

RFQP 12-001.1, Appendix A-1

GENERAL PROVISIONS – TELECOMMUNICATIONS

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Issued By:

STATE OF CALIFORNIA

California Technology Agency

Office of Telecommunications Procurement

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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 Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for services or equipment delivery and installation.
- b) **"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.
- c) **"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.
- d) **"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.
- e) **"Business entity or Firm"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- f) **"Buyer"** means the State's authorized contracting official.
- 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) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.

- j) **"Deliverables"** means Goods, software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
- k) **"Documentation"** means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the equipment or software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.
- l) **"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).
- m) **"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.
- n) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer and telecommunications equipment).
- o) **"Hardware"** usually refers to computer equipment and is contrasted with software. See also equipment.
- p) **"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.
- q) **"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 and all related interactions between people and Machines.
- r) **"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.
- s) **"Materials"** to include but not limited to; parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- t) **"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.

- u) **"Performance Testing Period"** means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed equipment and software prior to its acceptance by the State.
- v) **"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.
- w) **"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.
- x) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- y) **"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.
- z) **"Telecommunications"** means to include all hardware, software and service components involved in the secure, efficient and reliable delivery of analog and digital data streams to and/or from government 'end systems'. Examples of the components that comprise a telecommunications system are communications links, routers, switches, multiplexers, transmitters, repeaters, and firewalls. The end systems which are interconnected via a telecommunications system include discrete hardware and software elements that accept analog or digital data streams for storage, processing or conversion to an end user. Examples of end systems are servers, telephones, video displays, and handheld computing devices.
- aa) **"Telecommunications service"** means the providing, allowing, facilitating, or generating of any form of telecommunication through the use of a telecommunications device over a telecommunications system.
- bb) **"Telecommunications system"** means systems, services or components that:
 - i. Do not create data except for use by the telecommunications system or systems used to monitor or manage the telecommunications system.
 - ii. Do not store data except transiently for purposes related to network routing, performance optimization or error recovery.
 - iii. Do not delete or modify data except for purposes related to the reliability, efficiency and security of the telecommunications service.
- cc) **"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. PURPOSE

Unless otherwise specified, These Telecommunication's General Provisions are part of the Contract entered into effective as of the Effective Date of the agreement between the State and Contractor.

3. CONTRACT CONTACTS

- a) The Contract Representatives during the Term shall be identified in all Contracts.
- b) Subject to the terms of the Contract, each Party may modify the Contract Contacts by providing written notice to the other Party identifying the new Contract Contacts.
- c) Contractor shall act as the single point of contact and responsible party for all services offered under this Contract. This includes all elements of service; ordering; provisioning; maintenance; and trouble reporting. Contractor will also act as the single point of contact in coordinating all entities required in the Contract to meet the State's need for service. Contractor shall act as the single point of contact and responsible party for services obtained from its subcontractors and affiliates that are offered to the State or any authorized user of this Contract.
- d) Whenever any notice or demand is to be given to the State or from the State, the notice shall be in writing and addressed to the applicable party at the address described in Section 3.a above, or such subsequent address of a party provided to the other party via a written notice in accordance with this paragraph. Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) calendar days after mailing. Notices delivered by any other method shall be deemed given upon confirmed receipt.

4. CONTRACT FORMATION

- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in Section 4.a., above, Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.

5. COMPLETE INTEGRATION

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior, contemporaneous, different, or additional agreements pertaining to the subject matter of the Contract.

6. SEVERABILITY

Contractor and the State agree that if any term or 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.

7. 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. Contractor, not the State, has the right, power, authority and duty to supervise and direct the activities of the agents and employees of Contractor and to compensate such agents and employees for any work performed by them on the behalf of the State pursuant to this Contract. Contractor, and not the State, shall be responsible and therefore solely liable for all acts and omissions of the agents and employees of Contractor.

8. SUBCONTRACTING

The primary contractor may enter into any subcontract(s) relating to the performance of the Agreement or any part thereof. The Primary Contractor's use of subcontracts shall not in any way relieve the Primary Contractor of its responsibility for the professional and technical accuracy, adequacy, and timeliness of the work to be performed under the Agreement. The primary contractor shall be and remain liable for the performance of the work in accordance with the Agreement, as well as for any damages to the State caused by the negligent performance or non-performance of primary contractor's subcontractor(s).

9. APPLICABLE LAW

- a) This Contract and performance under it shall be governed by and interpreted in accordance with the applicable laws of the State of California, including applicable state and federal statutes such as the Communications Act of 1934, as amended, (including but not limited to the Telecommunications Act of 1996 and subsequent Acts) and the Public Utility Code as interpreted and applied, as well as regulatory rules, regulations and decisions by the California Public Utilities Commission ("CPUC") and the Federal Communications Commission, without giving effect to the principles thereof relating to conflicts of laws. To the extent services in this Contract are subject to the jurisdiction of the CPUC, the services and this Contract will be subject to modification from time to time as the CPUC may so order in the exercise of their lawful jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Contract must be brought solely and exclusively in Sacramento, California, and each party irrevocably submits to the sole and exclusive jurisdiction of the courts in Sacramento County, Sacramento California, in person, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other party.

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

10. COMPLIANCE WITH STATUTES AND REGULATIONS

- a) Contractor represents warrants and certifies that in the performance of this Contract, it will comply with all applicable laws, statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) In the event that any term or action required in this Contract requires a regulatory filing, Contractor shall make such filing and such action and/or term shall, to the extent applicable, be made effective pursuant to the rules of the FCC and the CPUC. To the extent applicable, Contractor shall make the appropriate FCC filing in a timely manner with the rates being effective consistent with FCC requirements. Under the CPUC, terms are effective immediately upon signature by the parties; provided, however, that, to the extent applicable, Contractor is obligated to and shall make a formal filing with the CPUC in a timely manner and shall provide the State with written notice that such filing has been made.
- c) In addition to the foregoing, Contractor shall, after execution of this Contract, make all necessary regulatory filings which shall include the rates and charges for Service and any terms and conditions that affect the rates and charges paid by any Customer.
- d) Should the filings described herein not adequately address an issue or fail to address an essential fact, Contractor's tariffs or published service guides (or other published corporate pricing if Contractor is not required to file tariffs), if applicable, shall be utilized as a basis for providing continuity of Service, and Service offerings, pending subsequent mutual agreement and modification of this Contract by the parties; provided, however, if the parties are unable to reach such mutual agreement within a reasonable period of time and good faith effort, then the State may take action pursuant to the terms and conditions of this Contract, including but not limited to terminating the affected Service(s) without penalty.

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

12. ASSIGNMENT

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

13. 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.

14. ORDER OF PRECEDENCE

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, unless otherwise stated, the following order of precedence shall apply:

- a) These General Provisions - Telecommunications and any amendments thereto, including all of the attachments (unless otherwise specified in the contract whereas replacing allowable paragraphs shall take precedence over these General Provision).
- b) Contract Forms and any amendments thereto, including all of the attachments
- c) Statement of Work (SOW) including any Special Terms and Conditions to be included in individual Contracts
The specifications and requirements contained in the solicitation documentation (i.e. RFQP, RFP, IFB) and the Contractor's response to meet the specifications and requirements in the solicitation as stated in their Proposal. (The parties acknowledge and agree that silence in the Proposal with respect to a particular solicitation specification or requirement equals consent by Contractor.)
- d) All other documents incorporated in the Contract by reference.
- e) All regulatory filings made pursuant to the terms and conditions of this Contract.

15. 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.

16. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES

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

- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services 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.

17. DELIVERY

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract subject to Section 39 (CONTRACT MODIFICATION). Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities or services specified herein, the State shall not be required to make any payment for the excess deliverables, requirements, or services, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

18. SUBSTITUTIONS

Substitution of deliverables, requirements, and services may not be tendered without five (5) days advance written consent of the State. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the State.

19. SERVICE INTERRUPTIONS

The Contractor's liability for Service interruptions, if any, shall be limited to credit out of allowances provided for in the agreement or Service Level Agreement (SLA) including any applicable tariffs incorporated.

20. CUSTOMER IN USE REQUIREMENTS

- a) The purpose of the Customer In-use requirement is to allow time for the Contractor to correct defects that could prevent new goods or services from performing correctly in support of State programs.
- b) The State requires that each service, equipment, and software component proposed as part of a solution must have been installed and in production to one or more commercial or government accounts in the same or substantially same configuration provided, to paying customers external to the Contractors organization, for at least six (6) months prior to the Installation Date set forth in the applicable Statement of Work or Work Order.
- c) The State has the option at any time to request from the Contractor supporting evidence of compliance to the Customer In-Use requirements.

21. INSPECTION, ACCEPTANCE AND REJECTION

Unless otherwise specified in the Contract:

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering deliverables, requirements, and services under this Contract and will tender to the State only those deliverables, requirements, and services that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance system or other similar business practices directly related to performance of the Contract.
- b) All deliverables, requirements, and services may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors, at no additional cost to the State, all information and data as may be reasonably required to perform their inspection.

- d) All deliverables, requirements, and services may be subject to final inspection, test and acceptance as determined necessary by the State, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of deliverables delivered or services performed hereunder within thirty (30) days after receipt of such deliverables or performance of such services. Such notice of rejection will state the respects in which the deliverables, requirements, or services do not substantially conform to their specifications and/or requirements. If the State does not provide such notice of rejection within thirty (30) days of delivery, such deliverables, requirements, and services will be deemed to have been accepted. 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.

22. WARRANTY

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

23. SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract and as required by law or regulation or any State rules applicable to such premises. Contractor's equipment, software, systems and services provided under this Contract shall comply with applicable laws and Contractor shall be responsible for any acts or omissions of agents or employees of Contractor in contravention of such laws. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes, including receipt of prescribed training prior to entering certain State premises. 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.

24. INSURANCE

When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.

25. TERMINATION FOR NON-APPROPRIATION OF FUNDS

- a) If the Term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefore.

- b) STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

26. 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 Deputy Director, Department of Technology, Telecommunications Procurement Division, or designee, determines that a termination is in the State's interest. The Deputy Director, Department of Technology, Telecommunications Procurement Division, or designee, shall terminate by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination for Convenience, and except as directed by the State, Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. Contractor shall:
 - i. Stop work as specified in the Notice of Termination (except as required by any Disentanglement/Migration-Out Services).
 - 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 settlement proposals arising from the termination of subcontracts.
- c) Contractor and the State agree that the State shall have no obligation to pay any amount to Contractor upon the termination for convenience, other than, and in accordance with the terms of this Contract, the agreed price for deliverables or services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges plus any unrecovered amortized capital costs originally identified in writing by Contractor and approved in advance by the State, calculated using Generally Accepted Accounting Principles. Contractor shall submit a final termination settlement proposal within ninety (90) calendar days from the effective date of termination.

27. TERMINATION FOR DEFAULT

- a) The State may, subject to Section 28 (FORCE MAJEURE) and to subsection d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if 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 in accordance with any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any: (i) completed Deliverables, (ii) partially completed Deliverables, and, (iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

28. FORCE MAJEURE

- a) 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.

29. RIGHTS AND REMEDIES OF STATE FOR DEFAULT

- a) In the event any deliverables furnished or services provided by Contractor in the performance of the Contract should fail to conform to the requirements herein, the State may reject the same, and it shall become the duty of Contractor to reclaim and remove the deliverable promptly or to correct the performance of the services, without expense to the State, and immediately replace or re-perform all such rejected deliverables or services, as applicable, with others conforming to the Contract.
- b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Contractor.
- c) In the event of the termination of this Contract, either in whole or in part, by reason of default or breach by Contractor, any loss or damage sustained by the State in procuring any items or services which Contractor agreed to supply shall be borne and paid for by Contractor, subject to the Limitation of Liability included in this Contract.
- 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.

30. ADDITIONAL RIGHTS

This provision has been deleted in its entirety.

31. LIMITATION OF LIABILITY

- a) Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase orders /orders 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/order.

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

32. STATEMENT OF ECONOMIC INTERESTS

As applicable, consultants can be categorized as a public official for purposes of adherence to Conflict of Interest laws and the filing of a Statement of Economic Interests (Form 700). As such, upon award and prior to beginning work, and on an annual basis, the consultant's staff and/or subcontractors engaged in performing the services described in the contract are required to complete and submit a Form 700 to the State of California. To acquire an exemption from this requirement, consultant must submit a request to the Department of Technology, Telecommunications Procurement Division explaining the basis for the request and the staff or subcontractor staff to be excluded on that basis. Form 700 and instructions can be accessed here: <http://www.fppc.ca.gov/forms/700-11-12/Form700-11-12.pdf>

33. ACCESS TO FACILITIES/FACILITIES ACCESS POLICIES

The State acknowledges that the Contractor or its employees may work closely with the State to implement and perform the services by working on the premises of participating State agencies and departments ("State Locations").

- a) The State will ensure that Contractor Personnel have access to State Locations as reasonably necessary for the contractor to provide the services for which the contractor is responsible.
- b) Contractor Personnel will coordinate with the State as necessary to obtain access to State Locations to perform the services, or to perform other obligations as contained herein.

If, as part of a State agency or department's standard policies and procedures regarding contractors working onsite, require Contractor Personnel to execute certain documents prior to gaining access to State Locations ("Standard Access Agreements"), the state will use reasonable

endeavors to (a) provide a copy of or (b) a URL link to such Standard Access Agreements to Contractor in advance of any Contractors Personnel going to State Locations.

- c) The State will endeavor to provide (i) a copy of or an Internet link to the then current and relevant Standard Access Agreements of that State agency or department as require be executed prior to Contractor Personnel to perform work on a given State Locations or (ii) copies or references to Standard Access Agreements already executed by Contractor that apply, if any, with a statement that those are still applicable to Contractor Personnel.

34. USE AND ADVERTISING USE OF DATA

Contractor or its third party providers are not authorized to use, sell, resell, package or repackage or publicly display any information deemed by the State as confidential, sensitive or personal information pursuant to the State of California General Provisions – Telecommunications language or State data without written express approval of the State. This restriction includes key word searching or data mining of State data.

35. STATE COST RECOVERY

The State shall not use software, Data, Web Services, or Documentation for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service). However, the State is authorized to provide fee-based access to an application built upon software, Hardware, Services or Documentation to other employees, departments, agencies, local governmental entities, and consultants of the State of California, through a Web site, Internet service or otherwise, provided that the fees are established on a cost recovery basis and not for profit.

36. PRICE GUARANTEE PERIOD

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

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

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

38. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, deliverables, services, materials, or supplies in connection with the performance of this Contract. The following shall apply with respect to such claims:

- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
- b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

39. CONTRACT MODIFICATION

The State reserves the right to amend this Contract as mutually agreed upon.

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. Notwithstanding this provision:

- a) The State and Contractor may propose informal changes or revisions to the activities, tasks, deliverables and/or performance time frames specified in the Statement of Work, provided such changes do not alter the overall goals and basic purpose of this Contract. Informal Statement of Work changes may include, subject to Sections 17 (DELIVERY) and Section 18 (SUBSTITUTIONS), the substitution of specified activities or tasks; the alteration or substitution of Contract deliverables; and modifications to anticipated completion/target dates. Informal Statement of Work changes processed hereunder shall not require a formal amendment to this Contract, provided Contractor's annual budget (or the fees received hereunder) does not increase or decrease as a result of the informal Statement of Work change.

Unless otherwise stipulated in this Contract, all informal Statement of Work changes and revisions are subject to prior written approval by the State. In implementing this provision, the State may provide a format for the State and Contractor to use to request informal Statement of Work changes. If no format is provided by the State, Contractor may devise its own format for this purpose.

- b) Any change to the Contractor's name will require a Contract amendment. The State, upon notification and receipt of legal documentation indicating the name change from the Contractor, will process the required amendment, assuming no other change has been made to the business entity.

40. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State (or which should be reasonably understood to be confidential) and made available to Contractor in order to carry out this Contract, or which become available to Contractor in carrying out this Contract, shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State, but in no event less than reasonable care. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to Contractor. If the methods and procedures employed by Contractor for the protection of 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. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available other than through a breach of Contractor's or a third party's confidentiality obligations, is already rightfully in Contractor's possession without an obligation of confidentiality, is independently developed by Contractor outside the scope of this Contract and without reference to the State's confidential data or information, or is rightfully obtained from third parties without an obligation of confidentiality.

41. PUBLICITY

Contractor shall not use the name, mark, or logo of, or refer to, the State or any department, division, Agency or Customer thereof, directly or indirectly in any news releases, public announcements, communications, correspondence or public disclosures pertaining to this Contract, including in any promotional or marketing materials, customer lists or business presentations, without the prior written approval of the State (which will not be unreasonably withheld) or except as may be set forth elsewhere in the Contract. Contractor and its representatives shall not make any statement to authorized users of the services implying that a particular service is available to such authorized users under this Contract when such service has not been proposed or approved by the State for inclusion under this Contract.

42. PROTECTION OF CONTRACTOR FURNISHED PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA

- a) State agrees that all material appropriately marked or identified in writing as proprietary, and furnished by Contractor hereunder are provided for State's use exclusively, for the purpose of this Contract only. All such proprietary data shall remain the property of Contractor. State agrees to take all reasonable steps to ensure that such proprietary data are not disclosed to others, without prior written consent of Contractor, subject to the California Public Records Act.

- b) The State will ensure, prior to disposing of any Contractor furnished media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to Contractor furnished 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.

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, 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 43a. 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 43a. will be conditional upon the following:
 - i. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - ii. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
 - iii. The State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Should the deliverables or software, or the operation thereof, become, or in Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor, at its option and expense either to procure for the State the right to continue using the deliverables or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such deliverables or software by the State shall be

prevented by injunction, the Contractor agrees to take back such deliverables or software and make every reasonable effort to assist the State in procuring substitute deliverables or software. If in the sole opinion of the State, the return of such infringing deliverables or software makes the retention of other deliverables or software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such deliverables or software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- i. The combination or utilization of deliverables furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
 - ii. The operation of equipment furnished by the Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or
 - iii. The modification by the State of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Contractor supplied software.
- e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation, hardware, or maintenance of computer software in violation of copyright laws.

44. EXAMINATION AND AUDIT

Unless otherwise specified in the Contract:

- a) Without limiting any examination or audit rights, or other rights of the State set forth in the Contract, Contractor agrees that the State, or its designated representative, shall have the right, at any tier or level, to audit, review and copy any records and supporting documentation pertaining to performance of and invoicing under this Contract and to audit the practices and facilities used by Contractor to provide the services and related operational matters. Contractor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment and five (5) years for Federal Universal Service Fund ("E-rate") funded projects, unless a longer period of records retention is stipulated or required by law. Contractor agrees to allow the auditor(s) access to such records and facilities during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. The State agrees to take all reasonable steps to ensure that such information is not disclosed to third parties, subject to the California Public Records Act.

For avoidance of doubt, audits may include those conducted by personnel of the State, or its designated representative, in performance of Contract oversight responsibilities in reviewing

invoices, monthly fiscal management and/or other required reports, as well as the application of service taxes, fees, surcharges and surcredits on invoices.

If an audit reveals that Contractor has overcharged the State or Agency for Service(s) during the period to which the audit relates, then Contractor shall promptly refund such overcharges to the State or Agency as appropriate, and, if the amount of the overcharge (offset by any undercharges revealed by such audit) is more than five percent (5%) of Contractor's charges to the State or Agency for such Service(s) for such period, the reasonable cost of such audit (including any imputed costs of State for audits performed by the State itself) shall be borne by Contractor.

If any audit reveals an inadequacy or insufficiency of Contractor's performance, including performance in connection with any security obligations of Contractor as set forth in this Contract, Contractor shall promptly develop and provide to the State, for approval, a reasonable and detailed corrective action plan and promptly thereafter implement such plan in accordance with its terms. In addition, the cost of such audit, and subsequent related audits or audit activity, shall be borne by Contractor in the event that: (i) the State specifically identifies a particular deficiency with respect to Contractor's performance of any particular Service; and (ii) Contractor either denies or fails to cure such identified deficiency within thirty (30) calendar days. Further, Contractor agrees to include an equivalent right of the State to audit records and facilities and interview staff in any subcontract related to performance of and invoicing under this Contract.

- b) Notwithstanding anything to the contrary in Section 43e), the State or any auditing body or its designated representative, agrees that it will not exercise the audit rights described in Section 43e) above for purposes of conducting an enterprise-wide audit of Contractor's performance under this Contract (i.e., Contractor's performance hereunder with respect to all issued Ordering Documents) more than once per calendar year, however, any follow-up reviews or other investigations related to an audit initiated under this Section 43e) may be conducted at any time and from time to time.
- c) Where Contractor conducts an internal audit of Contractor's performance under this Contract which shows any significant failures by Contractor to meet its obligations hereunder, Contractor shall provide to the State a written summary describing in reasonable detail such findings of such internal audit. If Contractor determines at any time that it has overcharged any Customer, then Contractor shall promptly provide to the applicable Customer a credit equal to the amount of such overcharge plus interest from the date of Contractor's receipt of such overcharge at a rate which is consistent with the rate provided in the California Prompt Payment Act, Government Code Section 927 et seq.
- d) Contractor agrees that (i) the State or its delegate will have the right to obtain, copy and review all billing records of public or local government entities purchasing under this Contract, provided that notice of such rights is included within the Authorization to Order (ATO) Under State Contract used by non-State Agencies purchasing under the Contract; and (ii) the State may forward audit results showing call rate discrepancies to the CPUC.

45. CONTINUING STANDARDS OF PERFORMANCE FOR CONTRACTOR SERVICES

a) Applicability

Contractor agrees that subsequent to completion of the successful performance period and acceptance of the services by the State, Contractor will comply with the availability and/or performance requirements and criteria established in this Contract throughout the full Term, including any extensions. If the State determines, after at least six (6) months experience with the measurement method prescribed below, that the methods and procedures should be modified to more accurately identify material System deficiencies, an appropriate Contract amendment shall be negotiated and upon agreement executed to effect such modification.

b) Causes and Effects of Contractor Service Malfunctions

- i. The State recognizes that equipment Failures do occur, and that software is not infallible. Moreover, the State concedes that conditions external to equipment may cause it to fail, particularly environmental conditions, that are outside the equipment design operating parameters. The State agrees, therefore, that unsatisfactory Contractor Service performance which is outside the control of Contractor or Contractor Personnel will not be considered in a determination of the level of performance.
- ii. In the event Contractor's Service failure or unsatisfactory performance is a result of factors external to the Contract, Contractor agrees to make appropriate recommendations to the State in order that such external factors may be corrected to preclude future problems of a similar nature. Within five (5) business days after such failure occurs, Contractor shall meet and confer with the State regarding appropriate next steps, which may include preparation, for the State's review, comment and approval, of a milestone-based action plan making such recommendations and corrections described in the preceding sentence.
- iii. In the event that the precise cause of a failure cannot be readily determined, both the State and Contractor shall continue to research the situation until the probable cause has been identified or until agreement is reached that the probable cause cannot be identified. Within five (5) business days after such failure occurs (or such other timeframe specified in the solicitation), Contractor shall meet and confer with the State regarding appropriate next steps, which may include preparation, for the State's review, comment and approval, of a milestone-based action plan for researching the probable cause of the failure.

c) Levels of Performance Required

Contractor shall perform the deliverables, requirements, and the services at the levels of quality, completeness, accuracy, timeliness, responsiveness and efficiency that are consistent with the accepted industry standards or service level agreements applicable to the performance of such deliverables and the services or, if higher, the levels of the same received by the State prior to the Effective Date and as set out in applicable service performance exhibits or the Statement of Work, agreed upon by the parties and incorporated into the Contract. Without limiting the foregoing or other obligations of Contractor, for those deliverables, requirements, and services for which the Statement of Work specifies a particular service level, Contractor shall provide all deliverables, requirements, and services at levels at least in accordance with such service levels.

d) Remedies for Unacceptable Levels of Performance

If a Contractor deliverable, Requirement, or Service does not meet the minimum level of performance as set forth in the Statement of Work, the remedy or process for correction set forth in the Statement of Work will be followed by the parties. If the specific deliverable or Service has no remedy or process for correction set forth in the Statement of Work, State shall promptly notify Contractor in writing of such unacceptable performance and the impact on the State, and Contractor shall promptly initiate action to remedy the unsatisfactory performance. Contractor shall, at its option, take one or more of the following actions to correct the situation:

- i. Provide on-site Contractor personnel for analysis of the problem;
- ii. Replace the faulty equipment, deliverable or Service;
- iii. Provide substitute equipment, deliverable or Service satisfactory to the State;
- iv. Modify the equipment, deliverable or Service; or
- v. Take any other action with which the State concurs.

If Contractor fails to correct an unacceptable level of performance with respect to any equipment, deliverable, or Service to the requirements of the Contract of the State during the thirty (30) calendar days following receipt of written notice from the State (or such other timeframe specified in the Contract), the State and Contractor can mutually agree to extend the time to a specified date. If Contractor fails to correct the situation to the satisfaction of the State by the end of the specified time period, then, without limiting any other remedy specified in the Contract, the State may (i) secure replacement equipment, deliverables, requirements, or services with Contractor responsible for payment of Costs to Cover, and/or (ii) terminate that portion of the Contract relating to the deficient equipment, deliverable, Requirement, or Service. The above-described remedies are not intended to constrain either party from any other action mutually agreed to by Contractor and the State as being more appropriate or to limit any of the State's other rights and remedies under this Contract, at law or in equity, including the application of Section 59 (Performance Deficiency Charges) or the exercise of Section 60 (Set-Off Rights).

e) Replacement or Substitution of equipment by Contractor

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

f) Review of Performance

Contractor's performance will be periodically evaluated in accordance with the service levels for each Service delivered throughout the term of this Contract. In accordance with the California Government Code, Contractor performance evaluation will be completed within the guidelines of the State Administrative Manual, Section 1283.

46. DISPUTES

Unless otherwise specified in the Contract:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. All disputes, for which California law (e.g., the California Prompt Payment Act) does not otherwise specify a dispute resolution process, shall immediately be brought to the attention of the parties' respective project managers. If the dispute persists, and the project managers are not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute initially became known to each party, then either party may submit the dispute to a State Contract Contact for resolution. This Contract Contact will convene with the respective leadership group in person or by telephone within three (3) business days after the dispute is submitted to the Contract Contact. If the dispute persists, and the leadership group is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the leadership group, then Contractor shall submit the dispute to an executive committee consisting of the State's project manager and representatives of the State's executive management, a representative of TPD, and Contractor's project manager and designated senior representatives of Contractor for resolution. This executive committee will convene in person or by telephone within three (3) Business Days after the dispute is submitted to the executive committee. If the dispute persists and the executive committee is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the executive committee, then Contractor shall submit to the Deputy Director, TPD, or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. At the State's sole discretion, the State may direct the Contractor to escalate the dispute directly to the Deputy Director for final resolution.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, for which California law (e.g., the California Prompt Payment Act) does not otherwise specify a dispute resolution process, both parties agree to diligently proceed with the performance of this Contract, including State's payment for and Contractor's delivery of goods or providing of services in accordance with this Contract. The failure to diligently proceed in accordance with this Contract shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such in writing, and shall be signed by the Deputy Director, TPD, or designee. 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 ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

47. STOP WORK

- a) Notwithstanding anything to the contrary contained herein, and even if any dispute arises between the parties and regardless of whether or not it requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall Contractor interrupt the provision of services to the State or any obligations related to Disentanglement under Section 81, disable any equipment or software used to provide services, or perform any other action that prevents, impedes, or reduces in any way the provision of services or the State's ability to conduct its activities (other than minimal, routine interruptions necessary in order for Contractor to provide the services), unless: (i) authority to do so is granted by the State or conferred by a court of competent jurisdiction; or (ii) the Term of this Contract has been terminated or has expired pursuant to Section 26 (TERMINATION FOR THE CONVENIENCE OF THE STATE) or Section 27 (TERMINATION FOR DEFAULT) and a Disentanglement has occurred in accordance with Section 81.
- b) Without limiting the generality of Section 47.a, the State may, at any time, by written Stop Work Order to Contractor, require Contractor to stop all, or any part, of the work called for by this Contract for a period of ninety (90) days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - 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.
- c) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, this Contract price, or both, and this Contract shall be modified, in writing, accordingly, if:
 - i. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Contract; and
 - ii. Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- d) 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.

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

48. FOLLOW-ON CONTRACTS

- a) If Contractor or its Affiliates provides Technical Consulting and Direction (as defined below), Contractor and its Affiliates:
 - i. Will not be awarded a subsequent Contract to supply the deliverables, services, or systems, 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 above. This prohibition will continue for one (1) year after termination of this Contract or completion of the termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which 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 or test requirements;
 - iii. Evaluation of test data;
 - iv. Direction of or evaluation of another Contractor;
 - v. Provision of formal recommendations regarding the acquisition of Telecommunication 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 Technology 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.

49. COVENANT AGAINST GRATUITIES

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

50. NONDISCRIMINATION CLAUSE

- a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. 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. 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) 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

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code 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 a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, or Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material and other items, or services by the supplier of 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 bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i. The assignee has not been injured thereby, or
 - ii. The assignee declines to file a court action for the cause of action.

53. DRUG-FREE WORKPLACE CERTIFICATION

Contractor certifies under penalty of perjury under the laws of the State of California that 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 represents and warrants to the State that it will provide only Four-Digit Date Compliant (as defined below) deliverables requirements, and/or services to the State. **"Four Digit Date Compliant"** deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality or 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 Sweat free Code of Conduct as set forth on the California Department of Industrial Relations website located at <http://www.dir.ca.gov> and Public Contract Code Section 6108.
- b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

56. RECYCLING

Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209.

With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this section shall specify that the cartridges so comply (PCC 12205).

57. CHILD SUPPORT COMPLIANCE ACT

For any Contract in excess of \$100,000, Contractor acknowledges in accordance with Public Contract Code Section 7110, that:

- a) 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) 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. AMERICANS WITH DISABILITIES ACT

Contractor assures the State that Contractor currently complies and at all times during the Term of this Contract will comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

59. PERFORMANCE DEFICIENCY CHARGES

- a) General

The State and Contractor agree that, in addition to the other rights of the State hereunder, the State, in its sole discretion, may invoice Contractor for performance deficiency charges to reflect Contractor's failure to perform its obligations under this Contract with respect to the performance of administrative, reporting, and relationship management functions, or due to the deficiency, delay, lack of professionalism, incompleteness, or other sub-standard nature of such performance of administrative, reporting, and relationship management functions. The parties acknowledge that any performance deficiency charges provided for herein are distinct from any service level credits provided for elsewhere in this Contract. Prior to invoicing Contractor, the State shall notify Contractor of, and meet with Contractor to confer regarding, the performance deficiency charges, the underlying failures or deficiencies in Contractor's performance, and alternative remedies and/or cures, if any, with respect to such failures or deficiencies. Contractor shall be provided a reasonable cure period (not to exceed sixty (60) calendar days) before the State invoices the performance deficiency charge. If a cure to the State's satisfaction has not been achieved during the permitted cure period, the State may invoice Contractor for the performance deficiency charge(s). Contractor shall pay to the State or its designee all performance deficiency charges within thirty (30) calendar days of receipt of an invoice therefor. Notwithstanding the preceding sentence, Contractor may in good faith dispute that it failed to perform its obligations under this Contract with respect to the performance of administrative, reporting, and relationship management functions by providing written notice of such dispute. In the event of such a dispute, Section 46 (DISPUTES) will be followed prior to the Contractor being obligated to pay the disputed part of the invoice. Such performance deficiency charges shall constitute agreed fee reductions and not penalties or liquidated damages hereunder.

- b) Without limiting paragraph (a) of this Section: (i) the State shall identify in the solicitation certain amounts the State may assess as performance deficiency charges for certain situations (which may be modified from time to time upon agreement by the parties); and (ii) the parties presently anticipate that (a) the State shall issue any invoices for performance deficiency charges and facilitate the meetings described in this Section, and (b) Contractor shall pay any performance deficiency charges to the entity identified by the State as the beneficiary of the deliverables and services to which the performance deficiency charges relate.
- c) Contractor shall provide all assistance and support reasonably necessary for the administration of such performance deficiency charges, including, the provision of additional documentation regarding Contractor's performance hereunder and the payment of the performance deficiency charges as directed by the State.
- d) Contractor may not earn back, with subsequent performance or otherwise, the amounts of any performance deficiency charges that become due the State.

60. SET-OFF RIGHTS

Unless otherwise specified in the Contract:

Notwithstanding anything to the contrary in this Contract, and in addition to the other rights of the State and/or the applicable Customer hereunder with respect to disputing invoices or withholding amounts, the State and/or the applicable Customer, in its sole discretion, may set off against any and all amounts otherwise payable to Contractor pursuant to any of the provisions of this Contract: (i) any and all amounts claimed by the State and/or the applicable Customer in good faith to be owed by Contractor to the State and/or the applicable Customer pursuant to any of the provisions of this Contract; and (ii) any and all amounts that the State and/or the applicable Customer believes in good faith that it does not owe to Contractor pursuant to any of the provisions of this Contract. Within twenty (20) calendar days after any such set-off by the State and/or applicable Customer, the State and/or applicable Customer shall provide Contractor with a written accounting of such set-off, a written statement of the reasons therefore, and a reasonable opportunity to meet and discuss the claimed set-off. In the event Contractor does not agree with the set-off applied, Contractor or applicable Customer may contact the State to seek equitable resolution or exercise its right under applicable law. The escalation procedure beyond the project manager in Section 46 (DISPUTES) shall not apply.

61. 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 goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later. Non-State Customers shall be subject to a late payment fee if payment is issued after the late payment date.

The late payment date shall be forty-five (45) calendar days after receipt of an undisputed invoice. The amount of the late payment fee shall be as set forth in Government Code Sections 927.6 and 927.7.

62. CONTRACTOR PERSONNEL

- a) When Contractor needs access to State's premises to perform the required services under this Contract, Contractor personnel shall perform their duties during State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State and Contractor.
- b) The State reserves the right to disapprove the continuing assignment of Contractor personnel working on State premises. If the State exercises this right, and Contractor cannot immediately replace the disapproved personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected hereby.
- c) Contractor will make every effort consistent with sound business practices to honor the specific request of the State with regard to assignment of its employees; however, subject to the above paragraph and the paragraph below, Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond Contractor's control, Contractor will make every reasonable effort to provide suitable substitute personnel.
- d) Contractor represents that the individuals designated as Contract Contact in the Contract are, and promises that any subsequent Contract Contact shall be, experienced professionals, possessing the appropriate knowledge, skills, and expertise to perform properly their assigned duties. With regard to each of the Contract Contact, including replacements for the Contract Contact, Contractor shall exercise every reasonable effort to not transfer the Contract Contact during the first eighteen (18) months (or such other time periods as may be specified in the solicitation or any Statement of Work) after the date that such individual commences performing services as one of the Contract Contact hereunder. Contractor may transfer or terminate Contract Contact at any time in the event the needs of Contractor's business support a transfer, or the individual is eligible for a promotion or other positive type of employment opportunity, or the individual's personal life experience requires a transfer, or the individual's employment is terminated for "good cause" (which term, as used in this Contract, means cause for termination, including a lay-off, as determined in accordance with Contractor's employment policies, consistently applied). Contractor shall exercise every reasonable effort to notify the State prior to the transfer of Contract Contact to another position within Contractor's organization, including upon any such replacement or reassignment if the function being performed by the individual being replaced or reassigned is eliminated from the services. If any of the Contract Contact is reassigned, becomes incapacitated, or ceases to be employed by Contractor, and therefore becomes unable to perform the functions or responsibilities assigned to such person, Contractor shall promptly replace such person with another person at least as well qualified to perform such functions and responsibilities as the person being replaced, and the State shall have the right to interview (in the presence of a Contractor representative) and provide input to Contractor concerning each such replacement.

The parties acknowledge that qualifications include a mix of experience and education and that equally qualified individuals may have different mixes thereof. Contractor shall cause its subcontractors to comply with this provision with respect to any of individuals of such subcontractors that are designated as Contract Contact.

- e) In recognition of the fact that Contractor personnel providing deliverables, requirements, or services under this Contract may perform similar services from time to time for others, subject to the above paragraph, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, providing that such use does not conflict with the performance of services under this Contract.
- f) Contractor shall submit annually a business plan that demonstrates a commitment to providing qualified staff and resources to support authorized user, business activities and Contract management

63. CONTRACTOR BUSINESS RELATIONSHIP RESPONSIBILITY

- a) Contractor shall fully cooperate with the State and the other Contractors as necessary to coordinate the performance of the said services, including participation in any advisory forum established by the State and the establishment of business processes that facilitate the orderly Transition, Migration, and Transfer of Customers to other said services and the implementation of any other ongoing provisioning support for services.
- b) Contractor shall demonstrate how business arrangements and practices will support Contract Services.
- c) If Contractor and any Affiliate have been awarded more than one of the Contracts, and separate Affiliates will provide the Contract Services under such Contracts, Contractor shall, upon award, describe in detail how it will meet single point of contact responsibilities; identify what, if any, interaction exists between such Affiliates for each of the Contracts in question; and demonstrate how any competitive business goals of the individual Affiliates with respect to the Contracts in question will be resolved so as not to cause harm to the State or negatively impact the provisioning of services to Customers. In addition, Contractor agrees to meet in good faith with the State to discuss potential efficiencies and savings that Contractor could make available to the State as a result of such circumstances.

64. UNANTICIPATED TASKS

Unless otherwise specified in the Contract, if applicable:

- a) Any services, functions, requirements, developments, or responsibilities not specifically described in this Contract that are consistent with industry standards, an inherent, necessary or customary part of the services or are, consistent with industry standards, required for proper performance or provision of the services in accordance with this Contract shall be deemed part of the services and Contractor shall provide them as part of the services without additional charge.
- b) In the event that any other work must be performed which was wholly unanticipated and is not specified in the Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined for particular deliverable(s) and/or Service(s), the procedures outlined in this Section 64 will be employed.

- c) For each item of wholly unanticipated work not specified in the Statement of Work, a Work Authorization will be prepared.
- d) It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization. Such Work Authorization shall in no way constitute a Contract other than as provided pursuant to this Contract and shall not in any way amend or supersede any of the other provisions of this Contract.
- e) Each Work Authorization shall consist of a detailed statement including justification of the need for the wholly unanticipated work, a description of the work to be accomplished by Contractor, the job classification or approximate skill level of the personnel to be made available by Contractor, an identification of all significant material to be developed by Contractor and delivered to the State, an identification of all significant material to be delivered by the State to Contractor, an estimated time schedule for the provision of the work by Contractor, completion criteria for the work to be performed, the name or identification of Contractor personnel to be assigned, Contractor's estimated work hours per person (and/or estimated subtotal of rates and charges per deliverable(s) and/or Service(s)) required to accomplish the work, Contractor's billing rates per work hour per person (and/or estimate rates and charges per unit for deliverable(s) and/or Service(s)) required to accomplish the work, and Contractor's estimated total cost of the Work Authorization.
- f) All Work Authorizations must be in writing prior to beginning work and signed by Contractor and the State.
- g) The State has the right to require Contractor to stop or suspend work on any Work Authorization pursuant to the provisions of Section 47 (STOP WORK) of this Contract.
- h) Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:
 - i. If, in the performance of the work, Contractor determines that a Work Authorization to be performed under this Contract cannot be accomplished within the estimated work hours, Contractor will immediately notify the State in writing of Contractor's estimate of the work hours which will be required to complete the Work Authorization in full. Upon receipt of such notification, the State may:
 - a. authorize Contractor to expend the estimated additional work hours in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization will not be unreasonably withheld), or
 - b. terminate the Work Authorization, or
 - c. alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining originally estimated work hours.

The State will notify Contractor in writing of its election within seven (7) calendar days after receipt of Contractor's notification. If notice of the election is given to proceed, Contractor

may expend the estimated additional work hours. The State agrees to reimburse Contractor for such additional work hours.

65. NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY

An emergency is defined in **PUBLIC CONTRACT CODE SECTION 1102**: "Emergency," as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

- a) Contractor shall make every reasonable effort to assist the State in procuring use of Contractor services compatible with that provided under this Contract to meet emergencies. The price and service levels for such compatible services shall be reasonably set by Contractor and, to the extent possible, shall be no greater than the Contract rates and at service levels substantially similar to those set forth in the Contract.
- b) The State, at its option, may accept or reject the use of emergency equipment.

66. NON-EXCLUSIVE AGREEMENT

Nothing in this Contract shall be construed as a requirements contract or interpreted as preventing the State from obtaining, consistent with State policy, any portion, component, subset or all of the services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or providing the same to itself. Nor shall anything in this Contract be construed or interpreted as limiting the State's right or ability during the Term of this Contract to increase or decrease its demand for services hereunder. To the extent the State, consistent with State policy, obtains from third parties, or provides to itself, replacement services for any of the services hereunder, the amount to be paid to Contractor by the State for the remaining services will be equitably adjusted downward, to the extent necessary, to reflect the portion of the services that Contractor will not be providing or performing, regardless of whether such services were priced individually or as a bundle with any of the remaining services.

67. CHARGES

Unless otherwise specified in the Contract:

Contractor agrees that the State and any Customer are not subject to any minimum monthly usage charges for any services contracted under this Contract.

- a) Contractor agrees that services not identified in this Contract may not be provided nor charged to the State or any Customer pursuant to this Contract, but that Contractor may use the invoicing process of this Contract so as to allow for invoicing of services not related to this Contract, provided that such items are clearly identified as not related to this Contract and Contractor otherwise complies with the requirements in the Contract related to invoicing.
- b) Contractor agrees that charges not identified in this Contract may not be assessed to the State or any Customer except in accordance with paragraph (a) of this Section.

- c) Invoices for all contracted services shall not be subject to late payment charges prior to the Contract defined due date.
- d) Contractor agrees that the charges shall comply with Section 76 ("MOST FAVORED NATION" STATUS OF STATE).

68. SERVICE TAXES, FEES, SURCHARGES, AND SURCREDITS

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

69. ADMINISTRATIVE FEE

Unless otherwise specified in the Contract, if applicable:

Contractor agrees to pay the State an administrative reimbursement as required and established by the State. The administrative reimbursement shall be used to fund only the State activities, or the State funded State offices and activities. the State's objective is not to increase the administrative fee associated with any existing Service or establish an administrative fee associated with any new Service if when combined with Contractor's Contract rate for the Service the administrative fee raises the total price for the Service to a level that is non-competitive with similar services available in the telecommunications industry. Notwithstanding the foregoing, in all events the State shall be entitled to an administrative fee increase equal to the Consumer Price Index (CPI) over the relevant Contract Term should an increase be required to fund the State activities or the State funded State offices and activities. The CPI is published by the U.S. Department of Labor, Bureau of Labor Statistics. For this Contract the following will be utilized: the CPI-U Index; not seasonally adjusted; US city average area, all items series adjusted annually. Until the Contract has been awarded and the Contractor rates determined, the State is unable to determine administrative fee rates that will be applied on any service or services. Accordingly, and on behalf of the State, Contractor will bill, collect and remit a Contract administrative fee. The administrative fee may be applied to any and all contracted services offered under this Contract. This fee shall be determined by the State and shall be included within the amount charged to those agencies obtaining services pursuant to this Contract. The administrative fee reimbursement amount shall appear on the monthly detailed fiscal management reports referenced in this Contract to be delivered to the State.

- a) Contractor shall bill, collect and remit a check or electronic funds transfer notification based on the amount billed for this administrative fee to the State on a monthly basis at no additional cost. The administrative fee shall be paid to the State no later than the 30th of the month, for the amount billed two months preceding. Contractor shall pay a late payment fee on any such administrative fees not paid to the State when due in accordance with the Statement of Work. The fee will be based on the State costs to manage this Contract as well as perform other mandated functions and may be adjusted annually or as otherwise deemed necessary by the State, based on fiscal year projected requirements, upon reasonable notice to Contractor.
- b) Contractor agrees to provide monthly fiscal management reports identifying services in accordance with this Contract.

70. INVOICES AND PAYMENTS

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

71. CONTRACTOR COMMITMENTS AND REPRESENTATIONS

Any written commitment by a duly authorized representative of Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill any such commitment shall render Contractor liable for performance deficiency charges or other damages due to the State as set forth herein. Such written commitments include but are not limited to (1) any warranty or representation expressly made by Contractor as to deliverables, Service, equipment or software performance, total System performance, or other physical design or functioning characteristics of a Machine or software System,

(2) any warranty or representation expressly made by Contractor concerning the characteristics of the items described in (1) above, made in any publication, drawings, or specifications accompanying or referred to in the Contract, and (3) any written notification of or affirmation or representation as to the above which is made by Contractor in or during the course of negotiations and which is incorporated into a formal amendment to the Contract.

72. SERVICE TO PUBLIC ENTITIES AND LOCAL GOVERNMENT AGENCIES

In accordance with Government Code Section 11541, Contractor agrees to provide Service to all public and local Agencies in the State pursuant to this Contract and hereby acknowledges that the State is not responsible for payment, deliverables, requirements or services rendered these entities. Contractor agrees that it shall have no recourse against the State for any act or omission of the local public entity, which arises from Contractor furnishing goods or services pursuant to this Contract. Contractor understands and acknowledges that under this Contract the State neither promises nor guarantees any minimum amount of revenue for Contractor or minimum amount of deliverables, requirements, or services to be purchased.

73. EXISTING EQUIPMENT

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

74. AVAILABILITY OF REFRESHED TECHNOLOGY AND ADDITIONAL SERVICE ITEMS

Contractor shall evolve, supplement, and enhance the goods and services provided in the normal course of business and that which is in scope of the contract during the Term, both to keep pace with and utilize technological advancements and improvements in the method of delivering telecommunications related services and the pricing thereof. Contractor also acknowledges that the telecommunications environment is critical to the State's business success, and that the State's needs and requirements with regard to the telecommunications environment may also evolve and change over time, and that the need for enhanced or modified functionality may arise. Therefore, during the Term and within contract scope, either party may suggest enhancements or additional required goods or services, modifications, cost saving items, or items that might be considered to

keep pace with and/or to take advantage of the latest and most useful technological advancements and improvements in Contractor's performance (collectively, "Enhancements").

- a) When such Enhancements substitute, replace, modify or improve goods or services already being received by the State (e.g., network backbone upgrades that generally benefit all users of the network and are not specifically requested by the State), Contractor will make such Enhancements available to the State under this Contract at no additional cost to the State.
- b) If Enhancements do not substitute, replace, modify or improve goods or services already being received by the State under this Contract, but instead add to additional material functionality and features, Contractor will make such Enhancements available to the State under the existing Contract through a written proposal. Each proposal for Enhancements must provide a 1) business case that includes potential users and technical requirements, if any, and 2) competitive pricing that includes market analysis that illustrates cost benefits and cost justification. The State, in its sole discretion, shall determine whether to approve of the proposal Enhancements and its inclusion in the Contract. If the State chooses to proceed hereunder, the State and Contractor will negotiate in good faith to agree on any additional terms and conditions, if any, under which the Enhancement will be added to this Contract through the amendment process. The Contractor shall update any applicable marketing plans used in connection with the goods or services hereunder.
- c) Contractor understands that the State is solely responsible for approval of proposal and agrees, absent an approved amendment from the contracts authorized State agency or/States designated authority; Enhancements must not be added to this Contract. Consistent with and without limiting anything set forth in Section 66 (NON-EXCLUSIVE AGREEMENT), nothing in this Section 74 shall prohibit the State from pursuing or obtaining the same or similar Enhancements with or from other providers or requiring that certain Enhancements may only be obtained from certain providers.
- d) Contractor agrees that Enhancements must not be added to the contract at the request of any local government or a non-State Agency unless otherwise authorized by the State.

75. PRICING AND SERVICE REVIEW

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

76. "MOST FAVORED NATION" STATUS OF STATE

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

77. FEDERAL UNIVERSAL SERVICE FUND

Federal Grant programs are available to schools and libraries under the Universal Service Fund. This program, also referred to as E-rate funding, provides supports to schools and libraries in accessing telecommunications services. To the extent such programs are applicable to the services under this Contract, as determined by the State, or required by law, Contractor agrees to:

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

78. TITLE TO EQUIPMENT

Title to equipment, accessories, and devices provided under this Contract shall not vest in the State, unless such items are purchased by the State. All devices and accessories furnished by Contractor hereunder, except those purchased by the State, shall accompany the equipment when returned to Contractor.

79. UNLAWFUL USE

Customer will not use any Service for any unlawful purpose. Without limiting any other remedy specified in this Contract, Contractor reserves the right to take any action it deems necessary to prevent unlawful use and to control fraudulent use. Such actions by Contractor may include, but are not limited to, blocking certain traffic, refusing to accept calling card, collect calling and or third number calls, or discontinuing provision of Service to the End-User or canceling the End-User's account.

80. MIGRATION-IN PLAN

Unless otherwise specified in the Contract:

- a) Migration-In Plan. Contractor shall prepare and deliver to the State, for the State's review, comment and approval, a Migration-In Plan for migrating the provision of services pursuant to the Contract to the provision of services pursuant to this Contract as set forth in this Contract. To the extent Contractor deems appropriate, or as otherwise requested by the State, Contractor shall design the Migration-In Plan to use a phased migration strategy.

81. DISENTANGLEMENT (MIGRATION-OUT)

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

82. REPORTS, DATA AND INVENTORY

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

83. DISASTER RECOVERY AND SECURITY PLAN

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

84. BENCHMARKING

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

85. OFFER; TERM

Unless otherwise specified in the Contract:

From the date that Contractor executes this Contract ("Signing Date") until such time as the State executes this Contract and TPD approves the award of this Contract to Contractor, and as such process is further described herein, this Contract constitutes the irrevocable, firm offer by Contractor to provide the services to the State for the charges in accordance herewith. This Contract shall not be binding or of any legal force or effect on the State until the authorized execution of this Contract by the State and such approval by the State ("**Effective Date**").

Notwithstanding the foregoing, from the Signing Date until the Effective Date, Contractor shall actively continue planning and working with the State to ensure the timely completion of all tasks necessary and sufficient to prepare for and achieve a smooth and seamless conversion of the services related to the ongoing operation, support, and maintenance of the State's infrastructure related to services hereunder that is from the State and its current third party service-providers to Contractor. The State may exercise its option to extend by giving written notice of extension to Contractor prior to expiration of the Term. Contractor shall provide a reminder letter to the State ninety (90) calendar days prior to the end of the Term and each extension thereof if the State shall not have previously provided written notice to Contractor of its intent to extend the Contract prior to such dates.

86. SUBCONTRACTORS

Unless otherwise specified in the Contract:

Contractor shall not subcontract all or any part of the Service without the prior written consent of the State, which will not be unreasonably withheld; provided, however, that Contractor may subcontract for internal infrastructure support, not specifically for this Contract, without notice to or consent from the State. Each subcontractor will perform only the specific services described with regard to such subcontractor in a written request submitted by Contractor to the State when seeking such consent; and no change may be made to the specific services performed by a particular subcontractor, and no substitution, replacement, or change of subcontractors may be made, without the advance written consent of the State, which will not be unreasonably withheld. All performance of services by each subcontractor shall at all times be in accordance with the terms and conditions of this Contract. Contractor covenants that its arrangements with subcontractors

shall not prohibit or restrict any such subcontractor from, at any time, entering into direct agreements with the State. The State's consent with respect to Contractor's use of a particular proposed subcontractor, shall be given or withheld in writing within Contractor's reasonably requested timeframe, and, if such consent is withheld, the State's notice thereof to Contractor shall set forth the reasons for such withholding of consent. If the State determines in good faith and in a commercially reasonable manner that the performance or conduct of any subcontractor is unsatisfactory, the State may notify Contractor of its determination in writing, indicating the reasons therefore, in which event Contractor shall promptly take all necessary actions to remedy the performance or conduct of such subcontractor or to replace such subcontractor by another third party or by Contractor personnel. Contractor shall be solely and exclusively responsible for supervising the activities and performance of each subcontractor. Contractor and each such subcontractor shall be jointly and severally responsible for any act or omission of such subcontractor engaged to provide deliverables, requirements, and services under this Contract. Notwithstanding the fact that a subcontractor may be the party actually performing a particular Service or providing a particular deliverable hereunder, Contractor shall at all times: (i) constitute the primary obligor for all of Contractor's duties and obligations hereunder; and (ii) be liable and responsible as a principal for the performance of all of the duties and obligations of Contractor hereunder that Contractor may elect to subcontract to any of its subcontractors or to any other third party.

87. DE MINIMIS SERVICE REQUESTS

For the purposes of RFQP 12-001.1, this provision is being moved from Phase 1 to be incorporated as Special Terms and Conditions in Phase 2 procurements.

88. GOVERNANCE

- a) Before communicating any interpretation of this Contract that the State or any Customer is or may be in violation or breach of this Contract to any entity receiving, or eligible to receive, deliverables, requirements, or services under this Contract, Contractor shall first provide notice of such interpretation to the State.
- b) Committees and Meetings. During the Term, representatives of the State and Contractor shall meet periodically or as requested by the State to discuss matters arising under this Contract, including any such meetings provided for the Migration-In Plan. Contractor shall bear its own costs in connection with the attendance and participation in such meetings. Such meetings shall include, at a minimum, the following:
 - i. Operations. At least monthly, an operations committee shall meet to review Contractor's performance hereunder and any reports, any planned or expected activities and changes that might impact performance, and such other matters as appropriate.
 - ii. Management. At least quarterly, a management committee shall meet to review Contractor's overall performance hereunder and any reports, progress on the resolution of any issues, to provide a strategic perspective for the State's telecommunication requirements, and such other matters as appropriate.
 - iii. Executive. At least semi-annually, an executive committee shall meet to review Contractor's overall performance hereunder and the ongoing provision of the services.

89. SECURITY AND POLICIES

Unless otherwise specified in the Contract:

At all times during the term, in addition to any other requirements in the Contract, and as further delineated in subsequently executed orders, at all times during the Term, Contractor shall provide all services, use all resources related thereto, and use, operate, support, and maintain any systems, in an appropriately secure manner and in accordance with the State's security requirements, policies, and procedures as communicated, modified, supplemented, or replaced by the State from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective ("**Security Policies**").

Contractor shall at all times take all reasonably necessary and appropriate action with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to and use of systems and the networks involved with the provision or receipt of services, including the implementation and deployment network management and maintenance applications and tools, the use of appropriate encryption technologies, and other security-related services. In addition, all Contractor personnel (including personnel of any subcontractors) shall be subject to, and shall at all times conform to, all of the State's policies, procedures, rules, and requirements regarding the protection of premises, materials, equipment, and personnel, as the State shall provide (in writing or electronically) in advance to Contractor. Contractor shall, and shall cause Contractor personnel and subcontractors to, fully comply with and abide by all such Security Policies provided in advance to Contractor at all times during the Term. Any violation or disregard of such Security Policies by an individual shall be cause for denial of access of such individual to the State's property. Contractor shall exercise due care and diligence to prevent any injury to person or damage to property while on the State's premises. The operation of Contractor vehicles or private vehicles of Contractor personnel on the State's property shall conform to posted and other regulations and safe driving practices. Vehicular accidents on the State's property and involving Contractor personnel shall be reported promptly to the appropriate State personnel. Contractor shall, and shall cause Contractor personnel and subcontractors, to not exceed (or attempt to exceed) the level of authorized access, if any, to any networks, computer or electronic data storage systems of the State that may be granted during the Term for purposes only of performing the services hereunder.

90. NEWLY MANUFACTURED GOODS

All Goods furnished under this Contract shall be newly manufactured Goods; used or re-conditioned Goods are prohibited, unless otherwise agreed by the parties.

91. DOCUMENTATION

Contractor agrees to provide to the State, at no charge, a reasonable number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the services, equipment or software provided hereunder, including any marketing information. Contractor agrees to provide additional Documentation at prices not in excess of charges made by Contractor to its other

customers for similar Documentation. Contractor may, at its option, provide any such Documentation in electronic form, unless otherwise specified in this Contract.

92. RIGHTS IN WORK PRODUCT

- a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this subsection a. may be revised in a Statement of Work.
- b) Software and other materials developed or otherwise obtained by or for Contractor or its Affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") does not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other original elements of Pre-Existing Materials do not. Nothing in this Section 92 will be construed to interfere with Contractor's or its Affiliates' ownership of Pre-Existing Materials. Intellectual property rights embodied in the Pre-Existing Materials shall remain with Contractor, its Affiliates, and/or its suppliers or manufacturers, as appropriate.
- 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 Contractor or jointly by Contractor and the State may be used by either party without obligation of notice or accounting.
- e) This Contract shall not preclude Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

93. ELECTRONIC WASTE RECYCLING ACT OF 2003

Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

94. USE TAX COLLECTION

In accordance with Public Contract Code Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of Public Contract Code Section 10295.1.

95. EXPATRIATE CORPORATIONS

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Sections 10286 and 10286.1, and is eligible to contract with the State.

96. DOMESTIC PARTNERS

The Contractor may elect to offer domestic partner benefits to the Contractor's employees in accordance with Public Contract Code Section 10295.3. However, the Contractor cannot require an employee to cover the costs of providing any benefits which have otherwise been provided to all employees regardless of marital or domestic partner status.

97. PRIORITY HIRING

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