

SCO ID: 0690-A241013270

AGREEMENT NUMBER
A241013270

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:
CONTRACTING AGENCY NAME
California Governor's Office of Emergency Services (Cal OES)
CONTRACTOR NAME
Promethean One, LLC
2. The term of this Agreement is: September 6, 2024, or upon approval by CDT STP, whichever is later, through September 5, 2025, with one (1) – one (1) year optional extension
3. The maximum amount of this Agreement is: \$ 1,300,000.00
(One Million Three Hundred Thousand Dollars and Zero Cents)
4. The parties agree to comply with the terms and conditions of the following exhibits and attachment which are by this reference made a part of the Agreement for Cal OES' NextGEN 9-1-1 Project Management:

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* EVAQ0002050 in its entirety
* RFQ A241013270 in its entirety
* Bidder's Response in its entirety, including BAFO
Items shown with an asterisk (*) are hereby incorporated by reference and made part of this agreement as if attached hereto.

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

CONTRACTOR	Department of Technology (CDT) <input type="checkbox"/> Office of Statewide Technology Procurement (OSTP) Use Only
CONTRACTOR NAME <i>(If other than an individual, state whether a corporation, partnership, etc.)</i> Promethean One LLC	
CONTRACTOR AUTHORIZED SIGNATURE 	DATE SIGNED
PRINTED NAME AND TITLE OF PERSON SIGNING David MacKinnon, Managing Partner	
ADDRESS 3288 Adams Ave. #16824, San Diego, CA 92116	
STATE OF CALIFORNIA	
CONTRACTING AGENCY NAME California Governor's Office of Emergency Services (Cal OES)	
CONTRACTING AGENCY AUTHORIZED SIGNATURE 	DATE SIGNED
PRINTED NAME AND TITLE OF PERSON SIGNING Eric Swanson, Deputy Director, Finance and Administration	
CONTRACTING AGENCY ADDRESS 3650 Schriever Ave, Mather, CA 95655	

DATE _____

Signed _____

EXEMPT PER:

ATTACHMENT 1: APPENDIX A - STATEMENT OF WORK

1. Background and Purpose

The Governor's Office of Emergency Services (Cal OES), Public Safety Communications (PSC), California 9-1-1 Emergency Communications (CA 9-1-1) Branch is authorized by Government Code (GC) Sections 53100-53121 to manage and oversee statewide 9-1-1 Services. The authority to oversee the expenditures of State Emergency Telephone Number Account (SETNA) funds is provided in the California Department of Finance's (DOF) Manual of State Funds, 0022. The CA 9-1-1 Branch is responsible for administering SETNA, which provides funding to California Public Safety Answering Points (PSAPs) for 9-1-1 systems and services. Cal OES will complete the transition to Next Generation 9-1-1 (NG 9-1-1) in 2025 and expects legacy 9-1-1 traffic to be possible through 2025 until the selective router services will no longer be needed.

1.1. Objective

Contractor [TBD] (hereinafter referred to as the "Contractor") agrees to provide the Office of Emergency Services (hereinafter referred to as "Cal OES" or the "State") with six (6) full-time consultant resources to assist Cal OES with the management of the Next Generation 9-1-1 (NG 9-1-1) Project as described in the NG 9-1-1 Prime Network Service Provider contract 6058-2019, and NG 9-1-1 Region Network Service Provider contracts 6059-2019, 6060-2019, 6061-2019, and 6062-2019. NG 9-1-1 services contracts are available at <https://www.caloes.ca.gov/office-of-the-director/operations/logistics-management/public-safety-communications/ca-9-1-1-emergency-communications-branch/ca-911-services-contracts/>. The Contractor consultant resources will provide the data, schedule, and information needed for Cal OES to ensure that the deployment of the NG 9-1-1 project is completed on or near December 31, 2025.

The six (6) resource classifications required for this effort are:

- One (1) Senior Project Manager
- Two (2) Senior Technical Leads
- Two (2) Technical Leads
- One (1) Data Analyst

2. Term of the Contract

Effective upon approval of the California Department of Technology (CDT), Office of Statewide Technology Procurement (OSTP), the term of this Contract will be one (1) year, with an estimated start date of September 1, 2024.

The State, at its sole discretion, may exercise the option to execute one (1) - one (1) year extension at the original hourly rates evaluated and considered and as specified in [EXHIBIT C: COST](#)

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WORKSHEETS.

The Contractor shall not be authorized to deliver goods or commence performance of services described in this Statement of Work (SOW) prior to the effective date. Any delivery of goods or performance of services by the Contractor that is commenced prior to the effective date shall be considered voluntary on the part of the Contractor and non-compensable.

3. Amendment

The Agreement may be amended, consistent with the terms and conditions of the Agreement, and by mutual consent of both parties, subject to approval by the CDT Office of Statewide Technology Procurement under Public Contract Code (PCC) Section 12100. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved by oversight agencies if required. No oral understanding not incorporated in the Agreement is binding on any of the parties.

4. Location and Availability

Contractor work shall be primarily performed remotely, with a minimum of six (6) required in-person meetings with Cal OES in Sacramento, California. The State will provide a set of collaboration tools to facilitate remote development. Contractor staff shall be based in the United States and remote work is not guaranteed. The required meetings and in the event onsite services are required, the State will provide five (5) business days advance notice to the Contractor to participate in meetings and/or perform work at the address below.

California Governor's Office of Emergency Services
Public Safety Communications
CA 9-1-1 Branch
601 Sequoia Pacific Blvd., MS 9-1-1
Sacramento, CA 95811

Normal hours of access are Monday through Friday, 7:00 a.m. to 5:00 p.m. Pacific Time (PT), excluding State holidays. The Contractor is required to perform work duties within the normal hours of work. The Contractor must make prior arrangements and receive approval from the State for access to the project office outside these normal working hours. State holidays are listed on the California Department of Human Resources (Cal HR) website at the link below, and are subject to change:

<http://www.calhr.ca.gov/employees/Pages/state-holidays.aspx>

The Contractor may be required to occasionally adjust their work hours to accommodate the needs of the project.

5. Contract Representatives

All notices required by, or relating to, this Agreement shall be provided in writing and distributed to the parties of this Agreement at the addresses below. In the event of changes, each party shall immediately notify the other party in writing. All such notices shall be deemed duly given if deposited, postage prepaid, in the United States mail and directed to the addresses provided below.

STATE DEPARTMENT: CAL OES	
Contract Manager:	Paul Troxel
Title:	California 9-1-1 Branch Manager
E-mail:	Paul.Troxel@CalOES.ca.gov
Telephone Number:	916-894-5017
CONTRACTOR: PROMETHEAN ONE LLC	
Contract Manager:	David MacKinnon
Title:	Managing Partner
E-mail:	David.MacKinnon@promethean.one
Telephone Number:	618-630-4484

6. CONTRACTOR KEY STAFF QUALIFICATIONS AND SKILLS

6.1. KEY STAFF

The Contractor shall be fully responsible for providing all necessary staffing resources to successfully complete the tasks/deliverables set forth in this Contract. The Contractor's team of consultant resources shall each meet the requirements individually and must be scalable based on the required tasks/deliverables. Contractor shall provide a team of six (6) consultant resources to include the following:

- Senior Project Manager - [one (1) resource]
- Senior Technical Leads - [two (2) resources]
- Technical Leads - [two (2) resources]
- Data Analyst - [one (1) resource]

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Contractor must provide a copy of degree and/or other certification as required for the the job role(s).

6.2. CONTRACT KEY STAFF MANDATORY AND DESIRABLE QUALIFICATIONS

For the duration of the Contract, the Contractor's key staff shall comply with the Staff Mandatory Qualifications as described below.

6.3. SENIOR PROJECT MANAGER (PM)

The Senior PM has full responsibility to manage and oversee all aspects of the pre-migration and migration plans by making recommendations to Cal OES. This includes, but is not limited to, communicating with both external Prime Network Service Provider (PNSP) and Region Network Service Provider (RNSP), interacting with department leadership, agency secretaries at the user agency, State control agencies, and individuals of similar status and capacity in the private sector. The Senior PM shall collaborate and support Cal OES Project teams.

The Senior PM shall monitor and track all project activities to ensure the PNSP and RNSPs are including the details that must be addressed to ensure the project is completed on time. The Senior PM shall advise Cal OES of any gaps in the plan. The Senior PM must have an understanding of the components of the NG 9-1-1 deployment and be able to approach the integration of the different components like a Systems Integrator. The Senior PM shall make recommendations to Cal OES on how to achieve project outcomes by leading the following efforts:

- a. Project management of pre-migration and Originating Service Provider (OSP) migration plans and schedule for the NG 9-1-1 vendors, Public Safety Answering Point (PSAP), OSPs, and Cal OES.
- b. Develop, modify or provide input to project plans.
- c. Implement project plans to meet objectives.
- d. Coordinate and integrate project activities.
- e. Manage, lead or administer project resources.
 - f. Monitor project activities and resources to mitigate risk.
 - g. Implement or maintain quality assurance processes.
 - h. Make improvements, solve problems or take corrective action with the pre-migration and migration plans.
 - i. Give presentations or briefings on all aspects of the pre- migration/migration plans.
 - j. Participate in phase, milestone, and final project reviews.
 - k. Compile data and make recommendations for Branch policy pertaining to NG 9-1-1.
 - l. Ensure Cal OES has data needed to track progress of the project.

6.3.1. SENIOR PROJECT MANAGER (PM) MANDATORY QUALIFICATIONS

- a. Minimum of seven (7) years of broad, extensive, and increasingly responsible experience applying PM principles, methods, techniques, and tools. At least four (4) years of

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that experience must have been as a Senior PM of one or more large or complex information technology (IT) projects.

- b. Three (3) years of experience in Next Generation 9-1-1.
- c. Possession of a bachelor's degree*
- d. Possession of a valid Project Management Professional (PMP) certificate from the Project Management Institute (PMI)**

*Additional qualifying experience may be substituted for the required education on a year-for-year basis.

** The PMP certification is required and may not be substituted with additional experience.

6.3.2. SENIOR PROJECT MANAGER (PM) DESIRABLE QUALIFICATIONS

- a. Minimum five (5) years of experience with complex Internet Protocol (IP) networks that deliver voice and other data elements.
- b. Minimum seven (7) years of experience with project planning and analysis, milestone tracking, and status reporting.

6.4. SENIOR TECHNICAL LEADS

The two (2) Senior Technical Leads will be tasked by the Senior PM to organize and support the efforts needed to identify gaps, risks, and challenges that must be addressed to complete the NG 9-1-1 deployment by December 2025. The Senior Technical Leads' responsibilities include, but not limited to:

- a. Coordinate and facilitate conference bridge with each NG 9-1-1 vendor, PSAP, Cal OES, and other stakeholders as necessary, to complete pre-migration testing and migration of OSP traffic at each PSAP.
- b. Direct and provide leadership to all NG 9-1-1 vendors, PSAPs, and stakeholders for pre-migration and migration.
- c. Communication with the PSAPs to include pre-migration schedule, migration schedule, updated plans and status of NG 9-1-1 pre-migration and migration project.
- d. Develop reference models of the NG 9-1-1 system and maintain the NG 9-1-1 system information needed to update the CA 9-1-1 Strategic Plan and Operations Manual.
- e. Provide data and make recommendations to define policies and procedures to guide technology decisions for NG 9-1-1 by gathering data and input from the PNSP and RNSPs.
- f. Identify opportunities to improve the schedule by recognizing key interdependencies, anticipating critical milestones, gating items that will prevent or disrupt the NG 9-1-1 pre-migration and migration plans.
- g. Ensure OSP migration is achieved across the NG 9-1-1 system by participating in testing, planning, and validation of the pre-migration and migration plans.
- h. Participate in meetings with PNSP, RNSPs, stakeholders, and Cal OES.
- i. Provide Cal OES all data related to NG 9-1-1 vendors, PSAPs, and stakeholders during pre-

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migration and migration plans.

- j. Suggest updates to the pre-migration and migration processes that will improve efficiency.
- k. Identify and report any gaps and/or resource challenges with the NG 9-1-1 vendors, PSAPs, and stakeholders.

6.4.1. SENIOR TECHNICAL LEAD MANDATORY QUALIFICATIONS

- a. Minimum of eight (8) years of experience aligning IT systems with organizational business processes. At least five (5) years of that experience must have been in a lead capacity.
- b. Possession of a bachelor's degree in an IT-related or Engineering field.*

*Additional qualifying experience may be substituted for the required education on a year-for-year basis.

6.4.2. SENIOR TECHNICAL LEAD DESIRABLE QUALIFICATIONS

- a. Minimum of five (5) years of experience with complex IP networks that deliver voice and other data elements.
- b. Minimum of five (5) years of experience with project planning and analysis, milestone tracking, and status reporting.

6.5. TECHNICAL LEADS

The two (2) Technical Leads shall be responsible for all PNSP, RNSP, PSAP, Cal OES, and Call Processing Equipment (CPE) maintenance provider, scheduling and notifications. Specific instructions will be developed by Cal OES and the Contractor; however, general tasks include, but not limited to the following.

The Notification and Scheduling tasks shall include, but not limited to:

- a. Notify all NG 9-1-1 vendors and PSAPs when the schedule has been developed.
- b. Notification to PSAPs, PNSP, RNSP, Cal OES, and any other vendor/stakeholder as necessary, that is scheduled a minimum two (2) weeks and 48 hours prior to the scheduled pre-migration and migration dates.
- c. Provide PSAP notification via email and a telephone call to all contact persons on record provided by Cal OES.
- d. Maintain a log of all communication to each stakeholder.
- e. Support conference call bridges to ensure compliance with testing plan.
- f. Build and maintain a schedule to complete pre-migration testing and carrier migration at each PSAP.
- g. Manage daily schedule and notify NG 9-1-1 vendors, PSAPs, Cal OES, and stakeholders.
- h. Reschedule PSAPs in the event the appointment is canceled or unable

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to be completed and communicate with NG 9-1-1 vendors, PSAPs, Cal OES, and stakeholders.

- i. Ensure all resources needed from NG -1-1 vendors, PSAPs, Cal OES, and stakeholders have been notified and available to support the testing plan.

6.5.1. TECHNICAL LEAD MANDATORY QUALIFICATIONS

- a. Minimum of five (5) years of experience aligning IT systems with organizational business processes. At least three (3) of that experience must have been in a lead capacity.
- b. Possession of a bachelor's degree in an IT-related or Engineering field.*

*Additional qualifying experience may be substituted for the required education on a year-for-year basis.

6.5.2. TECHNICAL LEAD DESIRABLE QUALIFICATIONS

- a. Minimum of three (3) years of experience with complex IP networks that deliver voice and other data elements.
- b. Minimum of three (3) years of experience with project planning and analysis, milestone tracking, and status reporting.

6.6. DATA ANALYST

The one (1) Data Analyst shall be responsible for all PNSP, RNSP, PSAP, Cal OES, and Call Processing Equipment (CPE) maintenance provider, trouble ticket tracking and analysis. Specific instructions will be developed by Cal OES and the Contractor.

The Trouble Ticket and Analysis tasks shall include, but not limited to:

- a. Data entry of issues needing remediation into the client provided ticketing management system.
- b. Create reports analyzing trends in identified issues that need remediation.
- c. Ad hoc reporting on an as-needed basis.
- d. Support conference call bridges to ensure compliance with testing plan.

6.6.1. DATA ANALYST MANDATORY QUALIFICATIONS

- a. Minimum of five (5) years of experience aligning IT systems with organizational business processes. At least three (3) of that experience must have been in a data analyst capacity.

6.6.2. DATA ANALYST DESIRABLE QUALIFICATIONS

- a. Minimum of three (3) years of experience with analyzing complex IP networks that deliver voice and other data elements.
- b. Minimum of three (3) years of experience with data analysis, milestone tracking, and status

reporting.

7. Project (Contractor) Tasks and Deliverable Requirements

The State and Contractor shall identify tasks within the scope of this Contract, to be agreed upon and approved by the State in an [EXHIBIT A: WORK AUTHORIZATION \(WA\)](#).

All Work Authorizations will be written to reflect agreed upon tasks, deliverables, roles and responsibilities, and approved by Cal OES Contract Manager and Contractor prior to work beginning.

Primary tasks shall include, but are not limited to, the following:

- a. Develop and maintain a master schedule for pre-migration and migration of all OSPs to be completed December 31, 2025, with input from the NG 9-1-1 vendors, PSAPs, Cal OES, and stakeholders.
- b. Contractor shall create a dashboard to visualize PSAP Operational Readiness Testing (ORT) status, pre-migration status, migration status, and number of OSPs that have migrated at each PSAP.
- c. Provide routine (daily, weekly, and as needed), feedback from the NG 9-1-1 vendors on milestones identified in the NG 9-1-1 Project Deployment Plan (PDP), Project Milestone Reports, and any other data not identified in these documents.
- d. Provide Cal OES all data and feedback on discussions with NG 9-1-1 vendors, to include network performance, trouble tickets, Root Cause Analysis (RCA) review, and NG 9-1-1 vendor-identified issues.
- e. Provide personnel in the form of a Bridge Lead to ensure the PNSP and RNSP are following the PNSP script for pre-migration testing or any other testing required to complete this project. This could be up to four calls per day.
- f. Provide bridge support to identify when additional resources are needed, requesting resources from NG 9-1-1 vendors and notifying Cal OES if assistance is needed.
- g. Provide recommendations on updates needed to the pre-migration plan and migration plans.
- h. Document critical components of the project to ensure continuity of operations.
 - i. Provide reports and presentations that can be used to support Cal OES presentations, including the 9-1-1 Advisory Board, Long Range Planning Committee, PSAP outreach, and other presentations by Cal OES.
 - j. Notify PSAPs of testing dates and process.
- k. Address PSAP questions on pre-migration testing and migration.
 - l. Facilitate meetings with all NG 9-1-1 vendors to review and discuss network performance, pre-migration testing, OSP migration, post go-live performance, and any other issues or topics requested by Cal OES.
- m. Contractor shall monitor, observe, analyze, track, and report NG 9-1-1 network performance at all i3 and cloud CPE migrated PSAPs to ensure consistent performance during pre-migration testing,

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OSP migration, and post go-live.

- n. Contractor shall act as an authorized agent of Cal OES in order to support NG 9-1-1 deployment.
- o. Contractor shall support any task identified by Cal OES during all phases of pre-migration testing, OSP migration, and post go-live network performance, in support of the NG 9-1-1 deployment.
- p. Contractor shall support a minimum six (6) in person meetings with Cal OES in Sacramento, or an agreed upon location.

8. ACCEPTANCE OF PROJECT TASKS/DELIVERABLES

It shall be in the State's sole determination as to whether a project task/deliverable identified in this Contract or in a supplemental [EXHIBIT A: WORK AUTHORIZATION \(WA\)](#) has been successfully completed and acceptable to the State. Acceptance criteria shall consist of the following:

- a. The approval process is outlined in [SECTION 14. Performance](#).
- b. A signed [EXHIBIT B: WORK AUTHORIZATION ACCEPTANCE DOCUMENT \(WAAD\)](#) (WAAD) is required for each project task/deliverable identified in an [EXHIBIT A: WORK AUTHORIZATION \(WA\)](#).
- c. The Contractor shall meet all timelines, as agreed to in the Contract or [EXHIBIT A: WORK AUTHORIZATION \(WA\)](#).

9. CONTRACTOR REPORTING REQUIREMENTS

The Contractor must submit **weekly** written status reports in MS Word format to the Office of Emergency Services Contract Manager or as directed. The status reports shall detail the current status and future activities of this Contract. Status reports are **not** considered deliverables under the terms of this Contract. The status reports shall include, but not limited to, the following information:

- a. A summary of the work completed during the reporting period, showing actual versus planned work.
- b. The tasks that are behind schedule, the overall impact on the project, and the approach for remediation.
- c. The status of the overall engagement and all phases/projects, including discussion of risks, problems encountered, solutions, and proposed solutions.
- d. The tasks expected to be completed in the next reporting period.
- e. An accounting of Contractor's staff hours for the reporting period and for the Contract to date (i.e. time sheets).
- f. Ad hoc reporting as required.

10. Contractor's Responsibilities

- a. The Contractor shall provide its own equipment necessary to perform the required duties.
- b. The Contractor shall designate a primary contact person to whom all project communications may

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be addressed and who has the authority to act on all aspects of the services.

- c. The Contractor personnel is required to work remote or within the Contractor facility, unless directed by Cal OES. [SECTION 4. Location and Availability](#) requires in-person meetings with Cal OES. During those meetings Cal OES will provide appropriate workspace for the Contractor team.
- d. The Contractor shall adhere to the Office of Emergency Services policies and procedures, guidelines and templates including access and security requirements.
- e. If requested, the Contractor shall participate in periodic briefings for Executive Management, as deemed appropriate by the Office of Emergency Services.

11. State's Responsibilities

- a. Cal OES will designate a person to whom all Contractor communication should be addressed and who has the authority to act on all aspects of the services. The designee will review the SOW and associated documents with the Contractor to ensure understanding of the responsibilities of both parties.
- b. At the sole discretion of Cal OES, the Contractor may be provided with standard Department imaged desktop(s), phone equipment, and, if on- premise work is required, a standard cubicle or hoteling space at any of the Cal OES' sites and/or locations specified by Cal OES. Limited network connectivity or temporary wireless access to Cal OES and access to team working documents may also be provided.
- c. Cal OES will provide access to department staff and management, offices and operation areas, as required, to complete the tasks and activities defined under this Contract.
- d. Cal OES will provide at least a minimum of ten (10) State business days for the timely review and approval of information and documentation provided by the Contractor to perform its obligations.
- e. Cal OES will provide information regarding the business structure of the Cal OES and schedule the availability of the Cal OES personnel for interviews, as required by the Contractor to perform its responsibilities.

12. Work Authorizations

- a. Each [EXHIBIT C: WORK AUTHORIZATION \(WA\)](#) shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by the Contractor and all information requested to be provided per WA.
- b. All WA must be in writing and signed by the Contractor and the Cal OES Contract Manager before beginning the work identified in the WAs.
- c. Cal OES has the right to require the Contractor to stop or suspend work on any WA.
- d. Personnel resources will not be expended (at a cost to the Cal OES) on task/deliverable accomplishment(s) in excess of the estimated work hours identified in the WA unless the procedure below is followed:
 - 1. If, in performance of the work, the Contractor determines that a WA under this Contract

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cannot be accomplished within the estimated work hours, the Contractor shall immediately notify Cal OES in writing of the revised estimate of the work hours which will be required to complete the WA in full. Upon receipt of such notification, Cal OES may:

- A. Authorize the Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the WA;
 - B. Alter the scope of the WA in order to define tasks that can be accomplished within the remaining estimated work hours; or
 - C. Terminate the WA.
2. Cal OES will notify the Contractor, in writing, of its decision within seven (7) calendar days after receipt of the Contractor's notification. If written notice to proceed is given via an amended WA signed by the Contractor and Cal OES, the Contractor may expend the estimated additional work hours for the agreed upon services. Via the written approved and signed WA, Cal OES agrees to reimburse the Contractor for such additional work hours.

13. Key Personnel Changes

The Contractor must obtain prior approval in writing from the Cal OES Contract Manager before attempting to change key staff. This includes substitutions made between submission of the Quote and the actual start of the project, as well as staffing changes that may occur during the course of the Contract.

The State reserves the right at its sole discretion to require the Contractor to replace any assigned staff, key staff or additional staff, at any time for reasons that may include, but are not limited to, poor performance, lack of experience, or unprofessional behavior / harassment in the workplace (subject to compliance with applicable law and departmental policies). The State will notify the Contractor in writing when exercising that right. Within 30 calendar days of such notification, the Contractor shall provide a replacement candidate that meets or exceeds the requirement as defined in [SECTION 6.](#)

[CONTRACTOR KEY STAFF QUALIFICATIONS AND SKILLS](#) of this SOW.

The Contractor shall provide a replacement resource who possesses equal or better qualifications and ratings. The Contractor must submit, for consideration of any replacement staff, [ATTACHMENT 12: KEY STAFF QUALIFICATIONS WORKSHEET](#) that indicates how the proposed staff meets or exceeds all of the minimum requirements and any of the desirable project characteristics that were evaluated as part of the award and the resulting Contract. Replacement staff may be subject to fingerprinting and a background check. The Contractor's request to replace staff must be approved in writing by the State prior to the replacement staff beginning work.

The State reserves the right to approve or deny any or all replacement project team members assigned by the Contractor to this project. If any of the proposed replacement staff are rejected and a qualified

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replacement is not provided to the State for approval within 20 State business days of the rejection, the Contractor will be in material breach of the Contract unless the State provides an extension in writing before the deadline is exceeded. The State shall not compensate the Contractor for any time or effort required to prepare a new staff member for performing tasks on the Project.

The State recognizes that changes to subcontractor(s) may be necessary and in the best interests of the State; however, advance notice of the proposed change and the reasons for such change must be made to the State no less than ten (10) State business days prior to the existing subcontractor's termination. If this should occur, the State Contract Manager or designee must approve any changes to the subcontractor(s) prior to the termination of the existing subcontractor(s) and retention of the new subcontractor(s). This also includes any changes made between submittal of the Quote response and actual start of the Contract. All replacement subcontractor(s) must meet all minimum requirements of [SECTION 6. CONTRACTOR KEY STAFF QUALIFICATIONS AND SKILLS](#) and the resulting Contract.

14. Performance

Cal OES will be the sole judge of the acceptability of all work performed and all work products produced by the Contractor as a result of this SOW or any WA. Should the work performed or the products produced by the Contractor fail to meet Cal OES' conditions, requirements, specifications, guidelines, or other applicable standards, the following resolution process will be employed, except as superseded by other binding processes:

- a. Cal OES will notify the Contractor in writing within five (5) State business days after completion of each phase of service of any acceptance problems by identifying the specific inadequacies and/or failures in the services performed and/or the products produced by the Contractor. The cost related to rework of unacceptable work products shall not be billed to Cal OES.
- b. The Contractor shall, within five (5) State business days after initial problem notification, respond to Cal OES by submitting a detailed explanation describing precisely how the identified services and/or products actually adhere to and satisfy all applicable requirements, and/or provide a proposed corrective action plan to address the specific inadequacies and/or failures in the identified services and/or products. Failure by the Contractor to respond to Cal OES' initial problem notification within the required time limits may result in immediate termination of the Contract. In the event of such termination, Cal OES will pay all amounts due to the Contractor for all work accepted prior to termination.
- c. Within five (5) State business days after receipt of the Contractor's detailed explanation and/or proposed corrective action plan, Cal OES will notify the Contractor in writing whether it accepts or rejects the explanation and/or plan. If Cal OES rejects the explanation and/or plan, the Contractor shall submit a revised corrective action plan within three (3) State business days of notification of rejection. Failure by the Contractor to respond to Cal OES' notification of rejection by submitting a revised corrective action plan within the required time limits may result in immediate termination of the Contract. In the event of such termination, Cal OES will pay all amounts due to the

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Contractor for all work accepted prior to termination.

- d. Cal OES will, within three (3) State business days of receipt of the revised corrective action plan, notify the Contractor in writing whether it accepts or rejects the revised corrective action plan proposed by the Contractor. Rejection of the revised corrective action plan will result in immediate termination of the Contract. In the event of such termination, Cal OES will pay all amounts due the Contractor for all work accepted prior to termination.

15. Escalation Process

The parties acknowledge and agree that certain technical and project- related problems or issues may arise and that such matters shall be brought to Cal OES's attention. Problems or issues shall normally be reported in regular status reports or meetings. However, there may be instances where the severity of the problem(s) justifies escalated reporting. To this extent, the Contractor shall determine the level of severity and notify the appropriate Cal OES personnel. The Cal OES staff notified and the time taken to report the problem or issue shall be at a level commensurate with the severity of the problem or issue. The Cal OES personnel include, but are not limited to, the following:

First level: CA 9-1-1 Branch Manager

Second level: Assistant Director Public Safety Communications

Third level: Deputy Director Logistics

16. OTHER CONTRACT CONSIDERATIONS

- a. The Contractor shall act as the prime contractor under this Contract. In addition to identifying all personnel proposed to work under this Contract, the Contractor shall also identify its subcontractor affiliation(s), as applicable.
- b. Cal OES reserves the right to approve all subcontractors prior to the performance of any work by the subcontractor(s).
- c. Nothing contained in this Contract shall create any conceptual relationship between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor is fully responsible to Cal OES for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them.
- d. If a subcontractor is a California Certified Small Business (SB) and/or Disabled Veteran Business Enterprise (DVBE), the Contractor shall identify the amounts paid to certified subcontractors on the Contractor's invoice(s).
- e. The Contractor's obligation to pay its subcontractors is independent of the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- f. Military and Veteran Code (MVC) 999.5(d), Government Code (GC) 14841, and California Code of Regulations (CCR) 1896.78(e) requires all Prime Contractors that

Office of Emergency Services

had DVBE firm perform any element of work for a contract to report DVBE information.

- g. Prime Contractors must maintain records supporting the information that they have made all payments to DVBE subcontractor(s). The Prime DVBE Subcontracting form is located at: <https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std817.pdf> and the instructions are located at: <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/File-a-DVBE-Subcontractor-Report>. Prime Contractors shall email completed forms to: jairo.turnil@caloes.ca.gov.

17. Federal Tax Administration Requirements

Subject to the Internal Revenue Service (IRS), federal tax information (FTI) requirements, if an unfavorable response is received by the IRS, this contract will be terminated immediately, per General Provisions – Information Technology (GSPD-401), clause 23, Termination for Default.

18. Termination of Agreement

Cal OES reserves the right to terminate this Contract, subject to 30 days written notice to the Contractor. In the event of such termination, Cal OES will pay all amounts due to the Contractor for all services rendered and accepted prior to termination. Additional conditions for termination include, but are not limited to, the following:

- a. This Contract can be immediately terminated for cause. The term “for cause” shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the Contract. In this instance, the Contract termination shall be effective as of the date indicated in Cal OES’s notification to the Contractor.
- b. This Contract may be suspended or canceled without notice, at the option of the Contractor, if the Contractor or Cal OES’s premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by any governmental authority.
- c. The Contractor may submit a written request to terminate this Contract only if Cal OES should substantially fail to perform its responsibilities as provided herein.

19. Budget Detail and Payment Provisions

19.1. Invoicing and Payment

- a. For services satisfactorily rendered and upon receipt and approval of the invoice(s), the State agrees to pay the Contractor for services in accordance with the hourly rates specified in [EXHIBIT C: COST WORKSHEETS](#).
- b. Invoices shall be submitted in triplicate not more frequently than monthly in arrears to the email or address provided below and must include:

Office of Emergency Services

1. The Contractor name, address and phone number
2. The Contract Number «Agreement Number»
3. The Contractor's invoice number
4. The invoice date
5. Dates of services performed and/or deliverables completed
6. Personnel name, classification, rate per hour and hours worked California Governor's Office of Emergency Services

Public Safety Communications
Attention: CA 9-1-1 Branch 9-1-1 Reconciliation Unit
601 Sequoia Pacific Blvd., MS9-1-1
Sacramento CA 95811
Email: CA911Invoicing@caloes.ca.gov

Any invoices submitted without the above referenced information may be returned to the Contractor for further re-processing.

19.2. Travel and Per Diem Expenses

The Contractor's cost related to items such as travel and per diem shall be inclusive of the hourly rate bid and are costs of the Contractor that will not be paid separately nor reimbursed under this Contract.

19.3. State Budget Contingency Clause

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Contract does not appropriate sufficient funds for the program, this Contract shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this contract and the Contractor shall not be obligated to perform any provisions of this Contract.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Contract with no liability occurring to the State, or offer a Contract amendment to the Contractor to reflect the reduced amount.

19.4. Final Billing

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

19.5. Payments

Payment for services under this Agreement shall be made in accordance with the State of California's

Office of Emergency Services

Prompt Payment Act (Government Code Section 927 et seq.).

19.6. Payment Method

Payment to the Contractor will be made on a time and materials basis per the hourly labor rate by resource classification as set forth in the Contract [EXHIBIT C: COST WORKSHEETS](#) for all labor-related costs.

EXHIBIT A: WORK AUTHORIZATION (WA)

WA Number:

Amendment:

Title of WA:

Dates:

Background:

Work Description:

Start Date:

Completion Date:

Tasks:

Below is a list of tasks that were assigned in the planning meeting and require development or revision by the Contractor due to this WA.

Enter Tasks as they were defined in the planning meeting:

Cost:

NOT-TO-EXCEED COST					
	Staff Name	Classification	Labor Hours	Rate Per Hour	Cost
1					
2					
				Not-to-Exceed Cost Total	

Contractor Tasks and Responsibilities:

Acceptance Criteria:

State Responsibilities:

Approvals:

These tasks will be performed in accordance with this WA including any accompanying documentation, if applicable and the provisions of the Contract.

AUTHORIZED AND APPROVED:

CONTRACTOR OFFICIAL PRINT & SIGN NAME/ DATE

CAL OES OFFICIAL PRINT & SIGN NAME / DATE

EXHIBIT B: WORK AUTHORIZATION ACCEPTANCE DOCUMENT (WAAD)

Contractor Name:

Cal OES Contract Number:

Work Authorization Accept Document (WAAD) Number:

Work Authorization Title:

Work Authorization Completed Date:

Total Cost of Work Authorization:

\$ _____

Work Authorization Description:

Cal OES Acceptance or Rejection:

Approvals:	
Contractor Contract Manager	Cal OES Contract Manager
Signature:	Signature

Approvals:

Date:	Date:

EXHIBIT C: COST WORKSHEETS

1. COST WORKSHEETS

The Contractor shall provide all labor, materials, and equipment necessary to provide services for NextGEN 9-1-1 Project Management in accordance with the specifications described in [ATTACHMENT 1: APPENDIX A - STATEMENT OF WORK](#), at the hourly rates specified below.

The Contractor is required to provide hourly rates for six (6) consultant resources. Failure to complete all items will be grounds to reject the Quote response. Any and all zero dollar (\$0.00) or blank shall be interpreted and understood by the State that the Contractor shall perform such services at no cost to the State.

CONSULTANT NAMES	LABOR CLASSIFICATIONS	HOURLY RATES
Karen Liddick	Senior Project Manager	\$ 175.00
Jim Lockard	Senior Technical Lead	\$ 150.00
Justin Adams	Senior Technical Lead	\$ 150.00
Jason Bivens	Technical Lead	\$ 125.00
Joel McCamley	Technical Lead	\$ 125.00
David Hoover	Data Analyst	\$ 50.00

**EXHIBIT D: General Provisions for Electronic Vendor Application of Qualifications (eVAQ)
#19-001- Telecom**

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GENERAL PROVISIONS

FOR
ELECTRONIC VENDOR APPLICATION OF QUALIFICATIONS
(eVAQ) #19-001
Revised 09/19/2019

Issued by:

STATE OF CALIFORNIA

California Department of Technology Statewide
Procurement

PO Box 1910

Rancho Cordova, CA 95741

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1. DEFINITIONS

Unless otherwise specified in the Statement of Work, Appendix A, Glossary, the following terms shall be given the meaning shown below.

- a) "**Acceptance Date**" means the date that the legal act of documenting that Equipment or Services conform to the requirements of the contract.
- b) "**Acceptance Tests**" means those tests performed during the Performance Period which are intended to determine compliance and reliability 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 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 company, 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.

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- 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) "**Custom Software**" means Software that does not meet the definition of Commercial Software.
- k) "**Customer**" means the State, or for CALNET Contracts any government entity with an authorized Non-State Entity Service Provider Agreement (NESPA)
- l) "**Data Processing Subsystem**" means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
- m) "**Data Processing System (System)**" means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
- n) "**Deliverables**" means Equipment, Software, Information Technology, telecommunications technology, Hardware, documentation and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of Services.
- o) "**Designated CPU(s)**" means the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
- p) "**Documentation**" means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
- q) "**Equipment**" is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Telecommunication System or Subsystem, including its Hardware and Operating Software (if any).

- r) "**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.
- s) "**Facility Readiness Date**" means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment or Software delivery and/or installation.
- t) "**Goods**" means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and Telecommunications Equipment).
- u) "**Hardware**" usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- v) "**Installation Date**" means the date specified in the Statement of Work by which the Contractor must have commenced the Services, or installed Software or Equipment ready (certified) for use by the State.
- w) "**Information Technology**" refer to [California State Administrative Manual, Chapter 4819.2](#).
- x) "**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.
- y) "**Machine Alteration**" means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- z) "**Maintenance**" includes : (i) remedial maintenance performed by the Contractor or manufacturer as a result of Services, Equipment or Software failure, and which is performed as required, i.e. on an unscheduled basis; or (ii) maintenance performed on a scheduled basis by the Contractor or Manufacturer and is designed to keep the Equipment and/or Software in proper operating condition.

- aa) "**Manufacturing Materials**" means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- bb) "**Operating Software**" means those routines that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- cc) "**Operational Use Time**" means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- dd) "**Ordering Document**" means the form used to request (also includes moves, adds, changes or deletes) services such as a Form 20, STD. 65 or other Customer authorized procurement document.
- ee) "**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.
- ff) "**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.
- gg) "**Principal Period of Maintenance**" means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) "**Scope of Work**" means description of work as mutually agreed upon by the Contractor and the Customer that is included as an attachment to Service Requests.
- ii) "**Services**" means any and all Services required to be performed by the Contractor pursuant to Contract.

- jj) **“Service Level Agreement (SLA)”** means an established set of metrics to be used to measure the level of service provided by the Contractor against the agreed to level of services.
- kk) **“Software”** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating software, Programming Aids, Application Programs.
- ll) **“Software Failure”** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **“State”** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- nn) **“State Data”** means all data owned by the State, and submitted to, processed by, or stored by the Contractor under this Contract and includes, but is not limited to, all data that originated with the State or Users, all data provided by the State or Users, and data generated, manipulated, produced, reported by or otherwise emanating from or by applications run by the State or Users on the Services. For clarity, State Data is synonymous with “Customer Data”, “Customer Content”, or similar terms, as used in various provisions of the service agreements and incorporated into the Contract and includes the following:
 - i. **“Non-Public Data”** means data submitted to the Contractor, other than Personal Data, that is not subject to distribution to the public as public information. Non-Public Data includes Customer Proprietary Network Information (CPNI). It is deemed to be sensitive and confidential by the State because it contains information that may be exempt by statute, regulation, or policy from access by the general public as public information.
 - ii. **“Personal Data”** means Personal Information as defined by the California Information Practices Act (Civil Code Sections 1798 et seq.) submitted to the Contractor.
 - iii. **“Public Information”** means any information prepared, owned, used, or retained by the State and not specifically exempt from the disclosure requirements of the California Public Records Act

(Government Code Section 6250 et. seq.) or other applicable state or federal laws. For clarity, "Public Information" is also interchangeable with "Public Data".

- oo) "**Statement of Work**" or ("SOW") means a document provided by the California Department of Technology (CDT) which defines the timeline, and specifies the objectives, Services, Deliverables and tasks that the Contractor is expected to provide or perform, the responsibilities and expectations, indicating the type, level and quality of Service that is expected, all of which form a contractual obligation upon the Contractor.
- pp) "**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.
- qq) "**Telecommunications**" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- rr) "**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

These General Provisions - electronic Vendor Application of Qualifications (eVAQ) #19-001 are part of the Contract entered into effective as of the Effective Date of the agreement between the State and Contractor.

3. 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), 3.5 (commencing with Section 12120), 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), or PCC Section 6611, then Contractor's 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 subsection 3.a) above, Contractor's quotation or proposal is deemed a

firm offer and this Contract document is the State's acceptance of that offer.

- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.

4. CONTRACT EFFECTIVE DATE

Awarded Contracts signed by the Contractor shall not become effective until signed by the California Department of Technology ("Effective Date").

For CALNET Contracts, an awarded Contractor shall not begin implementation, i.e., selling Services or accepting the Customer orders until the CALNET Contractor Management and Organization (CALNET CMO) authorizes the Contractor in writing to do so, and naming a specific implementation start date for such activities. The CALNET CMO reserves the right to delay a Contractor's implementation of sales and Services of an awarded Contract to the extent determined by the CALNET CMO to be in the State's interest.

For all other Telecom Contracts the Contract Effective date is when the California Department of Technology approves the Contract, unless otherwise specified in the Statement of Work.

5. IRREVOCABLE OFFER

From the date that Contractor executes this Contract ("Signing Date") until such time as the State executes this Contract and Statewide Technology Procurement 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 Department of Technology, as provided in Section 4 (Contract 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.

6. 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.

7. SEVERABILITY/SURVIVAL CLAUSE

Contracts shall automatically incorporate by reference all of the eVAQ terms and conditions which shall apply for the duration of the Contract. Vendors may utilize the eVAQ terms and conditions for multiple solicitations provided the eVAQ is valid and applicable. If any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect.

8. 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.

9. APPLICABLE LAW

- a) This Contract shall be governed by and interpreted in accordance with the laws of the State of California: venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. To the extent Services in this Contract are subject to the jurisdiction of the California Public Utilities Commission (CPUC), the CPUC shall have jurisdiction over this Contract, and Contract and related Services may be subject to modification from time to time as the CPUC may so order in the exercise of their lawful jurisdiction. The United Nations Convention on Contracts for the International Sale of Equipment shall not apply to this Contract.
- 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 and any applicable rules, regulations and decisions of the Federal Communications Commission (FCC) and the CPUC.

10. COMPLIANCE WITH STATUTES AND REGULATIONS

- a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that: (i) when substantial principles of government or public law are involved, when litigation might create precedent

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affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of Technology shall have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this Contract falls within the scope of Government Code Section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought pursuant to this Section.
- f) 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 Federal Communications Commission (FCC) and/or the California Public Utilities Commission (CPUC). To the extent applicable, Contractor shall make the appropriate FCC filing in a timely manner with the rates being effective consistent with FCC requirements. Under the CPUC, 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.
- g) 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.

- h) Should the filings described herein not adequately address an issue or fail to address an essential fact, Contractor's tariffs or published service guides (or other published corporate pricing if Contractor is not required to file tariffs) (collectively the "Contractor's Published Pricing"), if applicable, shall be utilized as a basis for providing continuity of Service, and Service offerings, pending subsequent mutual agreement and modification of this Contract by the parties; provided, however, if the parties are unable to reach such mutual agreement within a reasonable period of time and good faith effort, then the State may take action pursuant to the terms and conditions of this Contract, including but not limited to terminating the affected Service(s) without penalty, or continuing Service at the Contractor's Published Pricing.

11. CONTRACTOR'S POWER AND AUTHORITY

- a) 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.
- b) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of Technology 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. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, the 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, the following order of precedence shall apply:

- a) All regulatory filings pursuant to the terms and conditions of this Contract.
- b) The eVAQ inclusive of the General Provisions eVAQ #19-001. In the instances provided herein where the General Provisions eVAQ #19-001 permit modifications in the SOW, the language in the SOW shall take precedence over the replaced eVAQ or General Provisions eVAQ #19-001 paragraphs.
- c) The Contractor's eVAQ, and any attachments thereto.

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- d) The STD 213 Standard Agreement or any related ordering documents such as STD 65, as applicable, and any amendments thereto, issued as a result of a solicitation (e.g., IFB, RFQP and RFP).
- e) Statement of Work (SOW) contained in the solicitation documentation in the following order of precedence:
 - i. The specifications and requirements contained in the solicitation documentation (e.g., the SOW, including the Business and Technical Requirements, and Appendix A, Glossary).
 - ii. The State approved Catalog A and any amendments thereto (for CALNET Contracts only).
 - iii. The Contractor's response to meet or exceed the specifications and requirements in the solicitation as stated in their bid or proposal. (The parties acknowledge and agree that silence in the bid or proposal with respect to a particular solicitation specification or requirement equals consent by the Contractor.)
- f) Appendix E, Authorization to Order (ATO) form for Services to local government jurisdictions (for CALNET Contracts only).
- g) Form 20, Telecommunications Service Request or equivalent, and Work Authorizations.
- h) The Scope of Work (i.e. agreement between the Contractor and Customer per the Service order) as may be issued by authorized Customers, including in the following order of precedence:
 - i. The specifications and requirements contained in the Scope of Work.
 - ii. The Contractor's response to meet or exceed the specifications and requirements in the Scope of Work as stated in their offer. (The parties acknowledge and agree that silence in the offer with respect to a particular Scope of Work specification or requirement equals consent by the Contractor.).

- iii. All other documents incorporated in the Contract by reference (e.g. End User License Agreements, Acceptable Use Policies, Service guides, product specific terms and conditions).

15. PACKING AND SHIPMENT

- a) All Equipment 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 Equipment shipped; and appropriate evidence of inspection, if required. Equipment for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the Department of Technology.

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 Technology 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 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, 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 may not be tendered without five (5) days advance written consent of the California Department of Technology (CDT). Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the CDT.

19. SERVICE INTERRUPTIONS

Unless otherwise specified in the Statement of Work, 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 Equipment 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 Statement of Work, and subject to Section 39, Invoices and Payments:

- a) Contractor and its subcontractors shall provide and maintain a quality assurance system acceptable to the State covering Deliverables and Services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three (3) years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance system or other similar business practices directly related to performance of the Contract.
- b) All Deliverables may be subject to final inspection, test and acceptance by the State or its authorized representatives. Deliverables may be subject to inspection, test and acceptance at destination, notwithstanding any payment or inspection at source shall not be considered proof of acceptance by the State.
- 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) The State shall give written notice of rejection of Deliverables delivered or Services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such Services. Such notice of rejection will state the respects in which the Deliverables or Services, do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days of delivery for all purchases, such Deliverables and Services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

22. WARRANTY

- a) Limited Warranty for Services. Unless otherwise specified in the Statement of Work, Contractor warrants that Services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and:
- i. Services will be performed in accordance with the Contract; and
 - ii. All customer support for Services will be performed with professional care and skill.
- b) Duration of Limited Warranty for Services. The limited warranty will be for the duration of State's use of the Services, subject to the following limitations:
- i. Any implied warranties, guarantees, or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
 - ii. The limited warranty does not cover problems caused by the State's accident, abuse or use in a manner inconsistent with

this Contract or any applicable service agreement, or resulting from events beyond Contractor's reasonable control;

- iii. The limited warranty does not apply to components of Software that the State may be permitted to redistribute;
 - iv. The limited warranty does not apply to free, trial, pre-release, or beta services; and
 - v. The limited warranty does not apply to problems caused by the State's failure to meet minimum system requirements.
- c) **Warranty for Software Products.** Any Software products provided by the service provider shall be covered by the developer's consumer warranty that will be passed to the Customer.
- d) Contractor shall apply anti-malware controls to the Services to help avoid malicious software gaining unauthorized access to State Data, including malicious software originating from public networks. Such controls shall at all times equal or exceed the controls consistent with the industry standards for such data, but in no event less than the controls that Contractor applies to its own internal corporate electronic data of like character.
- e) Unless otherwise specified elsewhere in the Statement of Work:
- i. The Contractor does not warrant that any Services provided hereunder are error-free or that it will run without immaterial interruption; and
 - ii. The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from a modification made by the State, unless such modification is approved or directed by the Contractor;
 - iii. Use of Services in combination with Software or Services other than as specified by the Contractor, or
 - iv. Misuse by the State.

- f) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or Services.
- g) **Equipment Warranty.** In addition to the warranties set forth herein, any Equipment provided by the Contractor shall be covered by the manufacturer's consumer warranty that will be passed through to the Customer. The Contractor shall provide manufacturer's warranty information (terms and conditions, provider, etc.) to the Customer with all Equipment at the time of delivery. The Contractor shall work with the Customer to facilitate Equipment replacement.
- h) **Warranty for other Deliverables.** The Contractor warrants that Deliverables furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a detailed design document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that its Deliverables provide all material functionality required thereby. Unless otherwise specified in the Statement of Work, the duration of warranty shall begin on the delivery date of the Deliverables in question and end one (1) year thereafter.
- i) Except as may be specifically provided in the Statement of Work, and subject to General Provisions eVAQ #19-001, Section 52, Continuing Standards of Performance for Contractor Services, for any breach of the warranties provided in this Section, the State's exclusive remedy and the Contractor's sole obligation will be limited to: (i) re-performance, repair, or replacement of the nonconforming Deliverable or Equipment (including without limitation an infringing Deliverable), or (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable, Equipment or Service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables, Equipment or Services of

equivalent capability, function, and performance. The payment obligation in subsection (j) and (ii) above will not exceed the limits on the Contractor's liability set forth in the General Provisions eVAQ #19-001, Section 30, Limitation of Liability.

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

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 or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

24. INSURANCE

Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under the Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificate(s) is insufficient for this purpose. When performing work on State owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.

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) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
- c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES (EXCEPT FOR COMMERCIAL SOFTWARE AND EQUIPMENT ACCEPTED PRUSUANT TO SECTION 21 ABOVE) SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

26. TERMINATION FOR THE CONVENIENCE OF THE STATE

- a) The CDT may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Deputy Director, Statewide Technology Procurement, or designee, determines that a termination is in the State's interest. The Deputy Director, Statewide Technology Procurement, or designee, shall terminate by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date thereof, such date not to be less than thirty (30) days.

- b) After receipt of a Notice of Termination, and except as directed by the CDT, 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 termination settlement proposals arising from the termination of subcontracts.
- c) After termination, Contractor shall submit a final termination settlement proposal to the Customer in the form and with the information prescribed by the CDT. The Contractor shall submit the proposal promptly, but no later than ninety (90) days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
- d) The Contractor and the CDT may agree upon the whole or any part of the amount to be paid as requested under subsection c) above.
- e) Unless otherwise specified in the Statement of Work, upon the termination for convenience, the CDT shall have no obligation to pay the Contractor any amount other than in accordance with the terms of the this Contract the agreed upon price for Deliverables or Services accepted or retained by the Customer 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 CDT, calculated using Generally Accepted Accounting Principles.

27. TERMINATION FOR DEFAULT

Unless otherwise specified in the Statement of Work:

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- a) The CDT may, subject to the clause titled "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 any of the other provisions of this Contract, or any contract with a Customer.
- b) The CDT's right to terminate this Contract under subsection 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 CDT's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
- c) If the CDT terminates this Contract in whole or in part pursuant to this Section, it may acquire under terms and in the manner the CDT considers appropriate, Deliverables or Services similar to those terminated, and the Contractor will be liable to the CDT for any excess costs for those Deliverables and Services, including without limitation costs third party vendors charge for the Deliverables, including any Equipment (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 CDT may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the CDT, as directed , any: completed , partially-completed or accepted Deliverables or pre-paid Services, and, subject to provisions of subsection e) below, related to the terminated portion of this Contract. Nothing in this subsection d) will be construed to grant the CDT rights to Deliverables or Services that it would not have received had this Contract been fully performed. Upon direction of the CDT, the Contractor shall also protect and preserve property in its possession in which the CDT has an interest.
- e) The CDT shall pay Contract price for completed, partially-completed or accepted Deliverables and items the CDT requires the Contractor to transfer under Section d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and CDT shall attempt to agree on the amount of payment for

materials delivered and accepted by the Customer for the protection and preservation of the property; provided that where the Contractor has billed the Customer for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The CDT or Customer may withhold from these amounts any sum it determines to be necessary to protect the CDT or Customer against loss because of outstanding liens or claims of former lien holders.

- f) If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the CDT.
- g) Both parties, CDT and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by each party.
- h) The rights and remedies of the CDT 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

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) Except as provided in Section 21 and subject to Section 22 above, 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, including providing the State with the appropriate instructions for returning the Equipment, 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 the 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 which Contractor agreed to supply shall be borne and paid for by Contractor, (but subject to the clause titled "Limitation of Liability").
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

30. LIMITATION OF LIABILITY

- a) Except as may be otherwise approved by the Department of Technology, Deputy Director, Statewide Technology Procurement or Deputy Chief Technology Officer, or designee, and subject to subsection b) below, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this subsection a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or Service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to any liability under Section 10, Compliance with Statutes and Regulations, (ii) to liability under Section 50, Patent, Copyright, and Trade Secret Indemnity, 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; (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action, or (v) to direct costs of mitigation, remediation and/or notification obligations resulting from any data breach.

- c) 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 subsection b)(i), b)(ii), or b)(iv) above.

31. DE MINIMIS DELIVERABLE OR SERVICE REQUESTS (specific to CALNET contracts)

At any time during the term, if the State determines that such Deliverables or Services requested were not provided with the required items/Services for the Deliverable or Service to perform in accordance with the intended specification and parties cannot agree as to whether such Deliverables or Services are included as part of the Deliverables and Services offered by the Contractor and the financial impact on the Contractor of satisfying such request is less than Twenty-Five Thousand Dollars (\$25,000.00) and to the extent that the cumulative and aggregate amount of all such Deliverables or Services provided does not result in a financial impact on the Contractor in excess of Section 30, Limitation of Liability, during any contract year, such failure to agree shall (1) not be deemed a disagreement; (2) such request shall be deemed a request for Services; and (3) all such Services, products, or resources shall be provided to the State by the Contractor at no cost in accordance with the terms of this Contract.

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 (as applicable) 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, Statewide Technology Procurement 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 at the [California Fair Political Practices Commission website](#).

33. ACCESS TO FACILITIES/FACILITIES ACCESS POLICIES (specific to CALNET contracts)

The State acknowledges that the Contractor or its employees and/or subcontractors (collectively the "Contractor Personnel") 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.
- c) 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:
 - i. Provide a copy of; or

- ii. A URL link to such Standard Access Agreements to Contractor in advance of any Contractor Personnel accessing the State Locations; or
- iii. 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 eVAQ 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

Unless otherwise specified in the Statement of Work:

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 eligible employees, departments, agencies, local governmental entities, and consultants of the State of California, through a website, Internet Service or otherwise, provided that the fees are established on a cost recovery basis and not for profit.

36. PRICE GUARANTEE PERIOD

The Contractor shall guarantee all pricing must be at or below market value for the entire Contract Term. Any adjustment or amendment to the original contract will not be effective unless a written amendment is approved by the State and the Contractor. The State will be given the immediate benefit of any decrease in the market, product set, or allowable discount.

Additionally, the parties may negotiate Individual Price Reductions (IPR) as described herein or the SOW Business Requirements, as applicable.

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

- a) Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at 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 save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, Deliverables, Services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (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) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of Technology shall 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. INVOICES & PAYMENTS

Unless otherwise specified in the Statement of Work:

a) Invoices

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

b) Budget Contingency Clause

This Contract is valid and enforceable only if: (a) sufficient funds are made available by the State Budget Act of the appropriate State Fiscal Year(s)

covered by this Agreement for the purposes of this program; and/or (b) sufficient funds are made available to the State by the United States Government for the Fiscal Year(s) covered by this contract for the purposes of this program.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State other than as contained herein, or offer an Agreement amendment to the Contractor to reflect the reduced amount, as provided in Section 25, Termination for Non-Appropriation of Funds.

c) Recoup Cost Clause

For purpose and clarity and avoidance of confusion under this contract, the State is granted the limited right to make products and Services contemplated herein available to a) other State of California governmental entities and b) other municipal or local governments within the state of California. The State shall be authorized to establish a fee-based access to applications, data, documentation or Services provided under this contract, provided that the fees are established on a cost recovery basis and not for profit.

d) Acceptance Payments

Acceptance procedures to initiate payments will be as set forth in the Customer's Scope of Work and/or Ordering Documents. A Customer shall be deemed to have accepted each Service either (i) upon its issuance of written notice of such acceptance or (ii) thirty (30) calendar days after the Service activation date, excluding delays due to shipping time, or acceptance testing period (collectively Acceptance), unless otherwise specified in the Scope of Work or at or before the time the Customer gives the Contractor written notice of rejection or requests additional time. Any notice of rejection will explain how the Deliverable or Service fails to substantially conform to the functional and performance specifications of the Statement of Work and the Customer's Scope of Work. The Contractor will, upon receipt of such notice, investigate the reported deficiency and exercise reasonable best efforts to remedy it promptly. The Customer, in its sole discretion, will have the option to re-perform the acceptance test. If

the Contractor is unable to remedy the deficiency within thirty (30) calendar days of notice of rejection, the Customer shall have the option of terminating for default the portion of the Contract that relates to such Deliverable or Service, or terminating this Contract in its entirety for default; and/or the State or the Customer shall have the option of terminating the Service order or accepting substitute Deliverables or Service or other remedy provided in the SOW Business Requirements. No payment will be due before Acceptance thereof, except to the extent required by progress payment terms and/or progress payment requirements in the Scope of Work, if applicable.

40. 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: (a) the date of acceptance of Deliverables or performance of services; or (b) receipt of an undisputed invoice, whichever is later.

41. SERVICE TAXES, FEES, SURCHARGES, AND SURCREDITS

- a) The State government Customers of this Contract shall be subject to service taxes, fees, surcharges, and surcredits that are mandated by the government of the State of California (including the CPUC), and the federal government (including the FCC), as applicable. The Non-State Customers shall be subject to Service taxes, fees, surcharges and surcredits mandated by the State and federal governments, and also as mandated by California local government jurisdictions and political subdivisions, as applicable. Mandates in effect at the time of award and as hereafter mandated may be recovered from Customers of the applicable Service.
- b) The CDT reserves the right to verify, and if necessary, challenge the Contractor and the applicable regulatory authority, the application by the Contractor of Service taxes, fees, surcharges, and surcredits referred to in subsection a) above. Should the CDT consider the application of

such items to be inappropriate, the CDT and the Contractor shall meet and confer regarding the applicability of such items. If thereafter a dispute exists regarding the proper application of such items, the parties may resolve such disputes in accordance with Section 54, Disputes. Either party may seek guidance or clarification from the applicable regulatory authority regarding the appropriate application of such items. If the application of such items is deemed inappropriate by the regulatory authority, the Contractor shall cease and/or revise the application of such items and, if appropriate, issue retroactive credits to the impacted Customer(s).

- c) All charges under this Contract are exclusive of applicable federal, state and local sales, use, excise, utility, and gross receipt taxes, other similar tax-like charges and surcharges. The Contractor will provide the CDT the tax exemption certificates that comply with the requirements of the Internal Revenue Code and Regulations (i.e., see Internal Revenue Regulations Section 49.4253-11 and IRS Publication 510 or their current equivalent versions). The Contractor agrees to exempt all Entities from federal excise taxes and E-9-1-1 taxes as of the date the Contractor receives a duly authorized and valid exemption certificate. The Contractor agrees, for the purpose of federal exemption, that the CDT will act as the authorized agent for this Contract in submitting exemption requests on behalf of all Entities.
- d) The State of California government Customers are exempt from Service taxes, fees, surcharges, or surcredits imposed by local government and political subdivision entities, as applicable. The Contractor shall not apply Service taxes, fees or surcharges imposed by local governments and political subdivisions to the State as applicable. The State shall not be required to submit certificates of exemption in order to claim or confirm local government and political subdivision exemptions.

42. NEWLY MANUFACTURED EQUIPMENT

All Equipment furnished under this Contract shall be newly manufactured Equipment or certified as new and warranted as new by the manufacturer; used or reconditioned Equipment are prohibited, unless otherwise specified.

43. CONTRACT MODIFICATION

- a) 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.
- 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.

44. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to 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 obligation of confidentiality, is independently developed by Contractor outside the scope of this Contract and without reference to the State's confidential data information, or is rightfully obtained from third parties without an obligation of confidentiality or is required to be disclosed

by subpoena or other legal process, limited to the extent required by the terms of such subpoena or other legal process.

- a) The Contractor shall not use or share CPNI for any activity other than as permitted by applicable law and with the approval of the Customer. The Contractor shall provide reasonable written notification to the Customer prior to the disclosure of CPNI, except where expressly authorized by the Customer. Such notification shall indicate the reason for the CPNI disclosure. A description of the Contractor's process for obtaining the Customer's authorization to release CPNI shall be provided upon the State's request.

45. NEWS RELEASES

Any news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of Technology.

46. SOFTWARE LICENSE

Unless otherwise specified in the Statement of Work:

Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive right, to the use of Software products in this Contract. The State may use the Software products only in connection with the use of the Service and according to the licensing terms specified in a Statement of Work or otherwise in the Contract. Acceptance of the Software (including any third-party Commercial Software/End User License Agreement (EULA) associated with Services sold under this Contract will be governed by the terms and conditions of this Contract.

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

- a) The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished by Contractor hereunder are provided for the State's exclusive use, for the purposes of this Contract only. All such proprietary data shall remain the property of Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of Contractor, subject to the California Public Records Act.
- b) The State will insure, 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 in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

48. FUTURE RELEASES

Unless otherwise specifically provided in the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the Contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State's option at a price no greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.

49. ENCRYPTION & AUTHORIZATION KEYS

Upon initiation of Service, Contractor, where applicable, shall provide all encryption and authorization keys required by the State to operate or access the Software products, Services or Equipment.

50. 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 Deliverable or Service provided hereunder. With respect to claims arising from any Deliverable including Equipment or Software manufactured by a third party and sold by Contractor, pursuant to this Contract, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section. The provisions of the preceding sentence apply only to third party Equipment 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 subsection 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: (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose

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liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of Technology will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.

- b) Should the Deliverables and Services 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: (i) to procure for the State the right to continue using the Deliverables and Services, or (ii) to replace or modify the same so that they become non-infringing, or (iii) to discontinue the infringing Service and refund any amount paid by the State for such Service to the date when infringement occurred. If none of these options can reasonably be taken, or if the use of such Deliverables and Services by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables and Services. If in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other Deliverables or the use of Services acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- i. The combination or utilization of Deliverables furnished hereunder with Equipment, Software, or devices not made or furnished by the Contractor; or
 - ii. The operation of Equipment furnished by the Contractor under the control of any operating Software other than, or in addition to, the current version of Contractor-supplied operating Software; or
 - iii. The modification 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.
- d) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation, hardware, or maintenance of computer Software in violation of copyright laws.

51. EXAMINATION AND AUDIT

Unless otherwise specified in the Statement of Work:

- 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 or other lawful process (e.g. in response to a subpoena).
 - i. 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.
 - ii. If an audit reveals that Contractor has overcharged the State or Customers for Service(s) during the period to which the audit relates, then Contractor shall promptly refund such overcharges to

the State or Customer 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 Customer 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.

- iii. 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 this Section, the State or any auditing body or its designated representative, agrees that it will not exercise the audit rights described in this Section 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 may be conducted at any time and upon reasonable notice.
 - 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 designees will have the right to obtain, copy and review all billing records of public or local government entities purchasing under this Contract, provided that notice of such rights is included within the Authorization to Order (ATO) 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.

52. CONTINUING STANDARDS OF PERFORMANCE FOR CONTRACTOR SERVICES

Unless otherwise specified in the Statement Work:

- 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 Contract 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 or 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 and Services for which the Statement of Work specifies a particular service level, Contractor shall provide all Deliverables, and Services at levels at least in accordance with such service levels.

d) Remedies for Unacceptable Levels of Performance

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The remedies provided in this Section shall be in addition to any remedies provided in Section 22, Warranty. 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 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, 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 63, Liquidated Damages or the exercise of Section 64, 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.

53. AVAILABILITY

If at any time after award of this Contract, the Contractor becomes unable to provide any part of its contracted Services, the Contractor must, within ten (10) Business Days, notify the State in writing to seek a potential resolution, and if appropriate, propose a replacement of those Services which it can no longer provide. The replacement must be at no cost to the State, and shall be equivalent to or exceed the proposed Service which was previously offered and accepted by the State in the Contractor's Final Bid or awarded Contract.

The State reserves the sole right to determine if the proposed replacement is acceptable. An inability to provide a mandatory requirement may be grounds for Contract termination in whole or in part.

54. DISPUTES

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

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Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have thirty (30) days after receipt of Contractor's written demand invoking this Section 54, Disputes, to render a written decision. If a written decision is not rendered within thirty (30) days after receipt of the Contractor's demand, it shall be deemed a decision adverse to the Contractor's contention.

- c) If the Contractor is not satisfied with the decision of the contracting Department Director or designee, the Contractor may appeal the decision, in writing, within fifteen (15) days of its issuance (or the expiration of the thirty (30) day period in the event no decision is rendered by the contracting department), to the Department of Technology, Deputy Director, Statewide Technology Procurement or Deputy Chief Technology Officer, or designee, who shall have thirty (30) days to render a final decision. If the Contractor does not appeal the decision of the contracting Department Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Government Claims Board, for failure to exhaust Contractor's administrative remedies.
- d) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract Service in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.
- e) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department of Technology, Deputy Director, Statewide Technology Procurement or Deputy Chief Technology Officer, or designee if an appeal was made. If the Department of Technology Deputy Director or designee fails to render a final decision within thirty (30) days after receipt of the Contractor's appeal for a final decision, it shall be deemed a final decision adverse to the Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 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.

- f) For disputes involving purchases made by the Department of Technology, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in subsection a) above. The Department Director or designee shall have thirty (30) days to render a final decision. If a final decision is not rendered within thirty (30) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention. The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 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.
- g) The dates of the decision and appeal in this Section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

55. STOP WORK

- 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 forty-five (45) 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 forty-five (45) 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.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, 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 sixty (60) days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this clause.

56. 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, 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.

57. 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.

58. 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.

59. 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.

60. 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 Deliverables 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.

61. 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.

62. 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.).

63. LIQUIDATED DAMAGES

Unless otherwise specified in the Statement of Work:

- a) General Liquidated Damages (including but not limited to performance deficiency charges or service level agreements) are intended to encourage timely delivery of Deliverables and the provision of reliable and responsive Services by the Contractor. The purpose of this Liquidated Damages provision is to ensure adherence to the requirements of the Contract and to set an amount in advance of contractual non-compliance to compensate CDT or the Customer for damages that are impractical or extremely difficult to estimate, but which would be sustained by CDT or the Customer in the event the Contractor fails to

perform Services as agreed. The Liquidated Damages are intended to be a reasonable estimate of the damages and costs the CDT or the Customer would sustain as a result of noncompliance to the terms of the Contract. These are not punitive. CDT and the Contractor, therefore, agree that in the event the Contractor fails to perform certain agreed upon Services in a timely manner as specified in the Contract or service levels CDT or the Customer may assess such amounts set forth in the Statement of Work as Liquidated Damages, and not as a penalty.

- b) Payment of Liquidated Damages. CDT or the Customer may deduct Liquidated Damages from Contractor's invoices and/or may assess such Liquidated Damages by a separate invoice at any time during the Contract or within thirty days after the contractual period ends. The CDT or the Customer will notify the Contractor in writing of any claim for Liquidated Damages pursuant to this Section on or before the date the State deducts such sums from money payable to the Contractor. If CDT or the Customer imposes Liquidated Damages, upon notification by CDT or the Customer, the Contractor shall show the Liquidated Damages as a subtracted item from its invoice(s). The Contractor shall also be liable for actual damages above Liquidated Damages payment. CDT or the Customer may withhold the amount of the Liquidated Damages from any other money owed by the Contractor, in addition to any other remedies available to CDT or the Customer. Imposition of Liquidated Damages does not constitute a waiver of the CDT or the Customer's right to issue a Stop Work Order, as provided in Section 55, Stop Work, to terminate the Contract pursuant to Section 27, Termination for Default or to exercise its rights under the service level agreement terms. In the event of such a termination, the CDT or the Customer shall be entitled at its discretion to recover actual damages caused by the Contractor's failure to perform its obligations under this Contract.

64. SET-OFF RIGHTS

Notwithstanding anything to the contrary in this Contract, and in addition to the other rights of the CDT and/or the applicable Customer hereunder with respect to disputing invoices or withholding amounts, the CDT 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 CDT and/or the applicable Customer in good faith to be owed by Contractor to the CDT and/or the applicable Customer pursuant to any of the provisions of this Contract; and (ii) any and all amounts that the CDT 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 CDT and/or applicable Customer, the CDT 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 CDT to seek equitable resolution or exercise its rights under applicable law.

65. CONTRACTOR PERSONNEL

- a) When Contractor needs access to Customer's premises to perform the required Services under this Contract, Contractor personnel shall perform their duties during Customer's regular work days and normal work hours, except as may be specifically agreed to otherwise by the Customer and Contractor.
- b) The CDT and/or applicable Customer reserves the right to disapprove the continuing assignment of Contractor personnel working on Customer premises. If the CDT and/or applicable Customer exercises this right, and Contractor cannot immediately replace the disapproved personnel, the CDT and/or applicable Customer 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 CDT and/or applicable Customer with regard to assignment of its employees; If a Contractor's employee is unable to perform due to illness, resignation, or other factors beyond Contractor's control, Contractor will make every reasonable effort to provide suitable substitute personnel.
- 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. Except as specifically provided, 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.

66. PROVISIONING OF DELIVERABLES AND SERVICES

The State and Authorized Users may order Deliverables and Services under this Contract by issuing the appropriate Ordering Document form(s) in accordance with the user instructions. The Contractor will not commence provisioning Deliverables or Services for a given Customer until the Contractor receives a complete, signed, accepted, and accurate order form such as a Form 20, Telecommunications Service Request, STD 65, Purchasing Authority Purchase Order, or equivalent. The order form may be accompanied by an Authorization to Order (ATO) and/or a Work Authorization as applicable.

67. UNANTICIPATED TASKS

Unless otherwise specified in the Statement of Work:

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.

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 will be employed.

For each item of wholly unanticipated work not specified in the Statement of Work, a Work Authorization will be prepared.

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

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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.

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.

All Work Authorizations must be in writing prior to beginning work and signed by Contractor and the State.

The State has the right to require Contractor to stop or suspend work on any Work Authorization pursuant to the provisions of Section 55, Stop Work, of this Contract.

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.
- ii. 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.

68. NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY

Unless otherwise specified in the Statement of Work:

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 Customer in procuring use of Contractor Services consistent with that provided under this Contract to meet emergencies. The price and service levels for such compatible Services shall be reasonably set by mutual agreement of the parties and shall be no greater than the Contract rates and at service levels substantially similar to those set forth in the Contract.
- b) The Customer, at its option, may accept or reject the use of emergency equipment.

69. NON-EXCLUSIVE AGREEMENT

Nothing in this Contract shall be construed as a requirements contract or interpreted as preventing the CDT from obtaining, consistent with CDT 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 CDT's right or ability during the Term of this Contract to increase or decrease its demand for Services hereunder. To the extent the CDT, consistent with CDT 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 CDT 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.

70. CHARGES

Unless otherwise specified in the Statement of Work:

Contractor agrees that the Customers 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 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.
- b) Invoices for all contracted Services shall not be subject to late payment charges prior to the Contract defined due date.
- c) Contractor agrees that the charges shall comply with Section 78, Most Favored Nation.

71. ADMINISTRATIVE FEE

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

- a) Contractor agrees to pay the CDT an administrative fee as required and established by the CDT. The administrative fee shall be used to fund only the CDT activities, or the CDT funded CDT offices and activities. The CDT'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 CDT shall be entitled to an administrative fee increase in order to achieve cost recovery of CDT program operations. The administrative fee will be based on the CDT costs to manage this Contract as well as perform other mandated functions and may be adjusted annually or as otherwise deemed necessary by the State, based on fiscal year projected requirements, upon reasonable notice to Contractor. Administrative fees shall be determined upon contract award. Contractor will bill, collect and remit a Contract administrative fee to CDT. The administrative fee may be applied to any and all contracted items. This fee shall appear separately on the Customer's invoice. The administrative fee reimbursement amount shall appear on the monthly detailed fiscal management reports referenced in this Contract to be delivered to the CDT.

- b) Contractor shall bill, collect and remit a check or electronic funds transfer notification based on the amount billed for this administrative fee to the CDT on a monthly basis at no additional cost. The administrative fee shall be paid to the CDT 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 CDT when due in accordance with the Statement of Work.
- c) Contractor agrees to provide monthly fiscal management reports identifying Services in accordance with this Contract.

72. 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:

- a) 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,

- b) Any warranty or representation expressly made by Contractor concerning the characteristics of the items described in a) above, made in any publication, drawings, or specifications accompanying or referred to in the Contract, and
- c) 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.

73. 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 Customers. 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 Equipment 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.

74. AVAILABILITY OF REFRESHED TECHNOLOGY AND ADDITIONAL SERVICE ITEMS

- a) Contractor shall evolve, supplement, and enhance the Equipment 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 Equipment 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").

- b) When such Enhancements substitute, replace, modify or improve Equipment 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.
- c) If Enhancements do not substitute, replace, modify or improve Equipment 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 Equipment or Services hereunder.
- d) 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/State's designated authority; Enhancements must not be added to this Contract. Consistent with and without limiting anything set forth in Section 69, Non-Exclusive Agreement, nothing in this Section shall prohibit the State from pursuing or obtaining

- the same or similar Enhancements with or from other providers or requiring that certain Enhancements may only be obtained from certain providers.
- e) Contractor agrees that Enhancements must not be added to the Contract at the request of any local government or a State agency unless otherwise authorized by the CDT.

75. PRICING AND SERVICE REVIEW

For the purpose of maintaining competitiveness throughout the Contract term, the Contractor agrees to a joint review of its pricing and Service functionality at the State's request, no more frequently than annually, to ensure the State and its Customers will receive cost-competitive and technologically competitive Services. The State shall notify the Contractor in writing of any pricing adjustments and Service related issues as a result of the analysis. The Contractor shall have 15 calendar days to confirm and respond to the State's request for pricing reductions or other Service related changes. The effective date for the mutually agreed rate(s) shall be 15 calendar days from written notification by the State. Once an amendment has been issued, the Contractor shall issue rebates or billing credits back to the effective date of the new rate(s). The Contractor agrees that requests for amendments to this Contract to reduce statewide rates may be submitted throughout the term.

76. SERVICE COSTS

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

77. INDIVIDUAL PRICE REDUCTIONS (specific to CALNET)

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

78. “MOST FAVORED NATION” STATUS OF STATE (specific to CALNET)

Unless otherwise specified in the Contract, the Contractor agrees to give CDT the “Most Favored Nation” status, in that the Contractor agrees that no other similarly situated public customer of the Contractor or any of its Affiliates will receive rates for a substantially similar Service, or suite of Services, offered under substantially similar terms and conditions that are lower than the statewide rates provided hereunder when the volume of business from the other public customer is equal to or less than the volume of the business delivered under this Contract. The Contractor agrees to promptly bring to the CDT’s attention instances in which other public customers of the Contractor or any of its Affiliates may receive lower rates for substantially similar Services. For comparison purpose, all rates used for comparison shall not include administrative fees, service taxes, fees, surcharges, or surcredits equivalent to those of Section 71, Administrative Fee, or Section 41, Service Taxes, Fees, Surcharges, and Surcredits. If the Contractor or its Affiliates offer lower rates to any other public customer for the same or a substantially similar Service, or suite of Services, offered under substantially similar terms and conditions, the Contractor shall adjust the Contract rates prospectively to match or beat such rates. If the Contractor offers a bundled package of Deliverables and/or Services under substantially similar terms and conditions to other public customers at a rate lower than the rate(s) charged for such Deliverables and/or Services provided under this Contract, CDT reserves the right to amend the Contract to add a similarly bundled package of Deliverables and/or Services at such lower rate. At the end of each Contract year, an executive level officer

with authority to represent the Contractor shall certify in writing to CDT that the Contractor has complied with this provision. If the Contractor is not in compliance with this Section, the Contractor and CDT shall make adjustments and/or payment as necessary and described Section 63, Liquidated Damages, or Section 75, Pricing and Service Review, as applicable. Nothing herein shall be construed to require the Contractor to offer, provision, or sell Services in a manner that conflict with applicable laws or regulations.

79. FEDERAL UNIVERSAL SERVICE FUND

Federal Grant programs are available to schools, libraries, government run healthcare facilities and other eligible Customers under the Universal Service Fund. To the extent such programs are applicable to the Services under this Contract, as determined by CDT, 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 requests and invoicing; and
- d) Ensure that CDT has pre-approved the use of Contract Services by Customers otherwise qualified for the Federal Universal Service Fund.

80. EXISTING EQUIPMENT & TITLE TO EQUIPMENT

- a) The Contractor agrees to reasonably accommodate its Customers and utilize existing Equipment. The Contractor's proposed Services shall reasonably accommodate the use of such existing Customer Equipment.
- b) Title to Equipment, accessories, and devices provided under this Contract shall not vest in the Customer, unless such items are purchased by the Customer. All devices and accessories furnished by Contractor hereunder, except those purchased by the Customer, shall accompany the Equipment when returned to Contractor.

81. 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.

82. MIGRATION

Unless otherwise specified in the Contract, Contractor shall prepare and deliver to CDT, for CDT'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 CDT, Contractor shall design the Migration-In Plan to use a phased migration strategy.

83. DISENTANGLEMENT (MIGRATION-OUT)

Unless otherwise specified in the Statement of Work:

- a) Term Migration-Out shall be synonymous with Disentanglement. The Migration-Out shall begin on the earlier of the following dates, as applicable, the "Migration-Out Commencement Date": (1) as elected by the State, up to sixty (60) calendar days prior to the end of the Category or Subcategory Contract Term that the State has not elected to extend pursuant to Section 4, Contract Effective Date or has already extended fully as permitted under this Section; or (2) the date a Notice of Termination is delivered pursuant to Section 26, Termination for the Convenience of the State, or Section 27, Termination for Default; or (3) the State's election pursuant to Section 69, Non-Exclusive Agreement, to obtain 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, including other Category or Subcategory Contractors, or to provide the same to

itself. The Contractor shall provide Migration-Out Services until it has completed the obligations of this Section.

The Contractor's obligation to continue to provide the affected Services shall continue until the earlier of (i) completion of a migration to a new Service provider as provided in this Section, or (ii) eighteen (18) months after the effective date of any termination or expiration. During Migration-Out, the Contractor shall continue to provide Service(s) in a manner consistent with the Contractor's provision and performance of such Service(s) during the period such Service(s) were provided to the State hereunder.

- b) Subject to the performance by the State and any subsequent provider of similar Services, the Contractor shall cooperate fully with the State and third parties and shall take all actions requested by the State or as necessary to accomplish a smooth, complete conversion of responsibility for the Services being terminated from the Contractor to the State, or to any replacement provider designated by the State (a "Migration-Out"), with no material interruption of, or adverse impact on, the State in any way, including on the Services. In the event the State elects to terminate any Service (but not all Services in the aggregate) pursuant to the terms hereof, the Contractor shall perform its Migration-Out obligations hereunder to the extent applicable to the Service or Services being terminated. The Contractor's obligations hereunder regarding the collection and payment to the California Department of Technology of administrative fees shall continue throughout Migration-Out.
- c) If the State determines that the Contractor has not complied, or is unlikely to comply, with Migration-Out requirements identified in the Migration-Out Plan, and such non-compliance was a direct result of the Contractor, subcontractor or supplier, and not due to any third party or situations outside the control of the Contractor, as determined by the State, the State may give written notice to the Contractor of non-compliance. After such notice, the Contractor shall provide to the State all necessary additional Contractor personnel to accelerate performance as may be required or necessary to timely achieve compliance or, if the Contractor has already failed to comply, achieve compliance within a re-adjusted time frame established by the State. The Contractor shall have seven (7) calendar days, or longer if agreed to by the State in writing, to achieve compliance.

- d) For each material Migration-Out requirement not completed after the notice of non-compliance period, the State shall be entitled to invoice the Contractor for up to \$2,000 per day for each Customer affected by a material deficiency not to exceed \$10,000 per day for all deficiencies until the Contractor is in material compliance with the requirements of the Migration-Out Plan. The Contractor may exercise its dispute rights under Section 54, Disputes, in the event that the Contractor disagrees with the State's application of this Section; however, pending final resolution of any dispute, the Contractor shall diligently proceed without disruption or delay with the performance of the Migration-Out Plan.
- e) All Migration-Out Services performed by the Contractor during the conversion shall be performed by the Contractor at no additional cost to the State beyond what the State would pay for the Services.
- f) The Contractor shall provide to the State all State data and documentation and other information reasonably requested by the State in connection with the conversion that is sufficient to enable the State, or another reasonably competent service provider, to fully assume the provision of any terminated Services. Except as the Contractor is otherwise required to retain such data under this Contract or by law, the Contractor shall destroy all copies of Customer data not turned over to the State.

The Contractor shall export all artifacts and data to the requesting Customer. The State reserves the right to define export data formats, storage media type, locations to which data is to be delivered, and other special criteria deemed necessary for successful Migration-Out.

- g) To the extent applicable to the Services provided by the Contractor hereunder, the Contractor shall provide to the State as complete and accurate an inventory as is reasonably practicable and such other information regarding such items as the State reasonably requests and is necessary for Migration-Out of Services.

84. REPORTS, DATA AND INVENTORY

The Contractor shall provide all reports required by this Contract or otherwise requested by CDT or Customer. Upon CDT's or Customer's request, at intervals and for any reason related to the Contract and

Services provided under the Contract, during the Contract Term, the Contractor shall:

- a) Provide to CDT or Customer all data and documentation and all other information as requested by CDT or Customer. The export data formats and storage media type will be defined by the CDT or Customer.

85. SUBCONTRACTORS

Unless otherwise specified in the Statement of Work:

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.

86. GOVERNANCE

Unless otherwise specified in the Statement of Work:

- a) Before communicating any interpretation of this Contract that CDT 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 CDT 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 CDT'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.

87. SECURITY AND POLICIES

Unless otherwise specified in the Statement for Work:

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

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 Customer's policies, procedures, rules, and requirements regarding the protection of premises, materials, Equipment, and personnel, as the Customer shall provide (in writing or electronically) in advance to Contractor. Contractor shall, and shall cause Contractor personnel and subcontractors to, fully comply with and abide by all such Security Policies provided in advance to Contractor at all times during the term. Any violation or disregard of such Security Policies by an individual shall be cause for denial of access of such individual to the Customer's property. Contractor shall exercise due care and diligence to prevent any injury to person or damage to property while on the Customer's premises. The

operation of Contractor vehicles or private vehicles of Contractor personnel on the Customer's property shall conform to posted and other regulations and safe driving practices. Vehicular accidents on the Customer's property and involving Contractor personnel shall be reported promptly to the appropriate Customer personnel. Contractor shall, and shall cause Contractor personnel and subcontractors, to not exceed (or attempt to exceed) the level of authorized access, if any, to any networks, computer or electronic data storage systems of the Customer that may be granted during the term for purposes only of performing the services hereunder.

88. DOCUMENTATION

- a) Contractor agrees to provide to the State, at no charge, all Documentation 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.
- b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on the Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

89. 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 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 will be construed to interfere with Contractor's or it's Affiliates' ownership of Pre-Existing Materials.
- c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
- d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by 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.

90. USE TAX COLLECTION

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

91. 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.

92. UNITED STATES (U.S.) BASED SERVICES

Unless otherwise specified in the Statement of Work:

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

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

EXHIBIT E: CLOUD COMPUTING SERVICES SOFTWARE AS A SERVICE (SAAS) SPECIAL PROVISIONS - TELECOMMUNICATIONS (Rev. 05/03/2021)

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CLLOUD COMPUTING SERVICES Software as a Service (SaaS) SPECIAL PROVISIONS - TELECOMMUNICATIONS

(05/03/2021)

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

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

Definitions

- a) **“CALNET”** - The California Network and Telecommunications (CALNET) Program within the California Department of Technology, Office of Technology Services established pursuant to Government Code section 11541.
- b) **“Cloud Software as a Service (SaaS)”** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser (e.g., web-based email). The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- c) **“Cloud Platform as a Service (PaaS)”** - The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- d) **“Cloud Infrastructure as a Service (IaaS)”** - The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems; storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- e) **“Data”** - means any information, formulae, algorithms, or other content that the State, the State’s employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information and metadata which may contain Data or from which the State’s Data may be ascertainable.

CLOUD COMPUTING SERVICES Software as a Service (SaaS) SPECIAL PROVISIONS - TELECOMMUNICATIONS

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- f) **"Data Breach"** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- g) **"Encryption"** - Conversion of plaintext to ciphertext through the use of a Federal Information Processing Standards (FIPS) validated cryptographic algorithm. [FIPS 140-2]
- h) **"Recovery Point Objective (RPO)"** - means the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
- i) **"Recovery Time Objective (RTO)"** - means the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.

Terms

1. SaaS AVAILABILITY: Unless higher standards of SaaS availability are stated in the SOW (or Scope of Work for CALNET Customers), the following minimum standards shall apply:

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

2. DATA AVAILABILITY: Unless higher standards of Data Availability are stated in the SOW (or Scope of Work for CALNET Customers), the following minimum standards shall apply:

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

CLLOUD COMPUTING SERVICES Software as a Service (SaaS) SPECIAL PROVISIONS - TELECOMMUNICATIONS

(05/03/2021)

- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the eVAQ General Provisions – Telecommunications.

3. SaaS and DATA SECURITY:

- a) In addition to the Compliance with Statutes and Regulations provision set forth in the eVAQ General Provisions -Telecommunications, and other applicable contractual provisions, Contractor shall certify to the State:
 - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
 - 2) Compliance with the following:
 - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
 - ii. Current NIST special publications 800-171 Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations. Third party audit results and Contractor's plan to correct any negative findings shall be made available to the State upon request;
 - iii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Third party audit results and Contractor's plan to correct any negative findings and implementation progress reports shall be made available to the State upon request; and
 - iv. Privacy provisions of the Federal Privacy Act of 1974;
 - 3) Compliance with industry standards and guidelines applicable to the SaaS services being provided. Relevant security provisions may include, but are not limited to: Health Insurance Portability and Accountability Act of 1996, IRS 1075, Health Information Technology for Economic and Clinical (HITECH) Act, Criminal Justice Information Services (CJIS) Security Policy, Social Security Administration (SSA) Electronic Information Exchange Security Requirements, and the Payment Card Industry (PCI) Data Security Standard (DSS) as well as their associated Cloud Computing Guidelines.
- b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Contract to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data.
- c) Contractor shall allow the State reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Contract and the State's Data, at no cost to the State.
- d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
- e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by the State.
- f) Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance in writing by:
 - 1) the Agency Information Security Officer, with written notice to the State Chief Information Security Officer, or

CLOUD COMPUTING SERVICES Software as a Service (SaaS) SPECIAL PROVISIONS - TELECOMMUNICATIONS

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- 2) in the absence of an Agency Information Security Officer, the State Chief Information Security Officer.

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

5. DATA LOCATION:

The physical location of Contractor's data center where the Data is stored shall be within the continental United States.

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

7. TRANSITION PERIOD: Unless otherwise stated in the SOW (or Scope of Work for CALNET Customers):

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

8. DATA BREACH: Unless otherwise stated in the SOW (or Scope of Work for CALNET Customers):

- a) Upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification no later than forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor's notification shall identify:
 - 1) The nature of the Data Breach;
 - 2) The Data accessed, used or disclosed;

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

9. DISASTER RECOVERY/BUSINESS CONTINUITY:

- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification no later than twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:
- 1) The scale and quantity of the Data loss;
 - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
 - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
 - 4) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Contract.

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- b) Contractor shall restore continuity of SaaS, restore Data in accordance with the RPO and RTO as set forth in the SLA, restore accessibility of Data, and repair SaaS as needed to meet the performance requirements stated in the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
- c) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.

10. EXAMINATION AND AUDIT: In addition to the Examination and Audit provision set forth in the eVAQ General Provisions - Telecommunications:

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

11. DISCOVERY: Contractor shall promptly notify the State upon receipt of any requests which in any way might reasonably require access to the Data of the State or the State's use of the SaaS. Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency, unless prohibited by law from providing such notification. Contractor shall provide such notification no later than forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the State unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

Understanding and Approach (MS)

ATTACHMENT 14: UNDERSTANDING AND APPROACH

This effort will be complex, requiring diligent coordination between Cal OES, PSAPs, and previously selected vendors. We understand the project has been difficult to complete over the previous years because of technical hurdles, vendor coordination, and the complex coordination required with local PSAP resources. We believe that our team is best suited to assist Cal OES in executing to the milestones required given the existing risk we have outlined. While there are many factors that are outside our control (technical risk, vendor contracts, and local resources) our team has decades of experience with these types of mission-critical projects and is best positioned to deliver.

1. Detailed Plan for Project Management

Engaging stakeholders and vendors is pivotal in managing complex projects like the migration of Operational Service Providers (OSPs) for NG9-1-1 systems, where the stakes are notably high due to the mission-critical nature of the project. This engagement starts with the identification of all key parties, including internal team members, management, external vendors, and impacted Public Safety Answering Points (PSAPs). Understanding their diverse interests and influences is critical. A bespoke stakeholder management plan is then crafted, centering on tailored communication strategies to address each group's specific concerns. Regular updates and feedback loops are vital in keeping stakeholders engaged and building trust, with clear communication lines established with vendors to outline project requirements and expectations. This proactive strategy is not only instrumental in keeping stakeholders in the loop but also crucial in fostering a collaborative environment, a key ingredient for the project's success.

The enhancement of existing project plans necessitates a thorough review and refinement of all essential components. This process includes defining a clear project scope, aligning it meticulously with project objectives and stakeholder expectations. Incorporating a well-structured schedule with defined timelines and milestones is essential for effective progress tracking. While cost management focuses on budget allocation and monitoring to prevent overruns, quality management ensures that deliverables consistently meet established standards. Efficient allocation of personnel and materials is achieved through resource planning. Communication plans play a key role in ensuring a steady flow of information among stakeholders, and risk management involves identifying potential pitfalls and developing

strategies to mitigate their impact. This comprehensive approach guarantees a robust and adaptable plan, equipped to meet the demands of this mission-critical project.

The implementation of Teamwork, a versatile cloud-based project management tool significantly boosts project efficiency and collaboration. It provides powerful scheduling tools to effectively track deadlines and milestones. Resource allocation is streamlined within Teamwork, aiding in the optimal distribution of tasks and management of the team's workload. The software's intuitive interface enhances seamless communication, keeping the team interconnected and informed. Its capability to integrate with various tools further simplifies workflow and data sharing.

Conducting regular team meetings on a weekly basis is another cornerstone of maintaining project momentum and alignment. These meetings serve as crucial platforms for monitoring progress, addressing issues promptly, and ensuring that the team remains on the same page. They are fundamental in fostering a unified understanding of project goals and responsibilities. These gatherings not only encourage open communication and teamwork but are also key in early risk identification and timely decision-making, keeping the project on a successful trajectory.

Risk Management and Quality Management are particularly significant in the context of 9-1-1 systems, given their inherently high stakes. Risk management starts with identifying potential risks, ranging from technical issues to operational disruptions, each with substantial implications for emergency response efficiency and reliability. The challenge lies in accurately assessing these risks and developing effective mitigation strategies to maintain system robustness. Quality management, in parallel, is an ongoing process that rigorously adheres to established quality standards and Service Level Agreements (SLAs). Regular quality assessments ensure that every aspect of the 9-1-1 system functions without fail, acknowledging that in emergency services, there is absolutely no margin for error. Any compromise in quality can directly impact emergency response effectiveness.

Change Management plays a crucial role in efficiently handling alterations in project scope, schedule, or resources. Implementing a structured change management process is key to managing these changes effectively, ensuring minimal disruption and maintaining alignment with project objectives. This approach aids in smooth transitions and keeps the project on its intended path despite any evolving circumstances.

Document Management is essential in maintaining detailed records of all project aspects. This meticulous documentation is a valuable resource for future reference, ensuring compliance with relevant standards and regulations. It provides a transparent historical account of decisions, actions, and progress, vital for maintaining accountability.

Finally, Project Closure is a critical phase. It involves conducting a post-mortem analysis to evaluate what worked well and what didn't. Documenting these lessons learned is invaluable for future projects. Formally closing the project with stakeholders, communicating the outcomes and insights gained, marks a clear end to the project. This closure not only signifies the completion of one chapter but also sets the stage for future initiatives, informed by the experiences and knowledge gained from this critical project.

2. Experience with IP Networks

Our team, comprising the combined expertise of Promethean One and 911 Authority, stands at the forefront of technological proficiency in IP networks, especially in the context of the California Office of Emergency Services (Cal OES) and Public Safety Answering Points (PSAPs). Our ongoing contract with Cal OES for the redesign of the CAPSnet network and our extensive surveying of PSAPs are testaments to our exceptional technical expertise in this niche area.

Building on this foundation, we are poised to significantly contribute to the completion of the NextGen 9-1-1 rollout. Our strategy is to expand upon our existing work and leverage our deep understanding of IP networks to facilitate seamless communication with vendors, stakeholders, and Cal OES personnel. The crux of our approach lies in utilizing our technical acumen, honed over decades of experience in vendor management, to orchestrate the diverse resources necessary for the successful completion of the rollout.

A key advantage we bring to this project is our pre-established familiarity with the landscape. In many instances, we already have a strong working relationship with the vendors involved, the Cal OES staff overseeing the rollout, and some of the local PSAPs. This existing knowledge and rapport are invaluable assets. They enable us to navigate the project's complexities more effectively, anticipate potential challenges, and propose solutions that are both practical and innovative.

Our strong vendor management process is a critical component of our strategy. It allows us to efficiently deconflict vendor schedules and requirements, ensuring that all parties are aligned with the project's goals and timelines. This process is not just about coordinating schedules; it's about creating a synergy among all involved parties, fostering a collaborative environment where information is shared openly, and solutions are developed collectively.

Furthermore, our team's extensive experience in handling mission-critical projects, such as the NextGen 9-1-1 rollout, equips us to manage the inherent risks and ensure the highest quality standards are met. We understand the critical nature of 9-1-1 systems and the immense responsibility that comes with working on such a project. Therefore, we place a strong emphasis on risk management and quality assurance, implementing rigorous processes to identify potential

risks early and enforce quality standards that meet or exceed the expectations of Cal OES and the community it serves.

Change management is another area where our team excels. The dynamic nature of a project of this magnitude means changes are inevitable. Our approach involves implementing a structured change management process that allows us to handle changes in project scope, schedule, or resources efficiently and effectively, thereby minimizing any potential disruptions to the project.

Lastly, our commitment to thorough document management ensures that all project aspects are meticulously recorded for future reference and compliance purposes. This level of documentation is not only a testament to our dedication to transparency and accountability but also serves as a critical resource for continuous improvement and knowledge transfer.

In summary, our team, with its deep-rooted expertise in IP networks and vendor management, coupled with a strong understanding of the Cal OES and PSAP environment, is uniquely positioned to drive the successful completion of the NextGen 9-1-1 rollout. We are committed to leveraging our technical knowledge, established relationships, and robust management processes to deliver a project that meets the high standards of Cal OES and serves the community effectively and reliably.

3. Plan and Process for Communicating with Stakeholders

In managing our project, we follow a structured approach to ensure transparency, efficiency, and accountability.

Summary of Work Completed: Our approach begins with a meticulous summary of the work completed during each reporting period. We maintain a detailed record of actual versus planned work, highlighting both achievements and any deviations. For instance, if we completed the initial phase of the IP network redesign for Cal OES and surveyed a significant number of PSAPs, these accomplishments would be noted. We also identify any areas where our actual progress deviated from the original plan, offering clear visibility into the project's trajectory.

Addressing Tasks Behind Schedule: In instances where certain tasks lag behind schedule, we conduct a thorough analysis to understand the root causes. This analysis includes evaluating the overall impact of these delays on the project timeline and deliverables. Our approach to remediation is proactive and solution oriented. For instance, if technical issues or scheduling conflicts caused delays, we would reallocate resources, adjust timelines, or enhance coordination efforts to get back on track. Regular updates to stakeholders about these adjustments are a key part of our communication strategy.

Overall Engagement Status and Risk Management: We continuously monitor the status of overall engagement, encompassing all phases and projects. This involves discussing risks and problems encountered, along with devised and proposed solutions. Our team is adept at identifying

potential risks early on and implementing effective mitigation strategies. Regular meetings and reports keep all stakeholders informed about the status, risks, and our responsive actions to address any issues.

Planning for the Next Reporting Period: Looking ahead, we define the tasks expected to be completed in the next reporting period. This forward-planning includes setting realistic goals and milestones based on our current progress and any anticipated challenges. Our planning process is dynamic, allowing us to adapt to changing circumstances while staying aligned with the project's overall objectives.

Accounting of Staff Hours: Accurate accounting of our contractor's staff hours is a critical aspect of our project management. We maintain detailed timesheets for the reporting period and for the contract to date. This not only ensures transparency and compliance with contractual obligations but also provides valuable insights into workforce utilization and productivity.

Ad Hoc Reporting: In addition to regular reporting, we are prepared to provide ad hoc reports as required by the project stakeholders. These reports could cover specific aspects of the project, detailed analyses of particular issues, or responses to unforeseen events. Our team's flexibility and responsiveness in providing these ad hoc reports ensure that stakeholders remain fully informed and can make timely, informed decisions.

In summary, our handling of these project management elements is characterized by detailed planning, proactive problem-solving, transparent communication, and rigorous accountability. By adhering to these principles, we ensure the successful progression of our projects, meeting and often exceeding stakeholder expectations.

4. Understanding of Deliverables and Process for Tracking Them

Our team's approach to managing the deliverables and process for the NextGen 9-1-1 rollout is characterized by an efficient methodology, significantly enhanced by our use of Teamwork as a project management tool. This section outlines how we utilize Teamwork to streamline our processes, ensuring we meet our project objectives effectively.

- **Master Schedule Development:** For the development and maintenance of a master schedule for the pre-migration and migration of OSPs, Teamwork serves as an integral tool. It allows us to integrate inputs from various stakeholders, including NG9-1-1 vendors, PSAPs, and Cal OES, into a cohesive schedule. This comprehensive view enables us to track progress against key milestones and adjust our plans as necessary to meet the December 31, 2024, deadline.
- **Dashboard Creation for PSAP Status:** The creation of a dashboard to monitor the status of PSAP Operational Readiness Testing (ORT), pre-migration, migration, and the count of OSPs migrated at each PSAP is streamlined. This feature aids in providing a real-time,

visual representation of the project's status, enhancing our ability to monitor and report on progress effectively.

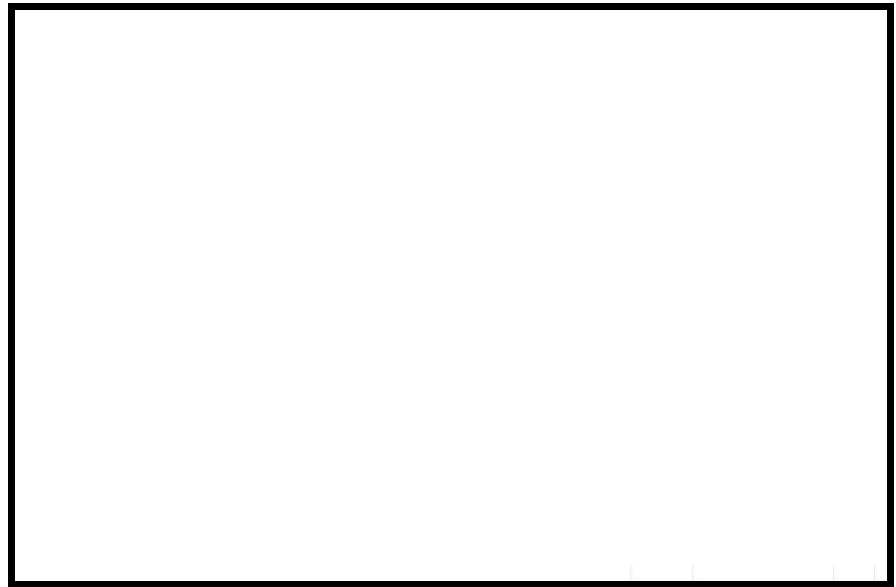
- Routine Feedback Management: Managing and incorporating routine feedback from NG9-1-1 vendors is crucial. Teamwork along with the PSAP status dashboard help us organize and track this feedback systematically, ensuring that it is considered in the ongoing project management process. This feedback is essential for adjusting our strategies and ensuring alignment with the Project Deployment Plan (PDP) and Project Milestone Reports.

- Data and Feedback Reporting: In providing Cal OES with data and feedback, including issues encountered with NG9-1-1 vendors, Teamwork data management and reporting features come into play. We use these features to document discussions, track problem resolution, and maintain a transparent communication line with Cal OES.

- Bridge Lead Management: Coordinating the activities of the Bridge Lead personnel, including ensuring adherence to

the PNSP script for pre-migration testing, is facilitated by using the Microsoft office 365 suite to include Outlook Calendar for scheduling features and Teams for virtual meetings spaces.

- Resource Allocation and Bridge Support: The team will support workout session via Teams and will staff all operational testing bridges to ensure vendors and stakeholders are present and ready.
- Plan Updates and Documentation: Teamwork is instrumental in tracking recommendations for updates to the pre-migration and migration plans. Additionally, SharePoint document management helps us in maintaining an organized repository of critical project components, ensuring continuity of operations.
- Reporting and Presentation Preparation: For the preparation of reports and presentations for Cal OES and other stakeholders, Teamwork project tracking and data visualization tools are invaluable. They help us compile comprehensive and coherent reports and presentations that effectively communicate the project's status and progress.



- Facilitation of PSAP Queries and Notifications: Managing communications with PSAPs, including notifying them of testing dates and facilitating queries, is streamlined through Teamwork and Microsoft Office 365 tools. Together these tools help us to track these interactions, ensuring that all communications are timely, and responses are well-coordinated.
- Meeting Coordination: Supporting in-person meetings with Cal OES in Sacramento or other locations is facilitated by Outlook calendar and scheduling functionalities. We efficiently organize and plan these crucial meetings, ensuring that all necessary preparations are made, and key participants are well-informed.

Throughout these tasks, Teamwork, PSAP Status Dashboard, and Microsoft Office 365 roles are not just as tools but as an enabler of efficiency and clarity. It allows us to centralize information, which is particularly beneficial in a project involving multiple stakeholders and complex, interrelated activities. By having interactive platforms where all project data, from schedules to feedback and reports, is accessible, we reduce the chances of miscommunication and oversight.

In handling routine feedback from NG9-1-1 vendors and managing the complex scheduling of pre-migration and migration tasks, our tools enable us to keep track of numerous feedback loops and integrate this information into our ongoing project management processes. This level of organization is crucial in ensuring that we are responsive to the needs and insights of our vendors and stakeholders.

The use of Teamwork also extends to our risk management processes. As we navigate the project, unforeseen challenges and changes in scope or schedule are inevitable. Teamwork's adaptability allows us to quickly adjust our plans and communicate these changes to all relevant parties, ensuring that everyone is aligned with the new direction.

Moreover, Teamwork aids in our documentation efforts. Documenting critical components of the project is vital for maintaining operational continuity and ensuring compliance. Teamwork and SharePoint serve as central repositories for all such documentation, streamlining access and retrieval, which is essential for efficient project management.

In preparing reports and presentations, Teamwork data visualization capabilities enable us to translate complex project data into understandable and actionable insights. This is particularly important when reporting to bodies like the 9-1-1 Advisory Board or the Long-Range Planning Committee, where clear communication of project status and needs is critical.

Finally, our tools effectiveness are evident in how we manage communications with PSAPs and coordinate in-person meetings. Ensuring that PSAPs are well-informed and engaged throughout the project is a key part of our responsibility. The combination of tools allows us to manage these communications effectively, ensuring that no detail is overlooked.

In conclusion, while Teamwork, the PSAP Status Dashboard, and Microsoft Office 365 are powerful tools in our arsenal, their real value lies in how we use them to enhance our team's efficiency and effectiveness. They support our methodology, enabling us to manage complex tasks, maintain clear communication, and ensure that our project remains on track and aligned with our objectives and those of Cal OES. Our use of these reflects our commitment to leveraging the best tools and practices to deliver a successful NextGen 9-1-1 rollout.