment during the Lease Term so long as Lessee is not in default under the subject Supplement.

**5.2 Location; Inspection.** The Property will be initially located or based at the location specified in the applicable Supplement. Upon reasonable advance request, Lessee agrees to allow Lessor to inspect the Equipment and its maintenance records during Lessee's normal business hours, subject to Lessee's reasonable security procedures. Lessee will affix to the Equipment any identifying labels supplied by Lessor indicating ownership.

### **Part 6 - Payments**

**6.1 Lease Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional, statutory or charter limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the faith and credit or taxing power of Lessee. Upon the appropriation of Lease Payments for a fiscal year, the Lease Payments for said fiscal year, and only the Lease Payments for said current fiscal year, shall be a binding obligation of Lessee; provided that such obligation shall not include a pledge of the taxing power of Lessee.

**6.2 Payment of Lease Payments.** Lessee shall promptly pay Lease Payments under each Supplement, exclusively from legally available funds, in lawful money of the United States of America, to Lessor in such amounts and on such dates as described in the applicable Payment Schedule, at Lessor's address set forth as the "remit to" address in the invoice, unless Lessor instructs Lessee otherwise. Lessee shall pay Lessor a charge on any delinquent Lease Payments in an amount sufficient to cover all additional costs and expenses incurred by Lessor from such delinquent Lease Payment. In addition, Lessee shall pay a late charge of five cents per dollar or the highest amount permitted by applicable law, whichever is lower, on all delinquent Lease Payments and interest on said delinquent amounts from the date such amounts were due until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

**6.3 Interest Component.** A portion of each Lease Payment due under each Supplement is paid as, and represents payment of, interest, and each Supplement hereunder shall set forth the interest component (or method of computation thereof) of each Lease Payment thereunder during the Lease Term.

**6.4 Lease Payments to be Unconditional.** SUBJECT TO SECTION 6.6, THE OBLIGATIONS OF LESSEE TO PAY THE LEASE PAYMENTS DUE UNDER THE SUPPLEMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT LESSEE'S RIGHTS OR ACTIONS AGAINST ANY SUPPLIER AS PROVIDED IN SECTION 10.2.

**6.5 Continuation of Lease by Lessee.** Lessee intends to continue all Supplements entered into pursuant to this Agreement and to pay the Lease Payments thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Lease Payments during the term of all Supplements can be obtained. Lessee agrees that during the budgeting process for each budget year its staff will provide to the governing body of Lessee notification of any Lease Payments due under the Supplements during the following budget year.



**Lease/Purchase Master Agreement  
For State and Local Government**

---

**6.6 Nonappropriation.** If, during the then current Original Term or Renewal Term, sufficient funds are not appropriated to make Lease Payments required under a Supplement for the following fiscal year, Lessee shall be deemed to not have renewed such Supplement for the following fiscal year and the Supplement shall terminate at the end of the then current Original Term or Renewal Term and Lessee shall not be obligated to make Lease Payments under said Supplement beyond the then current fiscal year for which funds have been appropriated. Upon the occurrence of such nonappropriation (a "Nonappropriation Event") Lessee shall, no later than the end of the fiscal year for which Lease Payments have been appropriated, deliver possession of the Property under said Supplement to Lessor. If Lessee fails to deliver possession of the Property to Lessor upon termination of said Supplement by reason of a Nonappropriation Event, the termination shall nevertheless be effective but Lessee shall be responsible for the payment of damages in an amount equal to the portion of Lease Payments thereafter coming due that is attributable to the number of days after the termination during which the Lessee fails to deliver possession and for any other loss suffered by Lessor as a result of Lessee's failure to deliver possession as required. In the event of a Nonappropriation Event under a Supplement, Lessee shall cease use of all software financed or acquired under the applicable Supplement and shall confirm and state in writing to Lessor that it has: (1) deleted or disabled all files and copies of the software from the equipment on which it was installed; (2) returned all software documentation, training manuals, and physical media on which the software was delivered; and (3) has no ability to use the returned software. Lessor may, by written instructions to any escrow agent who is holding proceeds of the Supplement, instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to Lessee's obligations under the Supplement and this Agreement. Lessee shall notify Lessor in writing within seven (7) days after the failure of the Lessee to appropriate funds sufficient for the payment of the Lease Payments, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee. In the event of such nonappropriation, upon request from Lessor, Lessee agrees to provide in a timely manner, written evidence of such nonappropriation, a copy of the fiscal year budget in which such nonappropriation occurred and any other related documentation reasonably requested by Lessor.

**Part 7 - Title: Security Interest**

**7.1 Title to the Property.** Upon acceptance of the Equipment by Lessee and unless otherwise required by the laws of the State, title to the Equipment shall vest directly in Lessee from the Supplier, subject to Lessor's interests under the applicable Supplement and this Agreement. Software that the Lessee acquires from the Supplier and finances with Lessor remains the property of the licensor. Ownership of the software is governed by the license agreement between the licensor and the Lessee and is not affected by this Agreement.

**7.2 Personal Property.** The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

**7.3 Security Interest.** To the extent permitted by law and to secure the performance of all of Lessee's obligations under this Agreement with respect to a Supplement, including without limitation all Supplements now existing or hereafter executed, Lessee grants to Lessor, for the benefit of Lessor and its successors and assigns, a security interest constituting a first lien on Lessee's interest in all of the Equipment under the Supplement, whether now owned or hereafter acquired, all additions, attachments, alterations and accessions to the Equipment, all substitutions and replacements for the Equipment, and on any proceeds of any of the foregoing, including insurance proceeds. Lessee shall execute any additional documents, including financing statements, affidavits, notices and similar instruments, in form and substance satisfactory to Lessor, that Lessor deems necessary or appropriate to establish, maintain and perfect a security interest in the Equipment in favor of Lessor and its successors and assigns. Lessee hereby authorizes Lessor to file all financing statements that Lessor deems necessary or appropriate to establish, maintain and perfect such security interest.

**Part 8 - Maintenance and Ancillary Charges**

**8.1 Maintenance of Equipment by Lessee.** Lessee shall keep and maintain the Equipment in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Equipment in conformity with all laws and regulations concerning the Equipment's ownership, possession, use and maintenance, and shall keep the Equipment free and clear of all liens and claims, other than those created by this Agreement. Lessee shall have sole responsibility to maintain and repair the Equipment. Should Lessee fail to maintain, preserve and keep the Equipment in good repair and working order and in accordance with manufacturer's specifications, and if requested by Lessor, Lessee will enter into maintenance contracts for the Equipment in form approved by Lessor and with approved providers.

**8.2 Liens, Taxes, Other Governmental Charges and Utility Charges.** Lessee shall keep the Property free of all levies, liens and encumbrances, except for the interest of Lessor under this Agreement. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Property will be exempt from all property taxes. The Lease Payments payable by Lessee under this Agreement and the Supplements hereunder have been established to reflect the savings resulting from this exemption from taxation. Lessee will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Lessee shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. Lessee shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term for such Property.

**Lease/Purchase Master Agreement  
For State and Local Government**

**8.3 Insurance.** At its own expense, Lessee shall maintain (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount equal to at least the outstanding principal component of Lease Payments, and (b) liability insurance that protects Lessor from liability in all events in an amount reasonably acceptable to Lessor, and (c) worker's compensation insurance covering all employees working on, in, near or about the Property; provided that Lessee may self-insure against all such risks. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. All such insurance shall be with insurers that are authorized to issue such insurance in the State. All such liability insurance shall name Lessor as an additional insured. All such casualty insurance shall contain a provision making any losses payable to Lessor and Lessee as their respective interests may appear. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Lessor and Lessee at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without Lessor's prior written consent. Upon Lessor's request, Lessee shall, within thirty (30) days of such request, furnish to Lessor, for each Supplement, certificates evidencing such coverage, or, if Lessee self-insures, a written description of its self-insurance program together with a certification from Lessee's risk manager or insurance agent or consultant to the effect that Lessee's self-insurance program provides adequate coverage against the risks listed above.

**8.4 Advances.** In the event Lessee shall fail to either maintain the insurance required by this Agreement or keep the Property in good repair and working order, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof or maintain and repair the Property and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term for the Supplement for which the Property is under and shall be due and payable on the next Lease Payment Date and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date such amounts are advanced until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

**Part 9 - Casualty Loss**

**9.1 Damage or Destruction.** If (a) the Property under a Supplement or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Property under a Supplement or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessor and Lessee will cause the Net Proceeds (as hereinafter defined) of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt repair, restoration, modification or improvement of the Property, unless Lessee shall have exercised its option to purchase Lessor's interest in the Property if the Supplement so provides. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee and applied to the next Lease Payments coming due on the Supplement. For purposes of Section 8.3 and this Part 9, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

**9.2 Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.1, Lessee shall (a) complete such repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Section 6.2; or (b) exercise its option to purchase Lessor's interest in the Property pursuant to the optional purchase provisions of the Supplement, if any. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such purchase may be retained by Lessee.

**Part 10 - Warranties: Use of Equipment and/or Financed Items**

**10.1 Disclaimer of Warranties.** LESSOR MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND LESSOR HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS LEASED TO LESSEE "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY LESSEE. Lessee acknowledges that it has made (or will make) the selection of the Property from the Supplier based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Lessor. Lessee understands and agrees that (a) neither the Supplier nor any sales representative or other agent of Supplier, is (i) an agent of Lessor, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Supplements, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Supplements.

**10.2 Supplier's Warranties.** Lessor hereby irrevocably assigns to Lessee all rights that Lessor may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Supplier. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Supplier of the Property, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Supplier of the Property.

## Lease/Purchase Master Agreement For State and Local Government

**10.3 Use of the Property.** Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Supplement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Lessee agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property (including compliance with any applicable privacy laws, rules or regulations and in conjunction therewith Lessee, upon cessation of the use, operation and control of, and prior to any disposition of the Equipment, shall destroy any data contained thereon that would be subject to such privacy laws, rules or regulations); provided that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Property or its interest or rights under this Agreement. Lessee shall promptly notify Lessor in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Supplement or the Property thereunder.

**10.4 Modifications.** Subject to the provisions of this Section, Lessee shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Equipment. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Equipment and shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any way damage the Equipment, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Equipment, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Equipment immediately prior to the making of such alterations, additions, modifications and improvements. Lessee shall, at its own expense, make such alterations, additions, modifications and improvements to the Equipment as may be required from time to time by applicable law or by any governmental authority.

### **Part 11 - Prepayments**

**11.1 Deemed Purchase.** Lessee shall be deemed to have purchased Lessor's entire interest in all of the Equipment subject to a Supplement and to have terminated any restrictions herein on the Property under such Supplement on the last day of the Lease Term for a Supplement, if the Supplement is still in effect on such day, upon payment in full of the Lease Payments due thereunder. Upon the deemed purchase as set forth in this Section 11.1 or payment of the purchase price pursuant to Section 11.2 hereof, under the applicable Supplement, and performance by Lessee of all other terms, conditions and provisions hereof, Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably require to evidence the transfer, without warranty by or recourse to Lessor, of all of Lessor's right, title and interest in and to the Equipment subject to such Supplement to Lessee.

**11.2 Option to Prepay.** Lessee shall have the option to prepay (a) in whole, but not in part, the Lease Payments due under a Supplement on any Lease Payment Date, at the Prepayment Price set forth in the Payment Schedule as the "Prepayment Price", or (b) in part, by requesting, in writing, the Prepayment Price for the portion of the remaining Lease Payments allocable to the Property being prepaid plus any past due amounts, accrued interest to the date of such prepayment and any other monetary amounts due under the Supplement to Lessor. The Prepayment Price shall be an amount equal to the present value of the portion of the remaining Lease Payments allocable to the Property being prepaid multiplied by the Prepayment Fee Rate set forth in such Payment Schedule as the "Prepayment Fee Rate". Upon payment of the Prepayment Price and such other amounts due Lessor, Lessee shall be deemed to have purchased Lessor's entire interest in all Property being prepaid, and to have terminated any restrictions herein on the Property prepaid.

### **Part 12 - Assignment; Risk of Loss**

**12.1 Assignment by Lessor.** Lessor's right, title and interest in, to and under each Supplement and the Property under such Supplement may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor without the consent of Lessee; provided that any assignment shall not be effective against the Lessee until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in this Agreement and the Supplements.

**12.2 Supplements Separate Financings.** Assignees of the Lessor's rights in one Supplement shall have no rights in any other Supplement unless such rights have been separately assigned.

**12.3 Assignment and Subleasing by Lessee.** NONE OF LESSEE'S RIGHT, TITLE AND INTEREST IN, TO AND UNDER THIS AGREEMENT OR ANY SUPPLEMENT AND IN THE PROPERTY MAY BE ASSIGNED, SUBLEASED OR ENCUMBERED BY LESSEE FOR ANY REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. Any request by Lessee to assign a Supplement or any Property thereunder must be accompanied by an opinion of tax counsel satisfactory to Lessor that the assignment will cause no material change to the federal income tax treatment of the amounts payable as interest under the Supplement.

**12.4 Risk of Loss Covenants.** Lessee shall not be required to indemnify or hold Lessor harmless against liabilities arising from the Agreement. However, as between Lessor and Lessee, and to the extent permitted by law, Lessee shall bear the risk of loss for, shall pay directly, and shall defend Lessor against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Property, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that (provided that Lessee has complied with its obligations under Section 10.3) Lessee shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after Lessee has surrendered possession of the Property in accordance with the terms of the Agreement to Lessor or that arise directly from the gross negligence or willful misconduct of the Lessor.



**Lease/Purchase Master Agreement  
For State and Local Government**

**Part 13 - Defaults and Remedies**

**13.1 Events of Default Defined.** Any of the following shall constitute an "Event of Default" under a Supplement:

- a. Failure by Lessee to pay any Lease Payment under the Supplement or other payment required to be paid with respect thereto at the time specified therein;
- b. Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Supplement, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;
- c. Any statement, representation or warranty made by Lessee in or pursuant to the Supplement or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- d. Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or
- e. An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

The foregoing provisions of Section 13.1 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to perform its agreements under this Agreement and the Supplement (other than the obligations on the part of Lessee contained in Part 6 hereof) Lessee shall not be in default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

A Nonappropriation Event is not an Event of Default.

**13.2 Remedies on Default.** Whenever any Event of Default exists with respect to a Supplement, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- a. Without terminating the Supplement, and by written notice to Lessee, Lessor may declare all Lease Payments and other amounts payable by Lessee thereunder to the end of the then current budget year of Lessee to be due, including without limitation delinquent Lease Payments under the Supplement from prior budget years, and such amounts shall thereafter bear interest at the rate of 12% per annum or the maximum rate permitted by applicable law, whichever is less;
- b. Lessor may terminate the Supplement, may enter the premises where the Property subject to the Supplement is located and retake possession of the Equipment and require Lessee to discontinue use of any Financed Items, or require Lessee, at Lessee's expense, to promptly return any or all of the Equipment to the possession of Lessor at such place within the United States as Lessor shall specify and require Lessee to discontinue use of any Financed Items, and Lessor may thereafter dispose of the Property in accordance with Article 9 of the Uniform Commercial Code in effect in the State; provided, however, that any proceeds from the disposition of the property in excess of the sum required to (i) pay off any outstanding principal component of Lease Payments, (ii) pay any other amounts then due under the Supplement, and (iii) pay Lessor's costs and expenses associated with the disposition of the Property (including attorneys fees), shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto, and further provided that no deficiency shall be allowed against Lessee. Lessee shall confirm and state in writing to Lessor that it has: (1) deleted or disabled all files and copies of the software from the equipment on which it was installed; (2) returned all software documentation, training manuals, and physical media on which the software was delivered; and (3) has no ability to use the returned software;
- c. By written notice to any escrow agent who is holding proceeds of the Supplement, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Supplement;
- d. Lessor may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Supplement and this Agreement.

**13.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in

**Lease/Purchase Master Agreement  
For State and Local Government**

---

equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Part it shall not be necessary to give any notice, other than such notice as may be required in this Part.

**13.4 Costs and Attorney Fees.** Upon the occurrence of an Event of Default by Lessee in the performance of any term of this Agreement, Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts due hereunder, all of Lessor's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid and shall bear interest at the rate of 12% per annum or the maximum amount permitted by law, whichever is less. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

**Part 14 - General**

**14.1 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by Lessee.

**14.2 Arbitrage Certifications.** Lessee shall be deemed to make the following representations and covenants as of the Commencement Date for each Supplement:

- a. The estimated total costs, including taxes, freight, installation, cost of issuance, of the Financed Items under the Supplement will not be less than the total principal amount of the Lease Payments.
- b. Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Lease Payments under the Supplement, or (ii) that may be used solely to prevent a default in the payment of the Lease Payments under the Supplement.
- c. The Property under the Supplement has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Lease Payments under the Supplement.
- d. There are no other obligations of Lessee which (i) are being sold within 15 days of the Commencement Date of the Supplement; (ii) are being sold pursuant to the same plan of financing as the Supplement; and (iii) are expected to be paid from substantially the same source of funds.
- e. The officer or official who has executed the Supplement on Lessee's behalf is familiar with Lessee's expectations regarding this Section 14.2. To the best of Lessee's knowledge, information and belief, the facts and estimates set forth in herein are accurate and the expectations of Lessee set forth herein are reasonable.

**14.3 Further Assurances.** Lessee agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of Lessor, to perfect, confirm, establish, reestablish, continue, or complete the interests of Lessor in this Agreement and the Supplements, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Supplements.

**14.4 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. Any county, township, municipality, political subdivision or affiliate (collectively, "Affiliate") of Lessee may enter into a Financing Transaction under this Agreement by signing a Supplement referencing this Agreement and so will be bound to the terms and conditions of this Agreement as Lessee. Nothing in this Agreement obligates the Lessor to provide financing to an Affiliate.

**14.5 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**14.6 Amendments, Changes and Modifications.** This Agreement may be amended in writing by Lessor and Lessee to the extent the amendment or modification does not apply to outstanding Supplements at the time of such amendment or modification.

**14.7 Execution in Counterparts.** This Agreement and the Supplements hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**14.8 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

Lease/Purchase Master Agreement  
For State and Local Government

14.9 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Agreed to:  
OAKLAND UNIFIED SCHOOL DISTRICT

By: [Signature]  
Authorized Signature  
Name (type or print): [Signature]  
President, Board of Education  
Title (type or print): [Signature]  
Date: [Signature]  
Kyla R. Johnson Trammell  
Secretary, Board of Education  
Email Address:

Agreed to:  
IBM Credit LLC

By: [Signature]  
Authorized Signature  
Name (type or print): WDMILA GONCALVES  
Title (type or print): BSO NA CLIENT OP. MGR.  
Date: 06/20/2018

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR EXECUTIVE SUBSTANCE  
By: [Signature]  
Merion MacWilliam, General Counsel

**IBM Credit LLC  
Lease/Purchase Supplement**

Supplement No: 050105

Page 1 of 2

Lease/Purchase Master Agreement No.: 076554500G

**Lessee Name and Address:**  
OAKLAND UNIFIED SCHOOL DISTRICT  
1000 BROADWAY STE 600  
OUSD RAD  
OAKLAND CA 94607-4071

**Lessor Name and Address:**  
IBM Credit LLC  
7100 Highlands Parkway  
Smyrna, GA 30082  
igfnadoc@us.ibm.com

This Supplement to the above referenced Lease/Purchase Master Agreement ("Agreement") is executed between OAKLAND UNIFIED SCHOOL DISTRICT ("Lessee") and IBM Credit LLC ("Lessor").

Payment Period means the period for which a Payment is due and payable (e.g., Month, Quarter). Payment Period is: Annual

Quote Validity Date is the date by which the executed Supplement must be returned to Lessor. Quote Validity Date is: June 7, 2018

Supplier:

| TAX-EXEMPT FINANCING TRANSACTION(S) |      |                                     |                        |                      |                   |                            |
|-------------------------------------|------|-------------------------------------|------------------------|----------------------|-------------------|----------------------------|
| Ref No.                             | Qty. | Property Description                | Original Term (months) | Amount Financed (\$) | Interest Rate (%) | Planned Commencement Month |
| 1                                   | 2    | ZP5U 625 PALO ALTO PA-6250 FIREWALL | 60                     | 114,634.00           | 4.10              | July 2018                  |
| 2                                   | 1    | XMT3 OEM OEM MAINTENANCE            | 60                     | 109,930.00           | 4.32              | July 2018                  |
| 3                                   | 1    | X8W1 OEM OEM SOFTWARE               | 60                     | 157,582.00           | 4.32              | July 2018                  |
| 4                                   | 1    | 9TX8 TAX FINANCING OF TAXES         | 60                     | 10,803.65            | 4.13              | July 2018                  |
| 5                                   | 1    | XOT9 OEM OEM OTHER                  | 60                     | 240.00               | 4.33              | July 2018                  |
| <b>TOTALS</b>                       |      |                                     |                        | <b>392,989.65</b>    |                   |                            |

**SPECIAL TERMS AND CONDITIONS:**

The following shall apply to this entire transaction.

- For equipment, software and services not supplied by IBM, Lessor may pay fees to the supplier and/or other third-party firms for administrative services provided in connection with the transaction contemplated under this Agreement. Details are available upon request.

**ADDITIONAL TERMS AND CONDITIONS:**

"Planned Commencement Month" means for the Financing Transaction to commence, the acceptance date on the Certificate of Acceptance must be prior to the end of the month of "Planned Commencement Month" indicated above unless otherwise approved by Lessor.

The Lease Payment Schedule for this Supplement sets forth the scheduled Lease Payments under this Supplement. The Commencement Date for this Supplement is set forth in the Lease Payment Schedule.

With respect to Financed Items consisting of prepaid maintenance, Lessee accepts the terms of the prepaid maintenance and agrees to look solely to the maintenance provider for provision of such maintenance in accordance with the terms of the contracts with the maintenance provider for said maintenance. Acceptance for purposes of a Supplement shall be the date of acceptance by Lessee in the Certificate of Acceptance.

Lessee agrees that it will timely complete, execute and file the Internal Revenue Service Form 8038-G or Form 8038-GC with the appropriate office of the Internal Revenue Service. Property contained in a Transaction is either Tax-Exempt, whereas the Property qualifies for tax-exempt interest treatment under the Code, or Taxable, whereas the Property does not qualify for tax exempt interest treatment under the Code. The interest rates applicable to this Supplement that provide for Tax-Exempt Lease/Purchase are based on many factors including Lessee's underlying obligation qualifying to pay interest that is treated as exempt by the Internal Revenue Service (IRS) from federal income tax under Section 103(a) of the Internal Revenue Code (Code), as well as many proprietary factors including pricing assumptions made by Lessor as to whether Lessor anticipates being able to recognize any benefits of this tax exemption. Lessee shall pay Lessor, on demand, a sum to be determined by Lessor, that will return to Lessor the economic results Lessor would otherwise have received if: (i) Lessee does not file the above IRS form on a timely basis; or (ii) IRS rules Lessee does not qualify under Section 103(a) of the Code.



**IBM Credit LLC  
Lease/Purchase Supplement**

Supplement No: 050105

Page 2 of 2

The interest rates applicable to a Supplement may reflect fees or other consideration Lessor receives from Lessee's Suppliers that is passed on to Lessee in the form of lower rates.

For a Taxable Financing Transactions, the following provisions of the Lease/Purchase Master Agreement shall not be applicable: (i) Part 3, paragraph (f), (ii) Section entitled Arbitrage Certifications.

Lessor reserves the right to reject any invoice that is: (i) not for information technology Equipment or related software or services, or (ii) dated more than 90 days prior to the date Lessor receives authorization from Lessee to finance.

Capitalized terms set forth in this Supplement or in the attachments, but not defined herein or therein, shall have the meaning set forth in the Lease/Purchase Master Agreement. The complete terms and conditions of the Lease/Purchase Master Agreement are incorporated by reference.

Section entitled "Waiver of Jury Trials" under this Agreement is deleted in its entirety.

In addition to a Supplement, and as a requirement to entering into of Lease/Purchase Supplement, Lessee shall provide in completed and executed form, acceptable to Lessor, the additional documents attached to this Supplement that may include:

(a) Payment Schedule for a Supplement, (b) Opinion of Counsel to the Lessee, (c) Lessee's Certificate, (d) Certificate of Acceptance, (e) State Addendum, if applicable and attached, (f) for Tax-Exempt Financed Items (i) Form 8038-G or 8038-GC (to be filed with Internal Revenue Service by Lessee), (ii) Prepaid Maintenance Certification of Maintenance Provider and (iii) Prepaid Maintenance Certification of Maintenance Vendor.

The Agreement referenced above shall be incorporated herein by reference. Lessee hereunder shall be bound to the terms and conditions of the Agreement as Lessee. The Agreement, this Supplement and any applicable attachments or addenda are the complete, exclusive statement of the parties with respect to the subject matter herein. These documents supersede any prior oral or written communications between the parties. By signing below, Lessee represents and warrants that Lessee's name as set forth in the signature block below is Lessee's exact legal name and the information identifying Lessee's state of organization is true, accurate and complete in all respects. By signing below, both parties agree to the terms represented by this Agreement as it may be amended or modified. Delivery of an executed copy of any of these documents by facsimile or other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. Lessee acknowledges that we may maintain a copy of these documents in electronic form and agrees that copy reproduced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original.

Agreed to:  
OAKLAND UNIFIED SCHOOL DISTRICT

Agreed to:  
IBM Credit LLC

By: *Aimee Eng*  
Aimee Eng signature  
Name (type or print): Aimee Eng  
President, Board of Education  
Title (type or print): *Kyla B. Johnson-Trammell*  
Kyla B. Johnson-Trammell  
Date: Secretary, Board of Education

By: *Ludmila Goncalves*  
Authorized signature  
Name (type or print): LUDMILA GONCALVES  
Title (type or print): BSO NA CLIENT OP. MGR.  
Date: 06/20/2018

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVE FOR FORM & SUBSTANCE  
By: *Manon McWilliams*  
Manon McWilliams, General Counsel



**LESSEE'S CERTIFICATE**

**Re: Lease/Purchase Supplement No. 050105 to Lease/Purchase Master Agreement No. 076554500G between IBM Credit LLC and OAKLAND UNIFIED SCHOOL DISTRICT ("Lessee").**

**The undersigned (person signing at the bottom of this document), being the duly qualified and acting representative of the Lessee with the title indicated at the bottom of this document does hereby certify, as of the date executed, as follows:**

1. Lessee did, by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Lease/Purchase Supplement and any related documents entered into pursuant to the Lease/Purchase Master Agreement (the "Lease/Purchase Supplement") by the following named representative of Lessee, to wit:

| <p><b>NAME OF EXECUTING OFFICIAL(S)<br/>AUTHORIZED TO SIGN ANY<br/>LEASE/PURCHASE SUPPLEMENT<br/>DOCUMENTS (incl. CERT of ACCEPTANCE)</b></p> <p>NOTE: THE PERSON SIGNING AT THE<br/>BOTTOM OF THIS DOCUMENT SHOULD NOT<br/>BE LISTED IN THIS TABLE</p> | <p><b>TITLE<br/>OF EXECUTING OFFICIAL(S)</b></p> | <p><b>SIGNATURE<br/>OF EXECUTING<br/>OFFICIAL(S)</b></p> |
|---|--|--|
| <p>SUSAN BELTZ</p>  | <p>CHIEF TECHNOLOGY OFFICER</p>                  | <p>[Signature]</p>                                       |
| <p>And/Or COLLEEN CAUVANO</p>   | <p>EXECUTIVE DIRECTOR</p>                        | <p>[Signature]</p>                                       |
| <p>And/Or</p>   | <p></p>  | <p></p>  |
| <p>And/Or</p>   | <p></p>  | <p></p>  |
| <p>And/Or</p>   | <p></p>  | <p></p>  |

2. The above-named representative(s) of the Lessee held at the time of such authorization and holds at the present time the office set forth above.

3. Any meeting(s) of the governing body of the Lessee which were required for the Lease/Purchase Supplement to be approved and authorized to be executed, were duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, and the enactment approving the Lease/Purchase Supplement and authorizing the execution thereof has not been altered or rescinded. All meetings of the governing body of Lessee relating to the authorization and delivery of the Lease/Purchase Supplement have been: (a) held within the geographic boundaries of the Lessee; (b) open to the public, allowing all people to attend; (c) conducted in accordance with internal procedures of the governing body; and (d) conducted in accordance with the charter of the Lessee, if any, and the laws of the State. The meeting of the governing body of the Lessee at which the Lease/Purchase Supplement was approved and authorized to be executed was held on 6/27/18 [Lessee must enter the meeting date or "n/a"].

4. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default or a Non-appropriation Event (as such terms are defined in the Lease/Purchase Master Agreement (the "Master Agreement")) exists at the date hereof with respect to this Lease/Purchase Supplement or any other Lease/Purchase Supplements under the Master Agreement.

5. The acquisition of all of the Property under the Lease/Purchase Supplement has been duly authorized by the governing body of Lessee.

6. Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Lease Payments scheduled to come due during the current budget year under the Lease/Purchase Supplement and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.

7. Lessee represents and warrants that the Property is essential to the proper, efficient and economic functioning of Lessee or to the services that Lessee provides; and Lessee has immediate need for and expects to make immediate use of substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future.

8. Bank Qualified Tax-Exempt Obligation under Section 265 (Consult tax counsel for applicable provisions.).  
**[Lessee must select one option below.]**

Lessee hereby designates this Lease/Purchase Supplement as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. Lessee reasonably anticipates issuing tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds and including all tax-exempt obligations of subordinate entities of the Lessee) during the calendar year in which the Commencement Date of this Lease/Purchase Supplement falls, in an amount not exceeding \$10,000,000.

or  
 Not applicable

LESSEE'S CERTIFICATE

9. Has Lessee ever terminated a lease or financing contract prior to the expiration of its term (including all permitted renewal terms) due to nonappropriation or other provision permitting Lessee to terminate in Lessee's discretion? [Lessee must select one option below.]

Yes \_\_\_ No  If yes, then please describe the circumstances of such termination:

10. As of the date hereof, no litigation is pending, (or, to my knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoin the delivery of the Master Agreement or the Lease/Purchase Supplement or of other agreements similar to the Master Agreement; (b) questioning the authority of Lessee to execute the Master Agreement or the Lease/Purchase Supplement, or the validity of the Master Agreement or the Lease/Purchase Supplement, or the payment of principal of or interest on, the Lease/Purchase Supplement; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Master Agreement and the Lease/Purchase Supplement, or (d) affecting the provisions made for the payment of or security for the Master Agreement and the Lease/Purchase Supplement.

Lessee: OAKLAND UNIFIED SCHOOL DISTRICT

\*\*By (Signature): Aimee Eng  
Aimee Eng  
President, Board of Education

\*PRINTED NAME

\*TITLE: Kyla R. Johnson-Trammell  
Kyla R. Johnson-Trammell  
Secretary, Board of Education

\*DATE:

\*\*SIGNER MUST NOT BE THE SAME AS THE EXECUTING OFFICIAL(S) SHOWN IN THE TABLE ABOVE. (I.E. SIGNER MUST NOT BE THE SAME PERSON WHO SIGNED THE LEASE/PURCHASE SUPPLEMENT DOCUMENTS)

A SELECTION OR RESPONSE MUST BE MADE IN REGARDS TO STATEMENTS 3, 8 & 9.

\*ALL FIELDS ARE REQUIRED TO BE COMPLETED.

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By: Marlon McWilliams  
Marlon McWilliams, General Counsel

## IBM Credit LLC Lease Payment Schedule

Lessee Name: OAKLAND UNIFIED SCHOOL DISTRICT

Lease/Purchase Supplement No: 050105

### Commencement Date

The Commencement Date shall be the date of acceptance of the Property as set forth in the Acceptance Certificate executed by the Lessee and filed with the Lessor. The Lease Payment Due Dates listed below are based on the date of acceptance being a date on or before the end of the Planned Commencement Month.

### Lease Payment Schedule

Total Principal Amount: \$392,989.65  
Interest Rate for Schedule: 4.25%

| Payment No. | Lease Payment Due Dates | Lease Payments (\$) | Principal Component (\$) | Interest Component (\$) | Prepayment Price (After Making Payment for Said Due Date) (\$) |            |
|-------------|-------------------------|---------------------|--------------------------|-------------------------|--|------------|
| 1           | 8/01/2018               | 85,278.50           | 85,278.50                | 0.00                    | 307,711.15   |            |
|             | 9/01/2018               | 0.00                |                          | 1,069.98                | 308,781.13   |            |
|             | 10/01/2018              | 0.00                |                          | 1,073.73                | 309,854.86   |            |
|             | 11/01/2018              | 0.00                |                          | 1,077.46                | 310,932.32   |            |
|             | 12/01/2018              | 0.00                |                          | 1,081.20                | 312,013.52   |            |
|             | 1/01/2019               | 0.00                |                          | 1,084.96                | 313,098.48   |            |
|             | 2/01/2019               | 0.00                |                          | 1,088.75                | 314,187.23   |            |
|             | 3/01/2019               | 0.00                |                          | 1,092.53                | 315,279.76   |            |
|             | 4/01/2019               | 0.00                |                          | 1,096.33                | 316,376.09   |            |
|             | 5/01/2019               | 0.00                |                          | 1,100.13                | 317,476.22   |            |
|             | 6/01/2019               | 0.00                |                          | 1,103.97                | 318,580.19   |            |
|             | 7/01/2019               | 0.00                |                          | 1,107.81                | 319,688.00   |            |
|             | 2                       | 8/01/2019           | 85,278.50                | 72,189.99               | 1,111.66   | 235,521.16 |
|             |                         | 9/01/2019           | 0.00                     |                         | 818.97   | 236,340.13 |
|             |                         | 10/01/2019          | 0.00                     |                         | 821.82   | 237,161.95 |
|             |                         | 11/01/2019          | 0.00                     |                         | 824.69   | 237,986.64 |
|             |                         | 12/01/2019          | 0.00                     |                         | 827.56   | 238,814.20 |
|             |                         | 1/01/2020           | 0.00                     |                         | 830.44   | 239,644.64 |
|             |                         | 2/01/2020           | 0.00                     |                         | 833.33   | 240,477.97 |
| 3/01/2020   |                         | 0.00                |                          | 836.21                  | 241,314.16   |            |
| 4/01/2020   |                         | 0.00                |                          | 839.14                  | 242,153.32   |            |
| 5/01/2020   |                         | 0.00                |                          | 842.05                  | 242,995.37   |            |
| 3           | 6/01/2020               | 85,278.50           | 75,260.52                | 850.87                  | 180,260.64   |            |
|             | 9/01/2020               | 0.00                |                          | 557.28                  | 180,817.92   |            |
|             | 10/01/2020              | 0.00                |                          | 559.24                  | 181,377.16   |            |
|             | 11/01/2020              | 0.00                |                          | 561.17                  | 181,938.33   |            |
|             | 12/01/2020              | 0.00                |                          | 563.11                  | 182,501.44   |            |
|             | 1/01/2021               | 0.00                |                          | 565.08                  | 183,066.52   |            |
|             | 2/01/2021               | 0.00                |                          | 567.06                  | 183,633.58   |            |
|             | 3/01/2021               | 0.00                |                          | 569.01                  | 184,202.59   |            |
|             | 4/01/2021               | 0.00                |                          | 570.99                  | 184,773.58   |            |
|             | 5/01/2021               | 0.00                |                          | 572.99                  | 185,346.57   |            |
| 6/01/2021   | 0.00                    |                     | 574.98                   | 185,921.55              |  |            |
| 7/01/2021   | 0.00                    |                     | 576.96                   | 186,498.53              |  |            |

**IBM Credit LLC  
Lease Payment Schedule**

Lessee Name: OAKLAND UNIFIED SCHOOL DISTRICT

Lease/Purchase Supplement No: 050105

| Payment No.    | Lease Payment Due Dates | Lease Payments (\$) | Principal Component (\$) | Interest Component (\$) | Prepayment Price (After Making Payment for Said Due Date) (\$) |        |      |
|----------------|-------------------------|---------------------|--------------------------|-------------------------|--|--------|------|
| 4              | 8/01/2021               | 85,278.50           | 78,461.63                | 578.98                  | 81,799.01  |        |      |
|                | 9/01/2021               | 0.00                |                          | 284.46                  | 82,083.47  |        |      |
|                | 10/01/2021              | 0.00                |                          | 285.44                  | 82,368.91  |        |      |
|                | 11/01/2021              | 0.00                |                          | 286.44                  | 82,655.35  |        |      |
|                | 12/01/2021              | 0.00                |                          | 287.43                  | 82,942.78  |        |      |
|                | 1/01/2022               | 0.00                |                          | 288.42                  | 83,231.20  |        |      |
|                | 2/01/2022               | 0.00                |                          | 289.42                  | 83,520.82  |        |      |
|                | 3/01/2022               | 0.00                |                          | 290.44                  | 83,811.06  |        |      |
|                | 4/01/2022               | 0.00                |                          | 291.45                  | 84,102.51  |        |      |
|                | 5/01/2022               | 0.00                |                          | 292.45                  | 84,394.96  |        |      |
|                | 6/01/2022               | 0.00                |                          | 293.47                  | 84,688.43  |        |      |
|                | 7/01/2022               | 0.00                |                          | 294.50                  | 84,982.93  |        |      |
|                | 5                       | 8/01/2022           |                          | 85,278.50               | 81,799.01  | 295.57 | 0.00 |
|                |                         | 9/01/2022           |                          | 0.00                    |  | 0.00   | 0.00 |
| 10/01/2022     |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| 11/01/2022     |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| 12/01/2022     |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| 1/01/2023      |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| 2/01/2023      |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| 3/01/2023      |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| 4/01/2023      |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| 5/01/2023      |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| 6/01/2023      |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| 7/01/2023      |                         | 0.00                | 0.00                     | 0.00                    |  |        |      |
| <b>Totals:</b> |                         | <b>426,392.50</b>   | <b>392,989.65</b>        | <b>33,402.85</b>        |  |        |      |

**IBM Credit LLC  
Lease Payment Schedule**

Lessee Name: OAKLAND UNIFIED SCHOOL DISTRICT

Lease/Purchase Supplement No: 050105

| QTY            | Product Description                 | Serial No. /<br>Alteration Reference No. | Principal Amt<br>(\$) |
|----------------|-------------------------------------|--|-----------------------|
| 2              | ZP5U 525 PALO ALTO PA-5250 FIREWALL |  | 114,634.00            |
| 1              | XMT3 OEM OEM MAINTENANCE            |  | 109,930.00            |
| 1              | XSW1 OEM OEM SOFTWARE               |  | 157,582.00            |
| 1              | 9TX8 TAX FINANCING OF TAXES         |  | 10,603.65             |
| 1              | XOT9 OEM OEM OTHER                  |  | 240.00                |
| <b>Totals:</b> |                                     |  | <b>392,989.65</b>     |

Lessee: OAKLAND UNIFIED SCHOOL DISTRICT

By: *Aimee Eng*  
Authorized signature

Aimee Eng  
President, Board of Education

*Kyla R. Johnson-Trammell*

Kyla R. Johnson-Trammell  
Secretary, Board of Education

Name (type or print):  
Title (type or print):  
Date:

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By: *Marlon McWilliams*  
Marlon McWilliams, General Counsel

**ADDENDUM TO LEASE/PURCHASE SUPPLEMENT - CALIFORNIA SCHOOL DISTRICTS**

THIS ADDENDUM TO LEASE/PURCHASE SUPPLEMENT (this "Addendum"), which is entered into as of \_\_\_\_\_ between IBM CREDIT LLC ("Lessor") and IBM CREDIT LLC ("Lessee"), is intended to modify and supplement the Lease/Purchase Supplement No. 050105 (the "Supplement") to the Lease/Purchase Master Agreement between Lessor and Lessee dated \_\_\_\_\_ (the "Master Agreement"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Supplement and the Master Agreement.

1. Effective on the Commencement Date for the Supplement, immediately after Lessee acquires title to the Property pursuant to the Master Agreement, Lessee hereby sells, transfers and conveys the Property to Lessor, and effective immediately thereafter, Lessor hereby demises, leases and lets the Property to Lessee pursuant to the Master Agreement. In connection with such sale, transfer and conveyance, Lessee covenants and agrees that (a) Lessee is the owner of the Property; (b) the Property is free of all encumbrances; (c) Lessee has a good right and title to sell the Property; and (d) Lessee will warrant and forever defend the sale against the lawful claims and demands of all persons whomsoever.

2. In addition to the representations, warranties and covenants of Lessee set forth in the Master Agreement, Lessee, as of the Commencement Date for the Supplement, represents, covenants and warrants for the benefit of the Lessor, as follows:

(a) The resolution of the governing body of Lessee which authorized the execution and delivery of the Supplement contained a finding of the governing body to the effect that the Property thereunder was either a major item of equipment or data processing equipment, and the sale and leaseback of such Property was the most economical means of providing the Property to Lessee.

(b) Lessee has not filed during the current or prior fiscal year a qualified or negative certification as required by California Education Code § 42131, as has been or may be amended from time to time, with the County Superintendent or California Department of Education. Lessee covenants that so long as the Master Agreement is in effect, Lessee shall send copies to Lessor in a timely manner of all certificates made by Lessee in accordance with California Education Code § 42131, as may be amended from time to time.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Addendum to be executed in their names by their duly authorized representatives as of the date first above written.

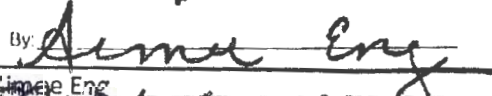
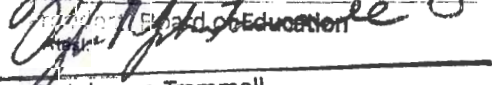
LESSOR:

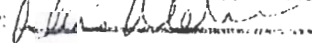
IBMCREDIT LLC

By   
Authorized Officer

LESSEE:

OAKLAND UNIFIED SCHOOL DISTRICT

By   
Linda Eng  
Member, Board of Education  
  
Kyla R. Johnson-Trammell  
Secretary, Board of Education  
Title \_\_\_\_\_

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By:   
Marion McWilliams, General Counsel

## Financing Proposal for OAKLAND UNIFIED SCHOOL DISTRICT

---

2018-05-15

### Executive Overview Firm

IBM Global Financing (IGF) is pleased to provide OAKLAND UNIFIED SCHOOL DISTRICT with a financing proposal for your acquisition. IGF is the world's largest IT financing provider, with over 25 years of experience helping customers with flexible financing offerings. As a captive lender, IGF can help you take advantage of very competitive rates that are driven by our unique position in the marketplace.

Financing is an effective way to obtain the products you need to maintain your competitiveness and grow your business without breaking the budget. Financing can also help you accelerate the ROI of your investment by helping you smooth out high upfront costs into predictable payments that more effectively match costs to expected benefits. It can help you better manage cash flow and budgets because of the predictability that financing payments provide you.

Our financing solutions can help you stay within budget by turning up-front costs into affordable monthly payments as well as:

- Control expenses
- Match cash flow to expected business benefits
- Conserve cash for other strategic initiatives

In the current economic climate, it's crucial that your business continue to invest in critical technology to maintain a competitive edge. IBM Global Financing can help you finance your entire IBM solution by providing access to capital and customized financing structures that best fit your requirements.

**Please review the attached Business Case Overview and remember that choosing IBM Global Financing can help you acquire the solutions you need NOW and simplify the way you manage your overall IT strategy.**

IBM Global Financing offerings are provided through IBM Credit LLC in the United States, IBM Global Financing Canada Corporation in Canada, and other IBM subsidiaries and divisions worldwide to qualified commercial and government customers.

Neither IBM nor any other IBM organization or affiliate makes any representation whatsoever regarding your accounting treatment applicable to the transaction included in this proposal. IBM will account for receivables under this transaction as financing receivables for U.S. reporting purposes.

We look forward to discussing this proposal with you in greater detail at your earliest convenience.

PALOMA SILVA  
 ptass@br.ibm.com

2018-05-15

Rates and offerings listed herein are subject to change, extension, or withdrawal without notice.

| Assumptions          |            |
|----------------------|------------|
| Term in months       | 60         |
| Installation Date    | 2018-07-31 |
| Rate Expiration Date | 2018-06-07 |

Payments are Annually in Advance under a/an M7 - LPMA (Lease Purchase Master Agreement) contract

| Summary                       |              |
|-------------------------------|--------------|
| Total Purchase Price Financed | \$392,989.65 |
| Total Periodic Payment        | \$426,392.50 |
| Estimated Average Rate        | 4.25%        |
| Proposal Number               | X0006326703  |
| Customer Number               | 1907231      |
| Credit Request Number         | CR00001EB5F4 |

| New Financing Loan   | Qty | Purchase Price | Total Amount Financed | Fin Type | Rate/K   | Periodic Payment   |
|----------------------|-----|----------------|-----------------------|----------|----------|--------------------|
| ZP5U-525 -           | 2   | \$57,317.00    | \$114,634.00          | IH       | 216.3896 | \$24,805.60        |
| XMT3-OEM -           | 1   | \$109,930.00   | \$109,930.00          | IS       | 217.2795 | \$23,885.54        |
| XSW1-OEM -           | 1   | \$157,582.00   | \$157,582.00          | IS       | 217.2795 | \$34,239.34        |
| 9TX8-TAX -           | 1   | \$10,603.65    | \$10,603.65           | IS       | 216.5166 | \$2,295.87         |
| XOT9-OEM -           | 1   | \$240.00       | \$240.00              | IS       | 217.2795 | \$52.15            |
|                      |     |                |                       |          |          |                    |
| <b>TOTAL SW/Svcs</b> |     |                | <b>\$392,989.65</b>   |          |          | <b>\$85,278.50</b> |
|                      |     |                |                       |          |          |                    |
| <b>TOTAL</b>         |     |                | <b>\$392,989.65</b>   |          |          | <b>\$85,278.50</b> |



**Step Payment Summary**

| Description | Qty | Step term | From | To | Step rate | Step payment |
|-------------|-----|-----------|------|----|-----------|--------------|
| ZP5U-525 -  | 2   | 60        | 1    | 60 | 216.3896  | \$24,805.60  |
| XMT3-OEM -  | 1   | 60        | 1    | 60 | 217.2795  | \$23,885.54  |
| XSW1-OEM -  | 1   | 60        | 1    | 60 | 217.2795  | \$34,239.34  |
| 9TX8-TAX -  | 1   | 60        | 1    | 60 | 216.5166  | \$2,295.87   |
| XOT9-OEM -  | 1   | 60        | 1    | 60 | 217.2795  | \$52.15      |

**Payment Summary**

|              | 2018               | 2019               | 2020               | 2021               | 2022               | 2023          |
|--------------|--------------------|--------------------|--------------------|--------------------|--------------------|---------------|
| Jan          |                    |                    |                    |                    |                    |               |
| Feb          |                    |                    |                    |                    |                    |               |
| Mar          |                    |                    |                    |                    |                    |               |
| Apr          |                    |                    |                    |                    |                    |               |
| May          |                    |                    |                    |                    |                    |               |
| Jun          |                    |                    |                    |                    |                    |               |
| Jul          |                    |                    |                    |                    |                    |               |
| Aug          | \$85,278.50        | \$85,278.50        | \$85,278.50        | \$85,278.50        | \$85,278.50        |               |
| Sep          |                    |                    |                    |                    |                    |               |
| Oct          |                    |                    |                    |                    |                    |               |
| Nov          |                    |                    |                    |                    |                    |               |
| Dec          |                    |                    |                    |                    |                    |               |
| <b>Total</b> | <b>\$85,278.50</b> | <b>\$85,278.50</b> | <b>\$85,278.50</b> | <b>\$85,278.50</b> | <b>\$85,278.50</b> | <b>\$0.00</b> |

**Average estimated Interest Rate is 4.25%**

Grow your business without breaking the budget. Financing can also help you accelerate the ROI of your investment by helping you smooth out high upfront costs into predictable payments that more effectively match costs to expected benefits. It can help you better manage cash flow and budgets because of the predictability that fixed financing payments provide you.

This offering provides low monthly payments to meet budgetary requirements.

- Improve your ROI payback rate
- Pay for your product acquisition with fixed, predictable payments
- Preserve your cash flow and other lines of credit

Additional financing options such as annual payments, or step payments may be available upon request.

|   |   |
|---|---|
| <b>RV</b> Lease with fair market value EOL options; Lessor is owner for tax purposes          | <b>RV1</b> Lease with fair market value EOL options; Lessor assumes Lessee is owner for tax purposes. |
| <b>PO</b> Lease with pre-stated EOL options; Lessor assumes Lessee is owner for tax purposes. | <b>FP1</b> Lease with \$1.00 EOL purchase options; Lessor assumes Lessee is owner for tax purposes.   |
| <b>IS</b> Loans for software, services, or maintenance  | <b>IH</b> Loans for hardware equipment  |

**DISCLAIMER :**

IBM Global Financing offerings are provided through IBM Credit LLC in the United States, IBM Global Financing Canada Corporation in Canada, and other IBM subsidiaries and divisions worldwide to qualified commercial and government clients. Rates and availability are based on a client's credit rating, financing terms, offering type, equipment and product type and options, and may vary by country. Non-hardware items must be one-time, non-recurring charges and are financed by means of loans. Other restrictions may apply. Rates and offerings are subject to change, extension or withdrawal without notice and may not be available in all countries.

This document is provided as an accommodation and solely as a reference tool for planning purposes. It is not intended and does not create an offer or binding legal obligation on the part of IGF to provide financing on the terms outlined herein. Any such offer or commitment would be in writing and would be subject to and preceded by satisfactory completion of the requisite credit and business reviews. The receipt of all customary internal IBM Global Financing approvals and its effectiveness would be conditioned upon the prior execution of documentation acceptable to both parties.