

Board Office Use: Legislative File Info.	
File ID Number	17-2652
Introduction Date	1-10-18
Enactment Number	18-0030
Enactment Date	1-10-18



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
 Vernon Hal, Senior Business Officer *VH*
 Susan Beltz, Chief Technology Officer *SB*

Board Meeting Date January 13, 2018

Subject Approval of project to upgrade Cisco Unified Messaging/VOIP system with DGI

Action Requested Approval by the Board of Education to commence project to upgrade the district's VOIP/Cisco Unified Messaging servers with Development Group, Inc (DGI).

Background In 2008 the district installed Cisco Voice Over IP (VOIP) phone systems in five of our schools. At that time AT&T had announced that they were ending support for their Centrex system which provided phone service to the entire district. The analog Centrex system was heavily dependent on individual phone lines which incur monthly recurring costs. By moving these sites to VOIP the district gained a cost savings on phone bills as individual phone lines to each extension are not required.

The VOIP system is now approaching 10 years old and requires an upgrade to both keep the current sites functional and to increase the capacity of the system. We currently have several school sites that require that their analog phone systems be replaced. The priority sites are Bret Harte, Futures, Community United, and Lincoln. As a cost savings measure and to move the district closer to having a unified phone system once again, we have decided to move these sites into the Cisco VOIP system and then cut our recurring costs for analog lines.

Until 2015 the Erate program and California Teleconnect Fund (CTF) paid for up to 92% of our phone bills making the cost for these analog lines minimal. However, under the new rules funding for legacy phone services has been reduced and costs have been rising. In 2017-18, funding is reduced to 40% of our overall phone bills (20% paid by Erate/20% paid by CTF), with an additional reduction to 25% in 2018-19 school year. As a first move to reduce our phone bills, we moved the Remote Call Forwarding services

over to Twilio. This service change is expected to save the district approximately \$500,000 per year. We expect additional savings as we move more school sites onto the VOIP system.

Discussion

The Technology Services, Facilities, and Building and Grounds departments have collaborated to bring together a plan to replace the legacy analog systems at Bret Harte, Futures, Community United, and Lincoln. Our vision is to provide the district with the base of a district-wide phone system that will save recurring costs over time, allow for easier administration, flexibility and the scalability needed to add more schools and offices to the system.

In order to initiate this plan, we must first upgrade our VOIP system to an updated version as our current system has reached end-of-life status. Once that work is done, we can begin to move sites onto the VOIP system and remove the expense of analog lines that cost the district ~\$30/month/line. If approved, this project would create the base system to allow for the addition of these sites and begin the process of reducing our phone bills.

The district has chosen DGI to perform these services after extensive research and vetting of several companies. DGI is a private company that caters to primarily K-12 customers and strives to establish and maintain IT relevancy by tailoring solutions that meet the objectives that matter most to organizations. This project includes the cost to build new Cisco Unified Messaging servers, migrate the current system and provide training and support for the district's Technology Services and Telecommunications departments for the next year through DGI and three years of Cisco SmartNet warranty.

Public Contract Code section 20118 permits the District to "piggyback" on any lawfully procured public agency bid. On September 13, 2017, the California Department of General Services entered into a contract with Development Group, Inc. for Information Technology Goods and Services under the California Multiple Awards Schedule Contract (CMAS), following a lawful public bidding process. Prices for this project are at or below the CMAS negotiated price with DGI. The purchase is being made through the CMAS piggyback contract and will cost \$143,206.79 from Measure J Technology Infrastructure fund.

Recommendation

Approve purchase of the Cisco Unified Messaging upgrade for \$143,206.79 to be spent out of the Measure J Technology Infrastructure fund.

Fiscal Impact

Funding Resource: Measure J, 9869901809

Attachments

- Contract Justification Form
- UC upgrade with Managed Services
- Master Services Agreement
- SLA Agreement
- Stocking Letter
- CMAS Contract
- Cisco CMAS Letter
- UC Upgrade CMAS Price Comparisons



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 17-2652

Department: Technology Services

Vendor Name: Development Group, Inc

Contract Term: Start Date: 1/14/2017 End Date: 6/30/2017

Annual Cost: \$ 143,206.79

Approved by: Susan Beltz, Vernon Hal

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Vendor was selected as they presented both the best solution to fit the needs of the district as well as best pricing.

Summarize the services this Vendor will be providing.

This project includes the cost to build new Cisco Unified Messaging servers, migrate the current system and provide training and support for the district's Technology Services and Telecommunications departments for the next year through DGI and three years of Cisco SmartNet warranty.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

Compared to pricing from multiple CMAS vendors.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$86,000 (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
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 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**



development group, inc

Proposal #18251

Specifically prepared for

**OAKLAND UNIFIED SCHOOL
DISTRICT_OUSD**

Presented by **Brandon Hardy**

Company:
OAKLAND UNIFIED SCHOOL DISTRICT_OUSD

Proposal #18251

Requested By:
Colleen L. Calvano
 Executive Director, Technology Services



Description:
JC Upgrade with Managed Service

Bill To: 1000 BROADWAY OAKLAND, CA 94607	Ship To: 1000 BROADWAY OAKLAND, CA 94607	Sold To: 1000 BROADWAY OAKLAND, CA 94607
Created: 12/19/2017 Expires: 1/19/2018 Version: 1	Account Manager: bhardy Systems Engineer: swinsick	Payment Terms: Net 30

Product & Manufacturer Maintenance

Line No	Qty	Product	SMARTnet	Unit Price	Ext'd Price	Tax
1.0 Cisco Business Edition 6000-Electronic SW Delivery-Top Level						
2	1	R-CBE6K-K9 Cisco Business Edition 6000-Electronic SW Delivery-Top Level	TP Operate Svcs - Essential SW	0.00	0.00	T
3	1	BE6K-SW-11.5 Business Edition 6000 v11.5 export restricted software		0.00	0.00	T
4	1	BE6K-START-UCL35 BE6000 Starter Bundle with 35 UCL Enh and 35 vmail Licenses		330.00	330.00	T
5	500	UPG-6K-ENH BE6000 Enhanced UCL - GCSC SW Upgrade		29.00	14,500.00	T
6	500	UPG-6K-VM BE6000 Messaging UCL - GCSC SW Upgrade		10.20	5,100.00	T
7	1	UC-8.X-OR-EARLIER Version 8.x or Earlier		0.00	0.00	T
8	2	UCXN-11X-SCPORTS BE6K - Unity Connection 11x - VM Speech Connect Ports		Included		T
9	1	LIC-EXP-E-PAK Expressway Series, Expressway-E PAK		Included		T
10	4	LIC-EXP-GW Enable GW Feature (H323-SIP)		Included		T
11	2	LIC-EXP-E Enable Expressway-E Feature Set		Included		T
12	2	LIC-EXP-TURN Enable TURN Relay Option		Included		T
13	2	LIC-EXP-AN		Included		T

Enable Advanced Networking Option					
14	4	LIC-SW-EXP-K9 License Key Software Encrypted		Included	T
15	4	LIC-EXP-SERIES Enable Expressway Series Feature Set		Included	T
16	500	UCM-11X-ENH-UCL BE6K UCM 11X Enhanced User Connect Lic - Single Fulfillment	TP Operate Svcs - Essential SW	Included	T
17	500	UCN-11X-VM-UCL BE6000 Unity Connection 11x Basic Voicemail License	TP Operate Svcs - Essential SW	Included	T
18	1	BE6K-UXL-START BE6K Starter Pack - Single Fulfillment Enforcement		Included	T
19	1	BE6K-PAK Cisco Business Edition 6000 - PAK - Single Fulfillment		Included	T
20	35	LIC-EXP-DSK Expressway Desktop Endpoint License		Included	T
21	1	BE-11X-UCL-STR BE6000 v11 UCL Starter licenses	TP Operate Svcs - Essential SW	Included	T
22	1	SW-EXP-8.X-K9 Software Image for Expressway with Encryption, Version X8		Included	T
23	2	EXPWY-VE-E-K9 Cisco Expressway-E Server, Virtual Edition		Included	T
24	2	EXPWY-VE-C-K9 Cisco Expressway-C Server, Virtual Edition		Included	T

1.0 Cisco UC Phone 7841

26	2	CP-7841-K9= Cisco UC Phone 7841		190.00	380.00	T
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1.0 Cisco IP Phone 8861

28	2	CP-8861-K9= Cisco IP Phone 8861		375.00	750.00	T
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lgi>enable Maintenance Contract

30	12	DGI>ENABLE Monthly Monitoring and Maintenance Service of Cisco Unified Communications Environment - 500 Users and 10 ISR Voice Gateways		3,145.40	37,744.80	
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 <p>Need more time to get important stuff done? Ask us about</p>				Subtotal	\$58,804.80
				Handling	\$2.00
				Estimated Sales Tax (9.25%)	\$1,948.24
				SMARTnet	\$42,712.50
				Professional Services	\$39,739.25
				Shipping	\$0.00
				Total	\$143,206.79

Company:
OAKLAND UNIFIED SCHOOL DISTRICT_OUSD

Requested By:
Colleen L. Calvano
 Executive Director, Technology Services

Description:
JC Upgrade with Managed Service



Proposal #18251

Cisco SMARTnet Proposed Service Details

Qty	Product Number	Service Level	Service Product Number	Term	Customer Price
1.0 Cisco Business Edition 6000-Electronic SW Delivery-Top Level					
1	R-CBE6K-K9 Cisco Business Edition 6000-Electronic SW Delivery-Top Level	TP Operate Svcs - Essential SW (ECMU)	CON-ECMU-RCBE6KK	3 Years	0.00
1	BE6K-SW-11.5 Business Edition 6000 v11.5 export restricted software	NONE			0.00
1	BE6K-START-UCL35 BE6000 Starter Bundle with 35 UCL Enh and 35 vmail Licenses	NONE			0.00
500	UPG-6K-ENH BE6000 Enhanced UCL - GCSC SW Upgrade	NONE			0.00
500	UPG-6K-VM BE6000 Messaging UCL - GCSC SW Upgrade	NONE			0.00
1	UC-8.X-OR-EARLIER Version 8.x or Earlier	NONE			0.00
2	UCXN-11X-SCPORTS BE6K - Unity Connection 11x - VM Speech Connect Ports	NONE			Included
1	LIC-EXP-E-PAK Expressway Series, Expressway-E PAK	NONE			Included
4	LIC-EXP-GW Enable GW Feature (H323-SIP)	NONE			Included
2	LIC-EXP-E Enable Expressway-E Feature Set	NONE			Included
2	LIC-EXP-TURN Enable TURN Relay Option	NONE			Included
2	LIC-EXP-AN Enable Advanced Networking Option	NONE			Included
4	LIC-SW-EXP-K9 License Key Software Encrypted	NONE			Included
4	LIC-EXP-SERIES Enable Expressway Series Feature Set	NONE			Included

500	UCM-11X-ENH-UCL BE6K UCM 11X Enhanced User Connect Lic - Single Fulfillment	IP Operate Svcs - Essential SW (ECMU)	CON-ECMU-UCMENHUC	3 Years	30,600.00
500	UCN-11X-VM-UCL BE6000 Unity Connection 11x Basic Voicemail License	TP Operate Svcs - Essential SW (ECMU)	CON-ECMU-UCN10XVM	3 Years	11,475.00
1	BE6K-UXL-START BE6K Starter Pack - Single Fulfillment Enforcement	NONE			Included
1	BE6K-PAK Cisco Business Edition 6000 - PAK - Single Fulfillment	NONE			Included
35	LIC-EXP-DSK Expressway Desktop Endpoint License	NONE			Included
1	BE-11X-UCL-STR BE6000 v11 UCL Starter licenses	TP Operate Svcs - Essential SW (ECMU)	CON-ECMU-BE1U1XCU	3 Years	637.50
1	SW-EXP-8.X-K9 Software Image for Expressway with Encryption, Version X8	NONE			Included
2	EXPWY-VE-E-K9 Cisco Expressway-E Server, Virtual Edition	NONE			Included
2	EXPWY-VE-C-K9 Cisco Expressway-C Server, Virtual Edition	NONE			Included
1.0 Cisco UC Phone 7841					
2	CP-7841-K9= Cisco UC Phone 7841	NONE			0.00
1.0 Cisco IP Phone 8861					
2	CP-8861-K9= Cisco IP Phone 8861	NONE			0.00
lgi>enable Maintenance Contract					
12	DGI>ENABLE Monthly Monitoring and Maintenance Service of Cisco Unified Communications Environment - 500 Users and 10 ISR Voice Gateways	NONE			0.00
Cisco SMARTnet Subtotal					\$42,712.50

Company:
OAKLAND UNIFIED SCHOOL DISTRICT_OUSD

Requested By:
Colleen L. Calvano
Executive Director, Technology Services

Description:
JC Upgrade with Managed Service

Proposal Notes

Client: **Avnet Government Solutions, LLC**

Current MAS Contract #: 3-17-70-2686N

Current MAS Contract Term: Sept 13, 2017 - July 31, 2021

Current GSA Schedule #: GS-35F-0349S

Client: **Development Group Inc.**

Current MAS Contract #: 3-17-70-2686L

Current MAS Contract Term: July 10, 2017 - Sept 30, 2022

Current GSA Schedule No: GS-35F-491GA



Proposal #18251

Company:
AKLAND UNIFIED SCHOOL DISTRICT_OUSD

Requested By:
Colleen L. Calvano
Executive Director, Technology Services

Description:
JC Upgrade with Managed Service



Proposal #18251

About Sales Tax

Items sold by Development Group, Inc. and shipped to destinations in California and Nevada are subject to sales tax.

Each item is subject to sales tax in the state to which the order is shipped, tax is generally calculated on the total selling price of each individual item. In accordance with state tax laws, the total selling price of an order will generally include shipping and handling charges and item-level discounts. The amount of tax charged on your order will depend upon many factors including, but not limited to, the type of item(s) purchased, and the source and destination of the shipment. Factors can change between the time you place an order and the time an invoice is sent, which could affect the calculation of sales taxes. The amount appearing on your proposal as 'Estimated Sales Tax' may differ from the sales taxes ultimately charged.

About Product Returns

Development Group, Inc. ("DEVGRU") only accepts the return of Products (a) that DEVGRU has the right to return to the applicable manufacturers or suppliers, (b) for which DEVGRU receives your written request for return within FOURTEEN (14) DAYS from the date of the invoice for such Products, and (c) that are factory sealed in fully resalable condition or which are Dead on Arrival ("DoA"). Except for Products returned because they are defective or DoA, to be eligible for return, Products must be in resalable condition, complete, unused and unopened, with the outer seal intact. Products that do not meet these conditions are not eligible for return and will be returned to you. Eligible Product returns will receive a credit that will be issued at the original purchase price that you paid for the Product only if your account is current. DEVGRU may, at its sole discretion, issue a credit for the current price of the Product, less a thirty percent (30%) restocking fee. DEVGRU is not liable for any loss or damage to Unauthorized Returns.

Company & Payment Information

Mailing Address

Development Group, Inc.
PO Box 991484
Redding, CA 96099-1484

Phone: (530) 229-0071
Fax: (530) 248-3415

Payment Information

Development Group, Inc.
2880 Collections Center Dr
Chicago, IL 60693

Federal Tax ID: 26-3740919

Office Locations

Development Group, Inc.
6704 Lockheed Dr
Redding, CA 96002

Wire Transfer Information

Domestic Wire Transfer (U.S.)

Wire Routing Transit Number (RTN): 026009593
Bank Name: Bank of America
City, State: Chicago, IL
Account Number: 8188065595
Title of Account: DEVELOPMENT GROUP INC

International Wire Transfer

Wire Routing Transit Number:
026009593
SWIFT Code: BOFAUS3N
Bank Name: Bank of America
City, State: Chicago, IL
Account Number: 8188065595
Title of Account: DEVELOPMENT
GROUP INC

Note: All wire transfers must be made in US Dollars



MASTER AGREEMENT FOR PURCHASE OF SERVICES AND/OR PRODUCTS

THIS MASTER AGREEMENT FOR PURCHASE OF SERVICES AND/OR PRODUCTS (this "**Agreement**"), as of the date of last signature and approval by Customer's Board of Education (the "**Effective Date**"), is entered into by Oakland Unified School District, a ("**Customer**"), and DEVELOPMENT GROUP, INC., a California corporation ("**DGI**"). Customer and DGI may sometimes hereinafter be collectively referred to as the "**Parties**" or, individually, as a "**Party**."

RECITALS

- A. DGI is in the business of designing, installing and integrating data and communications systems, and selling and implementing certain products and technology.
- B. This Agreement states the general terms and conditions by which DGI, from time to time from and after the Effective Date, will deliver to Customer, and Customer will receive and purchase from DGI, certain Services (as hereinafter defined) and/or Products (as hereinafter defined).
- C. The Parties intend this Agreement to cover and apply to any and all Services and Products from time to time provided and/or sold to Customer by DGI.

AGREEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the Parties, each intending to be legally bound, hereby agree as follows:

1. Recitals; Definitions; Affiliates.

- 1.1. **Incorporation of Recitals.** The Recitals hereto are material to this Agreement, are true, correct and complete, and are incorporated herein by this reference as if fully set forth.
- 1.2. **Definitions.** For all purposes of this Agreement and in addition to other capitalized terms defined elsewhere in this Agreement, the following capitalized terms shall have the respective meanings set forth hereinafter:
 - 1.2.1. "**Affiliate**" shall mean, with respect to a Party, any entity that directly or indirectly, controls, is controlled by, or is under common control with such Party, where "control" (and variants thereof) shall mean the ability (whether directly or indirectly) to direct the affairs of another by means of ownership, contract or otherwise.
 - 1.2.2. "**Applicable Law**" shall mean any international, federal, state and/or local statute, regulation and/or ordinance applicable to this Agreement and/or the performance thereof.
 - 1.2.3. "**Associated Contract**" shall mean any Proposal, Statement of Work, Customer Service Order or Block Time Account accepted according to the provisions of **Section 2.2**.
 - 1.2.4. "**Customer Technology**" shall mean Customer's proprietary technology, including, without limitation, Customer's Network design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights (whether owned by Customer or licensed to Customer by a third party) and also including, without limitation, any derivatives, improvements, enhancements and/or



extensions of Customer Technology conceived, reduced to practice and/or developed by Customer and/or any of Customer's licensors during the term of this Agreement.

- 1.2.5. **"Data"** shall mean all data and other information uploaded by Customer to a Product.
- 1.2.6. **"DGI Technology"** shall mean DGI's proprietary technology, including, without limitation, DGI's Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights (whether owned by DGI or licensed to DGI by a third party) and also including, without limitation, any derivatives, improvements, enhancements and/or extensions of DGI Technology conceived, reduced to practice and/or developed by DGI and/or any of DGI's licensors during the term of this Agreement.
- 1.2.7. **"Products"** shall mean the equipment, materials and/or other items sold and delivered to Customer by DGI under this Agreement or a Proposal.
- 1.2.8. **"Proposal"** shall mean any written document submitted to Customer by DGI offering to perform Services for or provide Products to Customer, which (i) refers to this Agreement, (ii) is subject to acceptance by Customer pursuant to **Section 2.2**, and (iii) specifies the fees, Services and Products for a particular project or phase thereof. A Proposal may, but need not be, in response to a formal "request for proposal" from Customer.
- 1.2.9. **"Service Commencement Date"** shall mean the date DGI will begin providing the Services to Customer as set forth in a Proposal.
- 1.2.10. **"Services"** shall mean the work, implementation, integration, consulting, training and/or other services described in a Proposal and provided to Customer by DGI employees and/or subcontractors.

2. Services and Products.

- 2.1. **Identification of Services and/or Products.** The Products to be furnished from time to time by DGI to Customer (or its Affiliate) and the Services to be provided from time to time by DGI to Customer (or its Affiliate) shall be set forth and described in one or more Proposals which, when accepted pursuant to **Section 2.2**, shall become Associated Contracts which shall be attached hereto from time to time and incorporated herein by this reference. Each Associated Contract shall become binding and enforceable as a separate contract between Customer and DGI, and shall incorporate therein and be subject to the terms, provisions and conditions of this Agreement. Customer acknowledges and recognizes that DGI is not the manufacturer of any Products purchased by Customer from DGI. In purchasing any Products, Customer shall rely exclusively on the representations and warranties made by the manufacturer or supplier and on the specifications and other information furnished by the manufacturer or supplier only and not on any representation, warranty, statement, specification or other information furnished by DGI.
- 2.2. **Creation of Associated Contract.** The Parties acknowledge that, before a Proposal becomes an Associated Contract binding upon either Party, it must be validly accepted by Customer and must include a Customer Stocking Letter when professional services are performed at a DGI facility. Customer may create an Associated Contract only by accepting a Proposal by (i) signing and delivering to DGI a counterpart of the Proposal, subject to the terms and conditions of a separate "Designation of Authorized Purchasing Agent" agreement, (ii) signing and delivering to DGI any other written document that states that Customer or its Affiliate accepts the Proposal, and/or (iii) by transmitting its acceptance by electronic transmission, including, without limitation, email from an authorized representative of Customer. In order for an Associated Contract or any other Agreement or Amendment to be binding on Customer, it must be approved by the Superintendent and the Board of Education of the Oakland Unified School District. In order to be effective, each form of acceptance referenced in the immediately



preceding sentence must be given and made without any accompanying conditions, qualifications, interlineations, addenda, supplements, amendments and/or other changes to the pertinent Proposal and/or this Agreement. Any form of acceptance that is given and made with conditions, qualifications, interlineations, addenda, amendments and/or other changes to the Proposal shall be deemed a counteroffer and shall not be binding or enforceable as an Associated Contract unless consented to in writing by DGI. Customer acknowledges that an Associated Contract shall not be created by delivering a pre-printed form of purchase order to DGI if such purchase order contains standard, pre-printed or other additional terms, provisions and/or conditions that conflict with the Proposal and/or this Agreement. Any such additional terms, provisions and/or conditions shall be null and void as between the Parties.

- 2.3. **Contract Contingent on Governing Board Approval.** Customer shall not be bound by the terms of this Agreement or any Associated Contract until it has been formally approved by Customer's Governing Board, and no payment shall be owed or made to DGI absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.
- 2.4. **Effect of Acceptance.** Customer's acceptance of a Proposal pursuant to **Section 2.2** shall constitute Customer's acceptance and confirmation of the binding nature of this Agreement and the terms, provisions and conditions of the resulting Associated Contract.
- 2.5. **Conflicts.** If the terms, provisions and conditions of any Associated Contract expressly conflicts with any term, provision or condition of this Agreement, the terms, provisions and conditions contained in the Associated Contract shall prevail and be controlling.

3. **Performance by DGI.**

- 3.1. **Reasonable Commercial Efforts.** Subject to Customer's compliance with the terms, provisions and conditions of this Agreement and Customer's performance of its obligations under the Associated Contract, DGI shall use reasonable commercial efforts to provide the Services to Customer and/or deliver the Products to Customer, according to the terms, provisions and conditions of this Agreement and the Associated Contract.
- 3.2. **Changes to Scope.** Changes to the scope, cost and/or schedule of the Services and/or Products contained in an Associated Contract, including, without limitation, changes made to the previously-approved design or layout of the project, changes which in DGI's sole discretion make the project a "rush" project, extensive alterations, a change in the objectives of Customer and new work or Products requested by Customer (collectively, "**Changes**"), are not effective or binding unless agreed upon by DGI and Customer in a written instrument specifying the scope, schedule and price of such Changes, which instrument shall be deemed to amend the Associated Contract. DGI shall not be bound to any Changes requested by Customer prior to the mutual execution of such written instrument. DGI may stop all work relating to the Services, at the expense of Customer, until the scope, schedule and price of such Changes are agreed upon in writing by both parties. Customer acknowledges that DGI cannot change its allocation of personnel with less than thirty (30) days written notice.

4. **Term, Termination, Suspension and Extension.**

- 4.1. **Term.** The term of this Agreement shall be effective as of the Effective Date and shall continue in effect until terminated as provided herein. The Effective Date for each Associated Contract shall be the day immediately following approval by the Superintendent and Board of Education of the Oakland Unified School District. Each Associated Contract shall be effective as of the date Customer accepts or is deemed to have accepted the pertinent Proposal and shall continue in effect until the earlier of (i) the date that all Services and/or Products to be provided by DGI under the Associated Contract have been provided, or (ii) the date either the Associated Contract or this Agreement is terminated as provided herein.



- 4.2. **Immediate Termination by Reason of Certain Events.** Either Party may, by delivering written notice to the other Party (a "**Termination Notice**"), immediately terminate this Agreement and all outstanding Associated Contracts for cause if the other Party (i) is adjudicated insolvent, (ii) terminates or ceases its business operations, (iii) makes an assignment for the benefit of its creditors, or (iv) is adjudicated bankrupt or becomes the subject of dissolution, liquidation and/or bankruptcy proceedings, whether voluntarily or involuntarily. DGI may immediately terminate this Agreement by delivering a Termination Notice to Customer if there is a merger, purchase, transfer or other acquisition of substantially all of Customer's assets or a controlling interest in Customer.
- 4.3. **Termination for Breach.** Either Party may, by delivering a Termination Notice to the other Party, terminate this Agreement and/or an Associated Contract for cause if such other Party is in breach of its obligations under this Agreement and/or an Associated Contract and fails to cure such breach within thirty (30) days after its receipt of written notice of such breach from the non-breaching Party or, if such breach cannot reasonably be cured within such thirty (30) day period, the breaching Party fails to commence and diligently pursue remedial steps to cure the breach within such thirty (30) day period.
- 4.4. **Termination for Convenience.** Customer may cancel the performance of Services by DGI at any time upon thirty (30) days' prior written notice to DGI. In the event of cancellation, Customer shall pay, within ten (10) days of DGI's demand therefor, DGI's reasonable and proper cancellation charges which shall include (i) the cost of all Products ordered for it by DGI less credits provided by the Product vendor for any return, and (ii) a percentage of the price payable for Services to be performed reflecting the percentage of work actually performed.. Any cancellation by Customer shall relieve DGI of any liability or responsibility for Products delivered or Services performed prior to the cancellation.
- 4.5. **Extension or Suspension.** In addition to the cancellation right set forth in **Section 4.4**, Customer shall have the right to extend schedules or suspend the Services at any time, upon written notice to DGI. Any delay in the performance by DGI of its obligations to Customer caused by Customer or its other contractors or suppliers shall be treated as an extension. DGI shall resume the delivery of any suspended Services when directed to do so by Customer. The delivery schedule and time for performance shall be extended for a period reflecting the delay caused by an extension or suspension. DGI shall also be entitled to an adjustment of all prices to cover reasonable stand-by fees and additional costs incurred by DGI by reason of an extension or suspension which shall be identified to Customer in writing prior to the commencement of a extension or suspension.
5. **Fees, Expenses and Payment.**
- 5.1. **Fees and Expenses.** Customer shall pay to DGI the fees for Services and/or the purchase price for Products as specified in each Associated Contract. Customer's failure to pay all such identified fees, expenses and/or charges that are not the subject of a good-faith dispute regarding which Customer has notified DGI in writing, shall constitute a material breach of this Agreement and the applicable Associated Contract.
- 5.2. **Time of Payment.** Customer shall make payments to DGI as required under this Agreement and each Associated Contract. Unless otherwise specified in an Associated Contract, Customer shall pay the full amount of each invoice submitted by DGI within (45) days after its receipt, without setoff, counterclaim, deduction, recourse or other defense.
- 5.3. **Overdue Payments.**
- 5.3.1. **Late Payment Charge.** Customer hereby acknowledges that late payment of invoiced amounts and other sums due to DGI hereunder and/or under an Associated Contract will cause DGI to incur costs not contemplated by this Agreement and/or the Associated Contract, the exact amount of which are and will be extremely difficult to ascertain. Such costs include, but are not limited to,



processing, and financing charges. Accordingly, unless otherwise stated in the applicable Associated Contract, if any invoiced amount or any other sum due from Customer is not received by DGI by the date due, Customer shall pay to DGI a late charge equal to five percent (5.0%) of such overdue amount. The Parties acknowledge that such late charge represents a fair and reasonable estimate of the costs DGI will incur by reason of late payment by Customer.

- 5.3.2. **Interest.** In addition to any late charge assessed pursuant to **Subsection 5.3.1** and unless otherwise stated in the applicable Associated Contract, any invoiced amount or other sum due to DGI, if not paid when due, shall bear interest from the date due until paid in full at the rate of 1.5% per month, or, if less, at the highest rate permissible under Applicable Law, provided that interest shall not be payable on late charges incurred by Customer.
- 5.3.3. **No Default Cure.** Payment of interest and/or late charges without payment in full of the delinquent invoiced amount shall not excuse or cure any default by Customer hereunder and/or under any Associated Contract.
- 5.4. **Frequency of Invoices.** Unless otherwise stated in the applicable Associated Contract, DGI shall bill Customer each month. If the applicable Associated Contract specifies a flat fee for Services and/or Products, and unless otherwise stated in such Associated Contract, such fee shall be considered earned by DGI and payable by Customer upon the earlier of (i) delivery of the Products, or (ii) substantial performance of the Services.
- 5.5. **Fee Estimates.** If DGI provides any estimate of fees for work to be done at an hourly rate or rates, such estimate shall not constitute a final statement of such fees and shall not be binding upon DGI. DGI does not make, and hereby expressly disclaims, any representation and/or warranty that any such estimate will correctly approximate the actual fees of DGI for such work.
- 5.6. **Deposits.** If a deposit is required under any Associated Contract, Customer shall, unless otherwise stated in such Associated Contract, within two (2) business days after the effective date of the Associated Contract, deliver such deposit to DGI. DGI may commingle any such deposit in the same account or accounts with deposits from other customers and other funds of DGI. Any interest that may accrue on any such deposit shall be the sole property of DGI, without credit to Customer against any fees or expenses owed. All deposits shall be non-refundable unless otherwise indicated in the Associated Contract.
- 5.7. **Taxes.** Unless otherwise expressly stated in an Associated Contract, DGI's fees shall not include any direct or indirect local, state, federal or foreign taxes, levies, duties and/or similar governmental assessments of any nature, including, without limitation, value-added, use and withholding taxes (collectively, "**Taxes**"). Customer shall be solely liable and responsible for paying all Taxes associated with its purchases of Services and/or Products hereunder, excluding any taxes based upon DGI's income or ownership of property. If DGI has the legal obligation to pay or collect Taxes for which Customer is liable under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer timely provides DGI with a valid tax exemption certificate authorized by the pertinent taxing authority.
6. **Delivery, Title and Risk of Loss.** DGI shall deliver all Products to Customer FOB destination. All transportation, freight, handling and other shipping costs and charges are the responsibility of Customer. Title and risk of loss, including title and risk of loss to the Products, including materials and equipment to be installed by DGI or used and consumed by DGI in the performance of its installation obligations, if any, shall pass to Customer upon delivery to the Customer FOB destination.
7. **Qualifications and Status of DGI**
- 7.1. CONTRACTOR warrants it is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of



California, the United States of America, and all local laws, ordinances and,/or regulations, as they may apply.

- 7.2. **Standard of Care.** DGI warrants that DGI has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of Customer. DGI's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
- 7.3. **Status of Employment.** DGI, in the performance of this contract and any Associated Contract, shall be and act as an independent contractor of Customer. DGI understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of Customer, and are not entitled to benefits of any kind or nature normally provided employees of Customer and/or to which Customer's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. DGI shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to DGI's employees. In the performance of the work herein contemplated, DGI is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, Customer being interested only in the results obtained.
- 7.4. **Non-Discrimination.** It is the policy of Customer that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, DGI agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, DGI agrees to require like compliance by all its subcontractor(s). DGI shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.
- 7.5. **Conflict of Interest:** DGI shall abide by and be subject to all applicable, regulations, statutes or other laws regarding conflict of interest. DGI shall not hire any officer or employee of Customer to perform any service by this Agreement or any other Associated Contract without the prior approval of Customer Human Resources.
- DGI affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between DGI's family, business or financial interest and the services provided under this Agreement or any other Associated Contract, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to Customer's attention in writing.
- Through its execution of this Agreement and any other Associate Contract, DGI acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event DGI receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, DGI agrees it shall notify Customer in writing.
- 7.6. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** DGI certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).



8. Insurance

8.1. Unless specifically waived by Customer, the following insurance is required:

8.1.1. If DGI employs any person to perform work in connection with this Contract or any Associated Contract, DGI shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check one of the boxes below:

DGI is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

DGI does not employ anyone in the manner subject to the workers' compensation laws of California.

8.1.2. DGI shall maintain Commercial General Liability insurance, including automobile coverage, with limits of at least One Million Dollars (\$1,000,000) per occurrence for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. The coverage shall be primary as to OUSD and shall name the Oakland Unified School District as an additional insured. Evidence of insurance must be attached. Endorsement of Customer as an additional insured shall not affect Customer's rights to any claim, demand, suit or judgment made, brought or recovered against DGI. The policy shall protect DGI and Customer in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

8.1.3. If DGI is offering OUSD professional advice under this Contract, DGI shall maintain Errors and Omissions insurance or Professional Liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

9. Certain Obligations of Customer.

9.1. **Information.** Customer shall furnish to DGI all information regarding its facilities, operations, communication processes and systems, utilities, service providers and other aspects or matters reasonably required by DGI to furnish the Products or perform the Services. Such information as Customer shall furnish to DGI shall be deemed to be non-proprietary and non-confidential unless otherwise agreed in writing by Customer and DGI at the time the information is furnished. Customer acknowledges that any Services to be provided by DGI are dependent on the accuracy and completeness of the information provided by Customer (or made available by others to DGI at the request or direction of Customer) to DGI and the knowledge and cooperation of the employees, contractors and other representatives appointed or designated by Customer to work with DGI.

9.2. **Access.** With respect to any Services to be performed by DGI at Customer's site, Customer shall make those portions of such site on or with respect to which DGI shall perform Services and its access thereto continuously available to DGI in an unobstructed and uninterrupted manner. DGI shall attempt to perform the services to be performed by it within Customer's normal working hours; however, Customer recognizes that the schedule for performance, the nature of work or the optimum time for performing the Services may occur during other than normal working hours and in such event Customer shall



provide DGI access to the site during such non-normal working hours as DGI shall request. Customer shall also provide DGI access to such of Customer's suppliers, contractors and employees and its resources at the site of the work that DGI determines are incidental, useful or necessary for DGI to provide the Services.

- 9.3. **Cooperation.** Customer shall cooperate fully with DGI with respect to the delivery of Products and in the performance of Services by DGI. Such cooperation shall include, but not be limited to, (i) timely responses to inquiries made by DGI, (ii) timely responses to requests by DGI for approvals and authorizations, (iii) providing DGI with local and remote computer access to Customer's computer and other systems and access to information and materials in Customer's possession or subject to its control that may be incidental, useful to or required by DGI in the performance of Services or with respect to the furnishing of Products, and (iv) providing DGI such consents, approvals, rights, permits and licenses required by DGI to access, use and modify data and third party products and programs. At such time as DGI begins work on any computer or other system of Customer, Customer shall provide DGI with all applicable passwords and other information required for DGI to access such system and perform Services thereon or with respect thereto. DGI shall follow all reasonable security rules and procedures of Customer which are communicated in writing by Customer to DGI from time to time.
- 9.4. **Government Authorizations.** Customer shall, at its cost and expense, obtain all federal, state and local governmental permits, licenses, approvals and other authorizations required with respect to or for the performance of any of the Services at its facilities.
- 9.5. **Export Control Laws.** Products delivered by DGI and the products and systems of the Customer on or with respect to which DGI performs Services are intended for use within the United States. If Customer exports or intends to export any of such Products or systems, or any part thereof, Customer shall be responsible and liable for, at Customer's cost and expense, compliance with all export control laws of the United States. Customer further recognizes that software programs embedded in Products and systems worked on by DGI may be encrypted or contain encryption capabilities which are subject to such laws and the foregoing obligations of Customer.

10. **Proprietary Rights.**

- 10.1. **Restrictions.** Customer shall not, and shall not permit any third party to, (i) modify, copy and/or create derivative works based on any Products and/or Services supplied by DGI hereunder or under any Associated Contract, (ii) frame or mirror any content forming part of any Products, other than on Customer's own Network or otherwise for its own internal business purposes, (iii) reverse engineer, de-compile, disassemble and/or otherwise attempt to discover the source code of any Products, and/or (iv) access any Products in order to build a competitive product or service, or copy any ideas, features, functions and/or graphics of the Products.
- 10.2. **DGI Intellectual Property.** As between DGI and Customer, and subject to the limited rights expressly granted hereunder and/or under any Associated Contract, DGI reserves any and all rights, titles and interests it may have in and to the Products, the Services and DGI Technology, including, without limitation, all related patent, copyright, trademark and other intellectual property rights, whether owned by or licensed to DGI. No rights are granted to Customer hereunder and/or under any Associated Contract other than as expressly set forth herein and/or in the applicable Associated Contract. To the extent legally permissible, DGI shall own all rights, titles and interests, including, without limitation, all intellectual property rights, in and to any improvements to the Products (including, without limitation, those relating to any new programs, upgrades, modifications, refinements and/or enhancements (collectively, "**Improvements**"), developed by or for DGI in connection with providing any Products or Services to Customer, even when such Improvements result from Customer's request. To the extent, if any, that ownership of such Improvements does not automatically vest in DGI by reason of this



Agreement or otherwise, Customer hereby assigns and transfers to DGI any and all rights, titles and interests that Customer may have in or to the Improvements.

10.3. Customer's Intellectual Property. As between Customer and DGI, Customer exclusively owns all rights, titles and interests in and to all Data and Customer Technology. All content created by, or by DGI for, Customer during performance of any Services, including, without limitation, templates, links, linkages, images, graphs and photos (collectively, "**Work Product**"), and all Customer Technology, shall be the sole and exclusive property of Customer. DGI shall not use the same Work Product created for Customer under this Agreement and an Associated Contract and/or any Customer Technology for another DGI customer; provided, however, that nothing in the preceding clause shall be interpreted to preclude DGI from using the same functionality, format, code, design, concept, workflow, integration or other idea represented in the Work Product.

11. Warranties and Disclaimers.

11.1. Mutual Warranties of Authority. Each Party represents and warrants that (i) it has the legal power to enter into this Agreement, (ii) the signatory hereto has the authority to bind it, (iii) when executed and delivered, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable according to its terms, and (v) when executed and delivered, each Associated Contract will constitute the legal, valid and binding obligation of such Party, enforceable according to its terms.

11.2. Customer Warranties. Unless and to the extent otherwise expressly stated in an Associated Contract, Customer hereby represents and warrants to and for the benefit of DGI that, as of the Effective Date and the effective date of each Associated Contract, (i) the Data does not and will not infringe on any copyright, patent, trade secret and/or other proprietary right held by any third party and was not and will not be compiled or used by Customer in any manner that violates Applicable Law, and (ii) Customer will not use any Product in a manner that violates Applicable Law.

11.3. DGI Warranties. Unless and to the extent otherwise expressly stated in an Associated Contract, DGI hereby represents and warrants to and for the benefit of Customer that, as of the Effective Date and the effective date of each Associated Contract, (i) DGI owns and will own, or otherwise has or will have sufficient rights (whether by license or otherwise) in, all Products delivered to Customer under any Associated Contract, and (ii) all Services provided or to be provided hereunder and/or under any Associated Contract will be performed in a professional and workmanlike manner.

11.4. Disclaimer as to Products. As referenced herein, DGI is not the manufacturer of any Products purchased by Customer from DGI. In purchasing any Products, Customer will be relying exclusively on the representations and warranties made by the manufacturer or supplier and on the specifications and other information furnished by the manufacturer or supplier only and not on any representation, warranty, statement, specification or other information furnished by DGI. The only warranties offered are those of the manufacturer or supplier of the Products furnished. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND/OR IN ANY ASSOCIATED CONTRACT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DGI EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES WITH RESPECT TO THE PRODUCTS AND SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, USAGE OF TRADE, COURSE OF DEALING AND/OR COURSE OF PERFORMANCE, PRIOR ORAL OR WRITTEN STATEMENTS OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. DGI DOES NOT AND SHALL NOT WARRANT THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY RECEIVING ANY SERVICES FROM DGI OR USING ANY PRODUCTS SUPPLIED BY DGI. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF ANY PRODUCTS NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY DGI. CUSTOMER EXPRESSLY WAIVES ANY



CLAIM THAT IT MAY HAVE AGAINST DGI BASED ON THE FAILURE OF ANY PRODUCT TO PERFORM AS REPRESENTED OR WARRANTED BY THE MANUFACTURER OR SUPPLIER OR TO COMPLY WITH THE SPECIFICATIONS, PERFORMANCE CRITERIA AND OTHER WRITTEN INFORMATION FURNISHED BY THE MANUFACTURER OR SUPPLIER WITH RESPECT TO THE PRODUCT OR ON ANY PRODUCT LIABILITY OR INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO ANY PRODUCT. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND/OR IN ANY ASSOCIATED CONTRACT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DGI HEREBY FURTHER DISCLAIMS ANY OTHER WARRANTY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, SHALL BE APPLICABLE TO THE SERVICES PROVIDED BY DGI.

11.5. Survival. Notwithstanding the termination or the expiration of this Agreement and/or the performance of any Associated Contract, the warranties set forth in this article with respect to any Product delivered and/or Services performed shall extend for a period of one year after such termination, expiration, delivery of such Product and/or completion of such Services.

12. Limitation of Liability.

12.1. Limited Liability. IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR ANY PROPOSAL ACCEPTED HEREUNDER, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AGGREGATE SUMS PAID BY CUSTOMER IN THE TWELVE (12) CALENDAR MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL CUSTOMER'S LIABILITY TO DGI BE LESS THAN THE SUM OF ALL OUTSTANDING FEES AND EXPENSES OWED BY CUSTOMER AND ANY OF ITS AFFILIATES PLUS ALL INTEREST, LATE CHARGES AND COLLECTION COSTS ASSOCIATED THEREWITH. NOTWITHSTANDING THE FOREGOING, CUSTOMER'S EXCLUSIVE REMEDY, AND DGI'S ENTIRE LIABILITY, FOR ANY BREACH OF THE WARRANTIES IN **ARTICLE 9.0** WITH RESPECT TO SERVICES SHALL BE LIMITED TO RE-PERFORMANCE OF THE SERVICES; PROVIDED, THAT CUSTOMER HAS NOTIFIED DGI WITHIN THIRTY (30) DAYS OF THE DISCOVERY OF ANY DEFICIENCIES IN THE SERVICES WHICH DO NOT CONFORM TO THE WARRANTY REQUIREMENTS. DGI SHALL AT ITS EXPENSE MAKE SUCH CORRECTIONS AND MODIFICATIONS IN THE SERVICES PERFORMED BY DGI AS MAY BE REQUIRED. DGI'S LIABILITY FOR DEFICIENCIES IN SERVICES PROVIDED BY IT SHALL BE LIMITED TO DEFICIENCIES WHICH ARE DISCOVERED WITHIN ONE YEAR FROM THE DATE OF COMPLETION OF SUCH SERVICES AND WHICH RESULT FROM DGI'S FAILURE TO OBSERVE AND ADHERE TO THE WARRANTY STANDARDS. DGI'S LIABILITY SHALL BE FURTHER LIMITED TO THE CORRECTION OF SUCH DEFICIENCIES TO THE EXTENT OF 100% OF THE COMPENSATION PAID OR PAYABLE TO DGI FOR THE PERFORMANCE OF SUCH SERVICES AND SHALL BE SUBJECT TO ANY OTHER PROVISIONS OF THESE TERMS AND CONDITIONS LIMITING THE LIABILITY OF DGI.

12.2. Exclusion of Consequential and Similar Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY AND/OR SPECIAL DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND LOSS OF GOODWILL), WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE LIABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.3. Indemnification: DGI agrees to hold harmless, indemnify, and defend Customer and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. DGI also agrees to hold harmless, indemnify, and defend Customer and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor



furnishing work, services, or materials to DGI in connection with the performance of this Agreement. This provision survives termination of this Agreement.

13. Miscellaneous Provisions.

- 13.1. **Force Majeure.** A Party shall not be liable for nonperformance or delay in performance hereunder (other than performance of obligations regarding payment of money) caused by any event reasonably beyond the control of such Party, including, without limitation, wars, hostilities, revolutions, riots, civil commotion, national emergency, strikes, lockouts, slowdowns, unavailability of supplies, delays in transportation, accidents, disruptions, delay or failure to act by any vendor or supplier (including, without limitation, a supplier of Products or any supplier of services, including utility services, to Customer), Product unavailability or scarcity, epidemics, fire, flood, severe weather, earthquake, force of nature, theft, vandalism, explosion, embargo or any law, proclamation, regulation, ordinance or other act or order or failure to act of any court, government, governmental agency or quasi-governmental agency. The time for performance shall be extended for a period equal to the time lost by reason of the delay.
- 13.2. **Entire Agreement.** This Agreement and any Associated Contract supersede and take precedence over any and all other agreements regarding the matters contained herein between the Parties. This Agreement and any Associated Contract shall not be amended, modified or supplemented except by a written instrument signed by both Parties.
- 13.3. **Assignment.** This Agreement shall not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld, provided however, that either party may, without the prior consent of the other, assign all of its rights under this Agreement to (i) a purchaser of all or substantially all assets related to this Agreement, or (ii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which either party is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and insure to the benefit of the parties and their respective successors and permitted assigns.
- 13.4. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of California, without regard to its conflicts of law provisions. This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
- 13.5. **Severability.** If, for any reason, any term or provision contained in this Agreement shall be held to be unenforceable, it shall be deemed fully severable, and the rest of this Agreement shall continue in full force and effect.
- 13.6. **Waiver.** Waiver by one Party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered to be a continuing waiver of such covenant, condition or promise, or a waiver by such Party of any other covenant, condition or promise hereunder. All waivers must be in writing in order to be enforceable.
- 13.7. **Binding Effect.** The terms, conditions and covenants herein contained shall bind and inure to the benefit of Customer (and, as applicable, its Affiliates) and DGI, and their respective heirs, successors, legal representatives, administrators and permitted assigns.
- 13.8. **No Party Deemed Drafter.** If there is a dispute between the Parties over the meaning of this Agreement and/or any Associated Contract, no Party shall be deemed to have been the drafter hereof or thereof, and the principle of law that contracts are construed against the drafter shall not apply.



- 13.9. **Holidays.** In the event any date for performance of any obligation or the giving of any notice pursuant to this Agreement occurs on a federal or California state holiday or on a Saturday or Sunday, then the next business day shall be deemed the applicable date for performance or notice.
- 13.10. **Relationship of the Parties.** Both Parties are independent contractors under this Agreement. Nothing contained in this Agreement is intended nor is it to be construed so as to constitute Customer and DGI as partners, agents or joint ventures with respect to this Agreement and/or any Associated Contract. Neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.
- 13.11. **Use of Party's Name.** No right, express or implied, is granted by this Agreement to either Party to use in any manner the name of the other Party or any trade name or trademark of the other in connection with the performance of this Agreement or otherwise.
- 13.12. **Further Assurances.** Each Party shall execute, acknowledge and deliver such further instruments, and do all such other acts as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.
- 13.13. **Attorneys' Fees.** In the event of any default by either Party of its respective obligations hereunder, such Party shall reimburse the other Party upon demand for any costs or expenses the non-defaulting Party incurs as a result thereof whether or not suit is commenced or judgment is entered. Such costs shall include, without limitation, attorneys' fees and costs incurred for the negotiation of a settlement, preparation of a notice of default, enforcement of rights or otherwise. Furthermore, if any action to enforce the terms of this Agreement is commenced, the prevailing Party shall be entitled to an award of its attorneys' fees and costs.
- 13.14. **Counterparts.** This Agreement and any Associated Contract may be executed in several counterparts and all so executed shall constitute one Agreement and Associated Contract, binding on the Parties even though all Parties are not signatories to the original or the same counterpart. The execution pages of counterparts may be attached to any one copy of the Agreement and/or such Associated Contract to form a single, complete document. The transmission of a signed copy of this Agreement or an Associated Contract via facsimile or e-mail shall constitute execution and delivery hereof, provided the Parties shall deliver original ink-signed counterparts as soon as reasonably possible thereafter.

[Remainder of page intentionally left blank. Signature page follows.]



IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

CUSTOMER:

DGI:

DEVELOPMENT GROUP, INC., a California corporation

By: _____

By: *[Signature]*

Title: _____

Title: PRESIDENT

Printed Name: _____

Printed Name: DANIEL LOCKWOOD

Date: _____

Date: 12-18-17

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: *[Signature]*
Amy Brandt, Attorney at Law
12.19.17

[Signature]
President, Board of Education

File ID Number: 17-2652
Introduction Date: 1-10-18
Enactment Number: 18-0030
Enactment Date: 1-10-18
By: _____

[Signature]
Kyla R. Johnson-Trammell
Secretary, Board of Education

dgi>enable

Service Level Agreement & Description

This Service Description is designed to provide a baseline understanding of and set expectations about the activities and deliverables that make up the dgi>enable service. Please read this document carefully as it contains important information regarding the services you have purchased from Development Group, Inc. (DGI).

SERVICE DESCRIPTION

Operational Sustainability and Management Support

DGI shall provide remote support necessary to respond to requests made by Customer for routine moves, adds, changes and deletes (MACDs).

DGI shall provide periodic configuration backups.

DGI shall provide an online web portal, accessible by Customer, which provides data about the performance of Customer's network environment and service request information.

DGI shall maintain current documentation related to Customer's network environment. Such documentation shall be used for the exclusive purpose to provide services described herein.

DGI shall provide the following services on managed hardware per unit and on managed applications per seat or instance count. Custom alerting available on a per-need basis as determined by DGI's Network Operations team.

- Software/IOS upgrades in conjunction with "Software Update" description
- Patch updates in conjunction with "Software Update" description
- Configuration backups
- Device availability monitoring & alerting
- Link capacity monitoring & alerting
- Device Inventory & Asset Information
- Out of Service Events (Vendor Management)
- Logical Configuration Moves, Adds, Changes, and Deletes (MACDs)
- Pre-Deployment Software Configurations
- Remote Technical Troubleshooting
- Management action authentication, authorization, and accounting of commands
- Change control process administration for operation best common practices
- Assistance with Meraki Vision video export to external medium when required
- Monthly Image Quality Verification and Validation
- Onsite semi-annual enclosure integrity verification and image quality resolution where possible for outdoor Meraki Vision surveillance cameras

- Onsite annual enclosure integrity verification and image quality resolution where possible for indoor Meraki Vision surveillance cameras

SOFTWARE UPDATES DESCRIPTION

DGI shall provide remote support necessary to install updated software where updates are available and where Customer requests or DGI recommends updates for supported software. If a feature set is licensed, Customer will be entitled to updates at the upgraded level for the licensed hardware. Software update schedule and frequency to be determined based upon business impact and hardware replacement cycle set by DGI review.

SERVICE EXCLUSIONS

Planning and Design Implementation Services

End-User Helpdesk Support (Desktop Environment Troubleshooting, MS Windows, Software Apps, Etc.)

On-Site Deliverables Services (100% commitment for remote assistance, DGI will retain the discernment for all service delivery assessment covered under dgi>enable services)

DGI retains the right to assess all Customer initiated service requests for best-effort resource investments and to determine when a service request has elevated to "out of scope". Out of scope service requests shall be at the sole discretion of DGI to deem a billable item at standard time and materials rates.

DGI shall not be held directly responsible for any campus or network related compliance and/or security standards required to be met/enforced by the Customer. DGI shall make best efforts to aid the Customer in compliance and security configurations where requested but cannot take ownership for enforcing, reporting, or enacting on deviations outside of the Customer set standards.

DGI shall not be held directly responsible for Emergency 911 (E911) related services, alerting, reporting, and compliance standards. DGI will assist the Customer in E911 configurations items but it is the Customers responsibility to maintain, verify, and ensure that E911 services are functioning and implemented in the required fashion.

AMENDMENTS

DGI reserves the right to amend the SLA from time to time effective upon the posting of revised SLA metrics to the customer.

PERFORMANCE

dgi>enable network support is available 24 hours per day, 7 days per week. The NOC is staffed during normal business hours Monday thru Friday, 07:00 – 18:00 PST/PDT excluding DGI observed holidays. To request support during other than normal business hours, Customer must call the NOC at 530-510-4300 to reach an on-call support engineer.

Service requests can be made using any of the following options:

- Sending an email to noc@development-group.net;
- Calling 530-510-4300; or,
- Opening a Service Request using the online web portal at <http://www.development-group.net>.

DGI classifies and prioritizes problems according to impact and urgency.

A problem is classified by the Customer according to its impact on the business (e.g. the size, scope and complexity of the problem).

There are four (4) impact levels:

- Widespread: Entire network is affected (more than three quarters of individuals, sites or devices);
- Large: Multiple sites are affected (between one-half and three-quarters of individuals, sites or devices);
- Localized: Single site and/or multiple users are affected (between one-quarter and one-half of individuals, sites or devices);
- Individualized: A single user is affected (less than one-quarter of individuals, sites or devices).

Urgency defines the criticality of the problem to Customer's business.

There are four (4) urgency levels:

- Critical: Primary business function is stopped with no redundancy or backup. There may be an immediate financial impact to the Customer's business. The Customer determines the issue as critical.
- High: Primary business function is severely degraded or supported by backup or redundant system. There is a probable significant financial impact to the Customer's business. The Customer perceives the issue as high.
- Medium: Non-critical business function is stopped or severely degraded. There is a possible financial impact to the Customer's business. The Customer perceives the issue as medium.
- Low: Non-critical business function is degraded. There is little or no financial impact. The Customer perceives the issue as low.

The Severity assigned to a Service Request defines the level of effort that will be expended by DGI and the Customer to resolve a problem.

Problem severities are defined as follows:

- S1: Critical – DGI and the Customer will commit any necessary resources 24x7 to resolve the situation.
- S2: High – DGI and the Customer will commit fulltime resources during Standard Business Hours to resolve the situation.
- S3: Medium – DGI and the Customer are willing to commit resources during Standard Business Hours to restore service to satisfactory levels.
- S4: Low - DGI and the Customer are willing to commit resources during Standard Business Hours to provide information or assistance.

		IMPACT			
		Widespread	Large	Localized	Individualized
URGENCY	Critical	S1	S1	S2	S2
	High	S1	S2	S2	S3
	Medium	S2	S3	S3	S3
	Low	S4	S4	S4	S4

DGI will downgrade the Service Request priority in accordance with reduced severity of impact or problem resolution. The Service Request may be left open for a prescribed period while operational stability is being assessed. Service Requests shall be closed by DGI or Customer upon validation of issue remediation and the systems return to operational stability.

dgi>enable Escalation Guidelines

SEVERITY 1: Means an existing Network or Environment is down or there is a critical impact to Customer’s business operation.

SEVERITY 2: Means operation of an existing Network or Environment is severely degraded or significant aspects of Customer’s business operation are negatively impacted by unacceptable Network or Environment performance.

SEVERITY 3: Means operational performance of the Network or Environment is impaired, although most business operations remain functional.

SEVERITY 4: Means information is required on network capabilities, installation or configuration. There is little or no impact to Customer’s business operation.

If you do not believe that adequate progress is being made or that the quality of DGI service is unsatisfactory, we encourage you to escalate the problem to the appropriate level of management by asking for the dgi>enable program manager.

DGI dgi>enable Escalation Guideline

Elapsed Time*	Severity 1	Severity 2	Severity 3	Severity 4
1 hour	dgi>enable Program Manager			
4 hours	Director of Engineering	dgi>enable Program Manager		
24 hours	President/CEO	Director of Engineering		
48 hours		President/CEO		

72 hours			dgi>enable Program Manager	
96 hours			Director of Engineering	dgi>enable Program Manager

* Severity 1 escalation times are measured in calendar hours – 24 hours per day, 7 days per week. Severity 2, 3 and 4 escalation times correspond with Standard Business Hours.

Customer Acceptance

Company / Organization Name

Customer Representative Name (Printed)

Customer Representative Title

Customer Representative Signature

11/15/2017

1000 BROADWAY
OAKLAND, CA 94607

SUBJECT: CUSTOMER STOCKING PROGRAM FOR PROPOSAL #18251

OAKLAND UNIFIED SCHOOL DISTRICT_OUSD (the "Customer") hereby agrees that each product covered by the above referenced purchase order(s) which Development Group, Inc. identifies through labeling or otherwise as belonging to Customer shall, effective at the time of such identification, be deemed to have been duly shipped to Customer, and title and responsibility of loss to such product shall pass to Customer at that time. Development Group, Inc. will invoice Customer for product at the time of identification and payment shall be made in accordance with the credit terms as indicated on the invoice(s). Such payment and the timeliness of payment is guaranteed by Customer.

Customer further requests that Development Group, Inc. provide warehousing for all product(s) included in the above referenced purchase order and agrees to pay for warehousing at a rate of \$1.00 USD per pallet, per month. Charges for warehousing are not included in, and are in addition to, the price of any product(s) included in the above referenced purchase order. Development Group, Inc. shall provide warehousing until such date as Customer shall designate, but in no event beyond 90 calendar days. Notwithstanding such warehousing service by Development Group, Inc., Customer shall be responsible for insuring the product from the time of identification forward.

Agreed to and accepted by:

Authorized Representative

Title

Date

September 13, 2017

Mr. Daniel Lockwood
Development Group, Inc.
6704 Lockheed Drive
Redding, CA 96002

Subject: Development Group, Inc. California Multiple Award Schedule (CMAS)

CMAS Contract No.: 3-17-70-2686N
CMAS Contract Term: September 13, 2017 through July 31, 2021
Base GSA Schedule No.: GS-35F-0349S

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

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

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

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

**THE NEXT QUARTERLY REPORT DUE FOR THIS CONTRACT IS Q3-2017 (JUL-SEPT)
DUE BY OCT 15, 2017.**

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

Should you have any questions regarding this contract, please contact me at 916/375-4554. Thank you for your continued cooperation and support of the CMAS Program.



JANNA WELK, Program Analyst
California Multiple Award Schedules Unit

State of California
MULTIPLE AWARD SCHEDULE
Development Group, Inc.

CONTRACT NUMBER:	3-17-70-2686N
SUPPLEMENT NO.:	N/A
CMAS CONTRACT TERM:	9/13/2017 through 7/31/2021
CONTRACT CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	September 8, 2014
MAXIMUM ORDER LIMIT:	\$500,000
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE NO.:	GS-35F-0349S
BASE SCHEDULE HOLDER:	Avnet Government Solutions, LLC

This contract provides for the purchase, warranty, installation and resale of Cisco hardware and software, hardware maintenance, and software maintenance as a product. (See page 2 for the specific brands and restrictions applicable to this contract.)

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: <http://www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.pdf>. This requirement is not applicable to local government entities.

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

This contract provides for the resale of Cisco products and Cisco branded services. Supplier provides own installation and configuration services.

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

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



JANNA WELK, Program Analyst, California Multiple Award Schedules Unit

Effective Date: **9/13/2017**

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DEVELOPMENT GROUP, INC.
CMAS NO. 3-17-70-2686N**

CMAS PRODUCT & SERVICE CODES

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

Brand-Cisco
Data Commun-Equipment
Data Commun-Network Mgmt
LAN/WAN-Wireless Network
Router-Network
Server-Network
Software-Communications
Software-Maintenance
Service-Hardware Installation

AVAILABLE PRODUCTS AND/OR SERVICES

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

Cisco

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.

MANDATORY REQUIREMENT FOR COMMERCIAL OFF-THE-SHELF (COTS) TECHNICAL SERVICES

Agencies requesting technical services must require a minimum of 3 references from the contractor for work performed within the last 2 years. The reference narrative must explicitly demonstrate the expertise being offered on the COTS products and correlate with the description of services/skills in the referenced CMAS contract and in the agency Statement of Work.

EXCLUDED PRODUCTS AND/OR SERVICES

Software maintenance as a service, training, and information technology professional services are not available under this contract.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA Schedule No. GS-35F-0349S (AVNET GOVERNMENT SOLUTIONS, LLC) with a GSA term of 4/5/2006 through 4/4/2021 including modification 188. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

Replace "Avnet Government Solutions, LLC" with "Development Group, Inc." where "Avnet Government Solutions, LLC" is referenced in the federal GSA multiple award Contract Terms and Conditions.

ISSUE PURCHASE ORDER TO

Agency purchase orders must be mailed to the following address, or faxed to (530) 248-3415:

Development Group, Inc.
6704 Lockheed Drive
Redding, CA 96002
Attn: Daniel Lockwood

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

Phone: (530) 229-0071
E-mail: dlockwood@development-group.net

CALIFORNIA SELLER'S PERMIT

Development Group, Inc.'s California Seller's Permit No. is 101172281. Prior to placing an order with this company, agencies should verify that this permit is still valid at the following website: www.boe.ca.gov.

CONTRACT PRICES

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

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

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 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.

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PURCHASING AUTHORITY DOLLAR THRESHOLD

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

HOW TO USE CMAS CONTRACTS

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

- Develop a Request for Offer, which includes a Scope of Work (SOW), and Bidder Declaration form. For information on the Bidder Declaration requirements, see the SCM, Volume 2, Section 3.5.7 and Volume 3, Section 3.4.7.
- Search for potential CMAS contractors at www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.a.spx, select "Find a CMAS Contract".
- Solicit offers from a minimum of 3 CMAS contractors including one small business and/or DVBE, if available, who are authorized to sell the products and/or services needed.
- If soliciting offers from a certified DVBE, include the Disabled Veteran Business Enterprise Declarations form (Std. 843) in the Request for Offer. This declaration must be completed and returned by the DVBE prime contractor and/or any DVBE subcontractors. (See the SCM Volumes 2 and 3, Chapter 3).
- This is not a bid transaction, so the small business preference, DVBE participation goals, protest language, intents to award, evaluation criteria, advertising, etc., are not applicable.
- If less than 3 offers are received, State agencies must document their file with the reasons why the other suppliers solicited did not respond with an offer.
- Assess the offers received using best value methodology, with cost as one of the criteria.
- Issue a Purchase Order to the selected contractor.
- For CMAS transactions under \$5,000 only one offer is required if the State agency can establish and document that the price is fair and reasonable.

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

SPLITTING ORDERS

Splitting orders to avoid any monetary limitations is prohibited.

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

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

MINIMUM ORDER LIMITATION

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

ORDERING PROCEDURES

1. Order Form

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

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

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

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

2. Purchase Orders

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

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

3. Service and Delivery after Contract Expiration

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

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4. Multiple Contracts on STD. 65 Order Form

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

5. Amendments to Agency's Purchase Orders

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

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

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

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

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

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

CONTRACTOR OWNERSHIP INFORMATION

Development Group, Inc. is a certified small business enterprise. Their Office of Small Business and DVBE Services (OSDS) certification #1002333 expires on 2/28/2018.

If this certification has expired, the current expiration date for this company's certification should be verified at: <https://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 contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

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

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

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

SMALL BUSINESS/DVBE - TRACKING

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

SMALL BUSINESS/DVBE - SUBCONTRACTING

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

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

PRODUCT INSTALLATION

The contractor is fully responsible for all installation services performed under the CMAS contract. 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.

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 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.

INTEGRATED SERVICES

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

ELECTRONIC WASTE RECYCLING

The Electronic Waste Recycling Act of 2003 requires retailers to collect a recycling fee from consumers on covered electronic devices starting January 1, 2005. California Public Resources Code, Section 42463(f) defines a "covered electronic device" as a video display device containing a screen greater than four inches measured diagonally. See the code identified above for more information and exceptions to this definition.

The Integrated Waste Management Board is implementing this new legislation, and the Board of Equalization is responsible for collecting these recycling fees from retailers. See the following two websites for more information on this topic:

www.ciwmb.ca.gov/Electronics/Act2003/

www.boe.ca.gov/sptaxprog/ewaste.htm

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

PUBLIC WORKS (INSTALLATION SERVICES ONLY)

A public works contract is defined as an agreement for "the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind" in accordance with the Public Contract Code (PCC) Section 1101. State agencies planning these types of projects need to review the SCM, Volume 1, Chapters 10 and 11 for applicable guidelines and regulations. Also, the Department of General Services (DGS), Real Estate Services Division (RESA) can be contacted at (916) 376-1748, if you have questions about these types of transactions.

Agency CMAS purchase orders may allow for public works installation only when it is incidental to the total purchase order amount. **The total dollar value of all public works services included in the purchase order must not exceed the dollar value of the products.**

Agencies are to ensure that the applicable laws and codes pertaining to the contractor and sub-contractor licensing, prevailing wage rates, bonding, labor code requirements, etc., are adhered to by the prime contractor as well as any sub-contractor during performance under the CMAS purchase order.

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The bond amount for public works has increased to a sum not less than one hundred percent (100%) of the purchase order price.

NOTE: In accordance with Labor Code Section 1773.2, the ordering agency is responsible for determining the appropriate craft, classification or type of worker needed for any contract for public works. Also, the agency is to specify the applicable prevailing wage rates as determined by the Director of the Department of Industrial Relations (DIR). In lieu of specifying the prevailing wage rates, the agency may include a statement on the order that the prevailing wage rates are on file at the agency's office, and will be made available upon request. The prevailing wage rates are available from the DIR at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774.

Bonds: For guidelines, see CMAS contract, General Terms and Conditions, Public Works Requirements.

State Contractor's License: Public works services can be obtained through CMAS only if incidental to the overall purchase order. If incidental public works services are included in the purchase order, prior to issuing the order agencies should contact the State Contractor's License Board at 1-800-321-2752 or at www.cslb.ca.gov to verify that the Contractor's License shown below is still active and in good standing.

Development Group, Inc.'s California Contractor's License number is 992824. This is a Class B license that is valid through 5/31/2018.

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.

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 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>Prior Operation</u>
More than \$100,000	8 months
\$10,000 up to \$100,000	4 months
Less than \$10,000	1 month

Category 2 - All Information Technology Equipment and Non-Critical Software: Information technology equipment is defined in SAM Section 4819.2.

<u>Cost</u>	<u>Prior Operation</u>
More than \$100,000	6 months
\$10,000 up to \$100,000	4 months
Less than \$10,000	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 schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

NOT SPECIFICALLY PRICED (NSP) ITEMS

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

Agency and 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 contract may not be identified as an NSP item.
4. 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.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DEVELOPMENT GROUP, INC.
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5. An NSP Item included in an order issued against a contract is subject to all of the terms and conditions set forth in the contract.
6. 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 contract:

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 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 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.
4. Any other item or class of items specifically excluded from the scope of this contract.
5. Public Works components NOT incidental to the total purchase order amount.
6. Products or services the 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 contractor.

The contractor is required to reject purchase orders containing NSP items that do not conform to the above requirements. The 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 contracts is optional. A local government is any city, county, city and county, district, or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges empowered to expend public funds. While the State makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

UPDATES AND/OR CHANGES

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

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

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

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

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

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

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DEVELOPMENT GROUP, INC.
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ORDER OF PRECEDENCE

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

APPLICABLE CODES, POLICIES AND GUIDELINES

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

STATEWIDE PROCUREMENT REQUIREMENTS

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

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements, per the SCM, Volume 3, Chapter 2, Section 2.B6.2.
- SAM Sections 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 State agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, State and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the Contractor's Std. 204, Payee Data Record, to determine sole proprietorship. For inquiries regarding this subject, contact EDD at (916) 651-6945 for technical questions or (888) 745-3886 for information and forms.
- Annual small business and disabled veteran reports.

- Post evaluation reports. Public Contract Code 10369 requires State agencies to prepare post evaluations on form Std. 4 for all completed non-IT consulting services contracts of more than \$5,000. Copies of negative evaluations for non-IT consulting services only must be sent to the DGS, Office of Legal Services. The Bureau of State Audits requires State agencies annually to certify compliance with these requirements.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

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

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

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this contract are net 45 days.

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

2. Payee Data Record (Std. 204)

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

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DEVELOPMENT GROUP, INC.
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3. DGS Administrative and Incentive Fees

Orders from State Agencies:

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

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

Orders from Local Government Agencies:

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

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

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

4. Contractor Invoices

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

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

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

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

5. Advance Payments

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

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

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

6. Credit Card

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

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

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 (SAM 3700). Approval by the Department of General Services is not required.

8. Leasing

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

SEAT Management financing options are NOT available through this contract.

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

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9. Maintenance Tax

The Board of Equalization has ruled that in accordance with Section 1655 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, that whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For contracts that provide for 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 contracts that provide for maintenance services and consumable supply items (e.g., toner, developer, and staples), 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 utilized during the performance period of the maintenance contract.

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

CONTRACTOR QUARTERLY REPORT PROCESS

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

This report shall be mailed to:

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

Reports that include checks for incentive fees or that exceed a total of 5 pages must be mailed and shall not be faxed or e-mailed. All other reports may be faxed or e-mailed to the attention of Quarterly Report Processing as follows:

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

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

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

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

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

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

CONTRACTOR QUARTERLY INCENTIVE FEES

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

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

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

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

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

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

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

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- California CMAS Terms and Conditions.
- Federal GSA Terms and Conditions.
- Federal GSA products, services, and price list.
- Supplements, if applicable.

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

CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED

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

AGENCY RESPONSIBILITY

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

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

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

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

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

CONFLICT OF INTEREST

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

FEDERAL DEBARMENT

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

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

LIQUIDATED DAMAGES FOR LATE DELIVERY

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

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
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ACCEPTANCE TESTING CRITERIA

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

AMERICANS WITH DISABILITY ACT (ADA)

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

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

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

**DGS PROCUREMENT DIVISION CONTACT AND
PHONE NUMBER**

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

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

ATTACHMENT A

ADA NOTICE

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

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

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

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

The Procurement Division TTY telephone numbers are:

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

The California Relay Service Telephone Numbers are:

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

ATTACHMENT B

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Contractor Name: _____

Reporting Calendar Year: _____

Revision

Contract Number: _____

Reporting Quarter: Q1 (Jan-Mar)

For Questions Regarding This Report Contact:

Q2 (Apr-Jun)

Name: _____

Q3 (Jul-Sep)

Phone Number: _____

Q4 (Oct-Dec)

E-mail: _____

Check Here if No New Orders for This Quarter

STATE AGENCY PURCHASES

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

Total State Agency Dollars Reported for Quarter: \$ _____

LOCAL GOVERNMENT AGENCY PURCHASES

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

Total Local Government Agency Dollars for Quarter: \$ _____ 1% Remitted to DGS (does not apply to CA certified 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. **Agency Billing Code** - Identify the State agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Billing codes are not applicable to Local Government agencies.
6. **Total Dollars Per PO** - Identify the total dollars of the order excluding tax and freight. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount (less tax and freight) regardless of when you invoice order, perform services, deliver product, or receive payment.
7. **Agency Contact** - Identify the ordering agency's contact person on the purchase order.
8. **Agency Address** - Identify the ordering agency's address on the purchase order.
9. **Phone Number** - Identify the phone number for the ordering agency's contact person.
10. **Total State Sales & Total Local Sales** - Separately identify the total State dollars and/or Local Government agency dollars (pre-tax) for all orders placed in quarter.
11. **1% Remitted to DGS** - Identify 1% of the total Local Government agency dollars reported for the quarter. This is the amount to be remitted to DGS by contractors who are not California certified small businesses.
12. **Grand Total** - Identify the total of all State and Local Government agency dollars reported for the quarter.

Notes:

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

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

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

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

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

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including without limitation any department, agency, or other unit of the government of the State of California.

- nn) "System" means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) "U.S. Intellectual Property Rights" means Intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

2. **CONTRACT FORMATION:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
 - a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
 - b) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this Contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
 - a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

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9. CMAS -- ASSIGNMENT:

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

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

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

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

12. PACKING AND SHIPMENT:

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

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

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

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

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harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.

c) Unless otherwise specified in the Statement of Work:

(i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.

(ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor; (B) use of Software in combination with or on products other than as specified by Contractor; or (C) misuse by the State.

(iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through an such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.

d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.

e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:

i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or

ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."

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

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

20. **INSURANCE:** The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the 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,

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

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

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

- f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23. TERMINATION FOR DEFAULT:

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

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- (i) completed Deliverables,
 (ii) partially completed Deliverables, and,
 (iii) subject to provisions of sub-section 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., a Master Agreement or Multiple Award Schedule Contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations"; (ii) to liability under the General Provisions entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36. DOCUMENTATION

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

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

37. RIGHTS IN WORK PRODUCT:

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

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

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

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

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

40. RIGHT TO COPY OR MODIFY:

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

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

42. ENCRYPTION/CPU ID AUTHORIZATION CODES:

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

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

43. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

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

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

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

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

b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using

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

c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

(i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or

(ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or

(iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or

(iv) The combination or utilization of Software furnished hereunder with non-Contractor supplied Software.

d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

44. DISPUTES:

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

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

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

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

45. STOP WORK:

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

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- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
- 46. EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.
- 47. FOLLOW-ON CONTRACTS:**
- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - (ii) will not act as consultant to any person or entity that does receive a Contract described in subsection (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - (ii) development or design of test requirements;
 - (iii) evaluation of test data;
 - (iv) direction of or evaluation of another Contractor;
 - (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
- (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.
- 48. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10363.
- 49. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 50. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate,

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

- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
- 52. ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting an offer to the State, the supplier offers and agrees that if the offer is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
 - b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.
- 53. DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
 - c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 54. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating

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- to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
- 55. SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov and Public Contract Code Section 6108.
 - b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).
- 56. RECYCLED CONTENT REQUIREMENTS:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of postconsumer material as defined in the Public Contract Code (PCC) Section 12200-12209, in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).
- 57. CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:
- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 58. AMERICAN WITH DISABILITIES ACT:** The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- 59. ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
- 60. USE TAX COLLECTION:** In accordance with PCC Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
- 61. EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to Contract with the State.
- 62. DOMESTIC PARTNERS:** For Contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that the Contractor is in compliance with Public Contract Code Section 10295.3.
- 63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**
- a) If for this Contract the Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the

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

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

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

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

ADDITIONAL CMAS TERMS AND CONDITIONS

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

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

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

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

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

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

d) Laws to be Observed

i) Labor

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

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

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

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

ii) Worker's Compensation Insurance

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

iii) Travel and Subsistence Payments

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

iv) Apprentices

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

v) Payroll

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

67. CMAS -- TERMINATION OF CMAS CONTRACT:

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

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

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

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

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

71. CMAS -- CONFLICT OF INTEREST:

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

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

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

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

72. CMAS -- SUBCONTRACTING REQUIREMENTS:

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

73. CMAS -- RENTAL AGREEMENTS:

The State does not agree to:

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Definitions

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

2. Terms

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

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

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

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

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- 8) **TRANSITION PERIOD:**
- a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the State in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
 - b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
 - c) During the Transition Period, SaaS and Data access shall continue to be made available to the State without alteration.
 - d) Contractor agrees to compensate the State for damages or losses the State incurs as a result of Contractor's failure to comply with this section in accordance with the Limitation of Liability provision set forth in the General Provisions - Information Technology.
 - e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
 - f) The State at its option, may purchase additional transition services as agreed upon in the SOW.
- 9) **DATA BREACH:** Unless otherwise stated in the Statement of Work,
- a) Upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor's notification shall identify:
 - 1) The nature of the Data Breach;
 - 2) The Data accessed, used or disclosed;
 - 3) The person(s) who accessed, used, disclosed and/or received Data (if known);
 - 4) What Contractor has done or will do to quarantine and mitigate the Data Breach; and
 - 5) What corrective action Contractor has taken or will take to prevent future Data Breaches.
 - b) Contractor will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Contractor until the Data Breach has been effectively resolved to the State's satisfaction.
 - c) Contractor shall quarantine the Data Breach, ensure secure access to Data, and repair SaaS as needed in accordance with the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
 - d) Notwithstanding anything to the contrary in the General Provisions - Information Technology, in performing services under this Contract, and to the extent authorized by the State in the Statement of Work, Contractor may be permitted by the State to use systems, or may be granted access to the State systems, which store, transmit or process State owned, licensed or maintained computerized Data consisting of personal information, as defined by Civil Code Section 1798.29 (g). If the Contractor causes or knowingly experiences a breach of the security of such Data, Contractor shall immediately report any breach of security of such system to the State following discovery or notification of the breach in the security of such Data. The State's Chief Information Security Officer, or designee, shall determine whether notification to the individuals whose Data has been lost or breached is appropriate. If personal information of any resident of California was, or is reasonably believed to have been acquired by an unauthorized person as a result of a security breach of such system and Data that is not due to the fault of the State or any person or entity under the control of the State, Contractor shall bear any and all costs associated with the State's notification obligations and other obligations set forth in Civil Code Section 1798.29 (d) as well as the cost of credit monitoring, subject to the dollar limitation, if any, agreed to by the State and Contractor in the applicable Statement of Work. These costs may include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach of the security of such personal information.
 - e) Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.
- 10) **DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work,
- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:
 - 1) The scale and quantity of the Data loss;
 - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
 - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
 - 4) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Contract.

**CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS)
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- b) Contractor shall restore continuity of SaaS, restore Data in accordance with the RPO and RTQ 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.



Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134-1706

Direct: 408 526 4000
FAX: 408 526 4100
www.cisco.com

September 11, 2017

CMAS Program Manager
State of California ("State")
Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor, MS 202
West Sacramento, CA 95605-2811

Re: Development Group Inc.

To Whom It May Concern:

As of the date of this letter, 1) Cisco Systems, Inc. ("Cisco") hereby acknowledges and confirms that Reseller is an authorized partner; and 2) subject to the terms and conditions of Reseller's corporate channels and/or other agreement(s) and certifications with Cisco, Reseller has access, for resale purposes only, to the following Cisco networking hardware and software products, and related maintenance services that are not sold by Cisco as "Cloud Computing Offerings"*:

- Routers
- Switches
- LAN/WAN Wireless
- Virtualization
- Security
- Networking Software
- Optical Networking
- Servers/UCS
- Storage Area Networking
- Unified Communications/Telephony
- Management and Monitoring Software
- Audio, Video and Web Conferencing (except for Webex)
- SMARTnet or other maintenance support services

*"Cloud Computing Offerings" as described at <http://www.gsa.gov/portal/content/190333> are IT services that provide convenient, on-demand access to (vs. ownership of) a shared pool of computing resources (e.g., networks, servers, storage, applications, and services) that can be quickly and easily configured, provisioned, and released.

Cisco also authorizes Reseller to provide its own installation and configuration services for Cisco products sold under Reseller's CMAS contract.



Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134-1706

Direct: 408 526 4000
FAX: 408 526 4100
www.cisco.com

In the event that any one of the Reseller's agreements with Cisco is terminated for any reason or expires, Cisco reserves the right to withdraw this CMAS authorization for this Reseller by providing the State with written advance notice. In addition, it is not Cisco's responsibility to monitor any of the Reseller's performance of its CMAS contractual obligations with the State.

Should you require any additional information, please feel free to contact me at 408-527-2627 or mimnguye@cisco.com.

Sincerely,

A handwritten signature in blue ink that reads "Mimi Nguyen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mimi Nguyen
Sr. Manager, U.S. Public Sector Contracts Management Office



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GSA Schedule

Tech Data Government Solutions is an authorized General Services Administration (GSA) IT70 contract holder. Working in collaboration with Tech Data for government IT opportunities, our partners are able to seamlessly and quickly fulfill federal, state and local government, and education orders. We are currently authorized to sell HPE, Hitachi Data Systems Federal, NetApp, Cisco, Catalogic and Commvault products and support services in addition to training courses and professional services.

GSA contracts are becoming the preferred purchasing mechanism within government contracting offices; our experienced Government Solutions team enables you to go

further by utilizing Tech Data's GSA Schedule Contract, to

- Close more government deals quickly
- Broaden solutions offerings
- Save time, money and resources
- Minimize competition

Tech Data's GSA Contract Schedule permits its authorized partners to sell:

- IT hardware and equipment
- Repair and maintenance of equipment and spare parts
- Term software licenses
- Perpetual software licenses
- Software maintenance
- IT training courses
- IT professional services

For more information on our GSA Schedule Contract [download a copy of our GSA price list](#). (This is a 60MB zip file) You can also contact your account executive for more information.

*In order to transact business through Tech Data's GSA Schedule Contract, partners must be an authorized reseller with Tech Data or complete a reseller agreement. To sign-up, contact your account executive.



Price sheet



Price sheet



Price sheet



Tech Data Government Solutions, LLC
 Authorized GSA Price List

SIN	Part Number	Manufacturer	Description	GSA Price	Warranty	COO	DGI Price
132-33	BE6K-START-UCL35	Cisco	This item is not orderable by itself and may be considered a configurable option of an end product. The country of origin will be that of the overall system. BE 6000 - UCL Starter Bundle with 35 Enh and 35 VM Licenses.	\$342.57	SCW	US	\$330.00
132-8	UPG-6K-ENH	Cisco	This item is not orderable by itself and may be considered a configurable option of an end product. The country of origin will be that of the overall system. BE6000 Enhanced UCL - GCSC SW Upgrade.	\$30.83	SCW	US	\$29.00
132-8	UPG-6K-VM	Cisco	This item is not orderable by itself and may be considered a configurable option of an end product. The country of origin will be that of the overall system. BE6000 Messaging UCL - GCSC SW Upgrade.	\$10.28	SCW	US	\$10.20
132-8	CP-7841-K9++=	Cisco	Cisco UC Phone 7841, TAA	\$250.08	SCW	MX	\$190.00
132-8	CP-8861-K9++=	Cisco	Cisco IP Phone 8861 for TAA	\$489.87	SCW	MX	\$375.00
132-32	UCM-11X-ENH-UCL	Cisco	This item is not orderable by itself and may be considered a configurable option of an end product. The country of origin will be that of the overall system. BOM Level 802.11ac Module Bulk PID	\$0.00	SCW	US	\$61.20
132-33	UCN-11X-VM-UCL	Cisco	This item is not orderable by itself and may be considered a configurable option of an end product. The country of origin will be that of the overall system. BE6000 Unity Connection 11x Basic Voicemail License.	\$0.00	SCW	US	\$22.95
132-32	BE-11X-UCL-STR	Cisco	This item is not orderable by itself and may be considered a configurable option of an end product. The country of origin will be that of the overall system. BE6000 v11 UCL Starter licenses	\$0.00	SCW	US	\$637.50