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## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

### Cloud Services

#### SECTION 1. DEFINITIONS

Capitalized terms used in this Contract and not defined in the text of the Contract have the meaning below. A reference to “day(s)” shall mean calendar day unless otherwise indicated.

**Buyer:** the State’s authorized contracting official.

**Cloud Services:** the cloud computing services, including Software as a Service (SaaS), Platform as a Service (PaaS), Infrastructure as a Service (IaaS) and any other vendor managed or hosted services, and any related services, provided to the State by the Contractor (or Reseller and/or Service Provider, as the case may be) herein.

**Contract:** these General Provisions –Cloud (Cloud-GPs) and the other documents set forth in Section 3 (Order of Precedence) collectively make up this Contract.

**Contractor:** individual(s) or business entity or with whom the State enters this Contract.

**Data Breach:** any access, destruction, loss, theft, use, modification, or disclosure of State Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.

**Deliverables:** Goods, works of authorship and other items (e.g., reports and Documentation) to be delivered pursuant to this Contract, including any such items furnished that are incidental to the provision of Services and/or Cloud Services.

**Documentation:** documentation, instructions, specifications, training materials, or other documents provided by Contractor in hard copy or electronic form with the Software products, Services, Cloud Services or otherwise, in accordance with the Contract.

**Goods:** all types of tangible and intangible personal property, including but not limited to, materials, supplies, reports, technology, Hardware, Software, and equipment (including telecommunications and broadband Hardware) to be delivered pursuant to this Contract, including any such items furnished incidental to the provision of Services or Cloud Services.

**Hardware:** tangible elements of equipment or Software products made available to the State.

**Infrastructure-as-a-Service (IaaS):** capability to provision processing, storage, networks and other fundamental computing resources where the customer is able to deploy and run arbitrary software, which can include operating systems and applications. The customer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed application; and possibly limited control of select networking components (e.g., host firewalls).

**Platform-as-a-Service (PaaS):** capability to deploy onto cloud infrastructure customer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The customer 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.

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### Cloud Services

**Reseller:** business entity authorized by the Contractor to resell the Services, Cloud Services and/or Software, as set forth in the Statement of Work, if applicable.

**Security Incident:** an actual or suspected Data Breach.

**Services:** all-inclusive term which includes, but is not limited to, support services (such as maintenance, operation) and other personal services (e.g., technical or professional services, such as consulting and direction, project management, implementation, training, customization) provided by the Contractor in accordance with this Contract. This term does not include Cloud Services.

**Service Provider:** provider of the Services or Cloud Services under the Contract, as set forth in the Statement of Work, if applicable.

**Software:** all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating Software, programming aids, application programs, program products to facilitate the use of Cloud Services.

**Software as a Service (SaaS):** capability provided to the user to use the Service Provider's applications running on a cloud infrastructure; applications are accessible from various client devices through either a thin client interface, such as a web browser (e.g., web-based email), or a program interface; user 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.

**State Data:** all data owned by the State, and submitted to, processed by, or stored 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 System or Services. For clarity, State Data is synonymous with "customer data", "customer content", or similar terms, as may appear in service agreements and other documents that may be incorporated into the Contract. State Data may include:

- (a) **Non-Public Data:** data other than Personal Information, that is not subject to distribution to the public as Public Information. It is deemed to be sensitive and confidential by the State because it contains information that may be exempt by statute, regulation, or policy from access by the general public as Public Information.
- (b) **Personal Information:** has the definition set forth in the California Information Practices Act (Civ. Code, §§ 1798.1 - 1798.78).
- (c) **Public Information:** any information prepared, owned, used, or retained by the State and not specifically exempt from the disclosure requirements of the California Public Records Act (Gov. Code, § 7929 et. seq.) or other applicable state or federal laws. For clarity, "Public Information" is also interchangeable with "Public Data".

**Statement of Work:** exhibit to the Contract that describes the State's requirements for the Goods, Services, Cloud Services, or Deliverables, under the Contract.

**System:** the Hardware, Software, Services, and Cloud Services as described in this Contract, integrated, functioning together, and performing in accordance with this Contract.

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

### Cloud Services

**User(s):** any authorized end user of the System, Services or Cloud Services under this Contract and includes State's customers, employees, and subcontractors.

## SECTION 2. CONTRACT FORMATION

### 2.1 CONTRACT FORMATION(2):

As used herein, the “State” refers to the government of the State of California, its employees and authorized representatives, including without limitation, any department, agency or government unit of the State as identified in the Contract and/or the purchase order. The State and Contractor shall be collectively referred to as “Parties”.

**2.1.1 Sealed Bid.** If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either Party.

**2.1.2 Firm Offer.** If this Contract results from a solicitation other as set forth in Section 2.1.1, Contractor's quotation or proposal is deemed a firm offer and this Contract is the State's acceptance of that offer.

**2.1.3 Joint Bid.** 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.

### 2.2 CONTRACTOR'S POWER AND AUTHORITY(8):

Contractor warrants that it has full power and authority to grant the rights herein 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. The State will notify Contractor promptly in writing of any such claim and Contractor will have sole control of the defense of any 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 required by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); or (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services (DGS) or as appropriate, the California Department of Technology (CDT), must approve 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. Further, Contractor agrees it will not enter into any arrangement with any third-party which may diminish any rights of the State under this Contract.

**IF CONTRACTOR IS A RESELLER, CONTRACTOR WARRANTS THAT THE SERVICE PROVIDER HAS REVIEWED THIS CONTRACT AND CAN PERFORM THE SERVICES IN ACCORDANCE WITH THE CONTRACT TERMS AND CONDITIONS.**

## **GENERAL PROVISIONS – INFORMATION TECHNOLOGY**

### **Cloud Services**

#### **2.3 COMPLIANCE WITH STATUTES AND REGULATIONS(7):**

The Parties warrant and certify that in the performance of this Contract, they will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. Contractor agrees to indemnify the State against any loss, cost, damage, or liability by reason of Contractors violation of this provision, subject to the requirements set forth in Section 10.3 (Indemnification Process).

### **SECTION 3. ORDER OF PRECEDENCE**

#### **3.1 ORDER OF PRECEDENCE(11):**

In the event of any inconsistency or conflict between the Sections, exhibits, attachments, specifications, or provisions comprising this Contract, the following order of precedence shall apply:

- (a) These General Provisions –Cloud and attached Exhibits (except in the instances herein where the provision contains “Unless otherwise specified in the Statement of Work” (or similar phrase), the provisions specified in the Statement of Work shall take precedence over the provisions referenced in these General Provisions);
- (b) Contract form(s), i.e., Purchase Order STD 65, Standard Agreement STD 213, FI\$Cal generated Purchase Order, etc., and any amendments;
- (c) Other Special Provisions (except in the instances therein where the provision contains “Unless otherwise specified in the Statement of Work” (or similar phrase), the provisions specified in the Statement of Work shall take precedence over the provisions referenced in the applicable Special Provisions);
- (d) Statement of Work, including any specifications incorporated by reference herein;
- (e) Cost worksheets;
- (f) The Service Provider’s service agreement and attachments; and
- (g) All other attachments included in the Contract and/or incorporated in the Contract by reference.

### **SECTION 4. LICENSE GRANTS**

#### **4.1 CLOUD SERVICES LICENSE:**

Subject to the terms and conditions of this Contract, Contractor or Service Provider grants the State a worldwide, limited, non-exclusive right and license during the term of this Contract to: (a) use the Cloud Services; (b) implement, configure and access the Cloud Services, including all actions and licenses necessary to fully effectuate the purposes of this Contract and the State’s internal business and IT purposes; and (c) access and use Service Provider’s Documentation.

#### **4.2 SOFTWARE LICENSE:**

## **GENERAL PROVISIONS – INFORMATION TECHNOLOGY**

### **Cloud Services**

Unless otherwise specified in the Statement of Work, if use of the Cloud Services requires the use of separate or additional Software, Contractor grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a royalty-free, non-exclusive license to use the Software and any Documentation. The State may use the Software only in connection with use of the Cloud Services and according to any licensing terms as may be specified in a Statement of Work or otherwise in this Contract. Acceptance of Software (including third party Software) will be governed by the terms and conditions of this Contract.

#### **4.3 AUTHORIZED USERS:**

The authorized User of the Cloud Services and Software (if applicable) is the State, including its employees, authorized agents, consultants, auditors, other independent providers and any external users contemplated by the Parties. This Section does not modify the quantity of Users permitted to use the Cloud Services.

#### **4.4 FUTURE RELEASES(41):**

Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions, patches, corrections, modifications, bug fixes, updates, and/or releases (collectively, Updates) of the Software versions are developed by Contractor, and are made available to other licensees, such Updates 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 Contractor offers new versions or upgrades to the Software, 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 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 Contractor in good faith.

## **SECTION 5. SERVICES**

#### **5.1 SUPPORT SERVICES(NEW):**

If applicable, Contractor will provide the support services for the periods set forth in the Statement of Work or purchase order, subject to the State's payment of the applicable support and maintenance fees.

#### **5.2 PROFESSIONAL SERVICES(NEW):**

If applicable, Contractor will provide the professional Services outlined in the Statement of Work and in accordance with the Contract. Subject to Section 9 (Confidentiality) and Section 20 (Data Protection) of this Contract, the State may provide reasonable access to information, documentation, facilities, equipment, Hardware, Software, and personnel as agreed by the Parties to facilitate Contractor's performance of the professional Services.

#### **5.3 FOLLOW-ON CONTRACTS(47):**

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

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If this Contract fits the definition of a "consulting services contract" within the meaning of PCC section 10335.5, Contractor may be prohibited from bidding on or being awarded a subsequent contract in accordance with the provisions of PCC section 10365.5, subject to the provisions of PCC section 10430.

To the extent permissible by law, the Director of DGS (DGS Director), or as appropriate, the Director of CDT (CDT Director), or their designees, may waive the restrictions set forth in this Section by written notice to Contractor if the DGS Director or, as appropriate, CDT Director, determines their application would not be in the State's best interest.

The restrictions of this Section will not apply: (a) 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 (b) 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 Contractor's own products.

The restrictions set forth in this Section 5.3 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 5.3, even if enacted after execution of this Contract.

## SECTION 6. INSPECTION, ACCEPTANCE AND REJECTION(16)

### 6.1 ACCEPTANCE TESTING:

Unless otherwise specified in the Statement of Work, when acquiring Goods, commercial Software, Services, or Cloud Services, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables, Goods (e.g., custom software), Services, and/or Cloud Services, under this Contract and will tender to the State only those Deliverables, Goods and Services, and/or Cloud Services, that have been inspected and found to conform to this Contract's requirements. All Goods may be subject to inspection, test and acceptance by the State or its authorized representatives, at destination, notwithstanding any payment or inspection at source.

**6.1.1 Contractor Duties.** Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data reasonably required to perform inspection. Contractor will keep records evidencing inspections and their result and will make these records available to the State during Contract performance and for 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 related to performance of the Contract.

### 6.2 NOTICE OF REJECTION:

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The State shall give written notice of rejection (Rejection Notice) of Goods delivered, Deliverables provided or Services/Cloud Services performed hereunder within a reasonable time after receipt of such Goods, Deliverables, or performance of Services/Cloud Services. The Rejection Notice will state the respects in which Goods, Deliverables or Services/Cloud Services do not substantially conform to required specifications. If the State does not provide a Rejection Notice within 15 days of delivery for purchases of Hardware, or within 30 days of delivery for all other purchases, such Goods, Deliverables, Services, or Cloud Services, will be deemed to have been accepted.

#### 6.3 ACCEPTANCE:

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.

#### 6.4 TITLE:

Unless otherwise specified in the Statement of Work, title to Goods and Software shall remain with Contractor and assigns, if any, until such time as successful acceptance testing to determine compliance of Goods and Software has been achieved.

## SECTION 7. WARRANTIES & REPRESENTATIONS

### 7.1 WARRANTIES (18) FOR GOODS, SERVICES & CLOUD SERVICES:

Unless otherwise specified in the Statement of Work, the warranties in this section begin upon delivery of the Goods, Services or Cloud Services and terminate one year after. Contractor warrants that: (a) the Goods and Services furnished will substantially conform to the manufacturer's published specifications and the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work) and will be free from material defects in materials and workmanship; and (b) the Services or Cloud Services will be performed in a skilled, professional manner by competent personnel. Where the Parties have agreed to design specifications (such as a detailed design document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor warrants its Goods and Services provide all material functionality required. The State's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty. All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Goods, Services or Cloud Services.

Contractor warrants that Goods and/or Software furnished hereunder: (a) will be free, at the time of delivery, of harmful code (i.e., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (b) will not infringe or violate any U.S. Intellectual Property Right. "U.S. Intellectual Property Right" means any intellectual property right enforceable in the United States, including without limitation, rights in trade secrets, copyrights,

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### Cloud Services

and U.S. patents. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any commercial Software delivered hereunder, Contractor will, upon the State's request, provide a new or clean install of the Software.

#### 7.1.1 Unless otherwise specified in the Statement of Work:

- (a) Contractor does not warrant, that any Software provided hereunder is error-free or that it will run without immaterial interruption.
- (b) Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from:
  - (i) a modification made by the State, unless such modification is approved or directed by Contractor;
  - (ii) use of Software in combination with or on products other than as specified by Contractor; or
  - (iii) misuse by the State.
- (c) Where Contractor resells Software it purchased from a third-party, Contractor, to the extent it is legally able to do so, will pass through any such third-party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve Contractor from Contractor's warranty obligations set forth above.

#### 7.2 REMEDIES FOR BREACH OF WARRANTY:

Unless otherwise specified in the Statement of Work, the State's remedy for any breach of the warranties provided in Section 7.1 shall include: (a) re-performance, repair, or replacement of the nonconforming Goods (including without limitation an infringing Goods) or Service; or (b) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Goods 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 Goods or Services of equivalent capability, function, and performance.

#### 7.3 LIMITED WARRANTY FOR CLOUD SERVICES:

Unless otherwise specified in the Statement of Work, Contractor warrants that Cloud 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:

- (a) the Cloud Services will be performed in accordance with the Contract; and
- (b) all customer support for Cloud Services will be performed with professional care and skill.

**7.3.1 Duration of Cloud Services Limited Warranty.** The limited warranty will be for the duration of State's use of the Cloud Services, unless the underlying Service Provider's warranty is shorter in duration, in which case the Parties will specify the length of the applicable limited warranty in the Statement of Work. This limited warranty is subject to the following limitations:

- (a) 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;

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### Cloud Services

- (b) 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;
- (c) the limited warranty does not apply to components of Software that the State may be permitted to redistribute;
- (d) the limited warranty does not apply to free, trial, pre-release, or beta services; and
- (e) the limited warranty does not apply to problems caused by the State's failure to meet minimum system requirements.

**7.3.2 Warranty for Cloud Services' 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 State.

### 7.4 REMEDIES FOR BREACH OF WARRANTY:

Unless otherwise specified in the Statement of Work, the State's remedy for any breach of the warranties provided in this Section shall include: (a) re-performance, repair, or replacement of the nonconforming Goods (including without limitation an infringing Goods) Service, or Cloud Services; or (b) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Goods, Service or Cloud Services 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 Goods, Service or Cloud Services of equivalent capability, function, and performance. If Contractor fails to re-perform, repair, replace, or refund fees paid for the Goods, Service or Cloud Services as appropriate, the State may terminate the Contract.

### 7.5 DISCLAIMER:

EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN SECTION 7, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## SECTION 8. PROPRIETARY RIGHTS

### 8.1 OWNERSHIP AND RIGHTS IN WORK PRODUCT(37):

Unless otherwise specified in the Statement of Work, 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, Work Product), shall be Contractor's exclusive property.

Software, Cloud Services components, and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order (Pre-Existing Materials) do not constitute Work Product. If Contractor creates Derivative Works of Pre-Existing Materials, the elements of such Derivative Works created pursuant to this Contract constitute Work Product, but other elements do not. "Derivative Works" means any work that is based upon the Work Product, such as an enhancement, update, translation, abridgment,

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summary, or aggregation. Nothing in this Section will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.

The ideas, concepts, know-how, techniques, customizations, or configurations, relating to data processing, developed during this Contract by Contractor or jointly by Contractor and the State may be used by either Party without obligation of notice or accounting.

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.

### 8.2 GOVERNMENT PURPOSE RIGHTS:

The State will have Government Purpose Rights to Work Product. "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, U.S. tribal governments, 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. This Section and the rights hereunder may be modified in the Statement of Work as required for federally funded projects pursuant to federal law or regulations, including, but not limited to, 7 CFR 277.18 and 45 CFR 95.617.

## SECTION 9. CONFIDENTIALITY; DATA RIGHTS

### 9.1 CONFIDENTIALITY OBLIGATIONS:

Each Party will ensure that access to the other Party's confidential information is provided only to those individuals who need access to such information to fulfill their obligations under this Contract. With regards to the State, confidential information includes information maintained by state agencies that is exempt from disclosure under the provisions of the California Public Records Act (Gov. Code, § 6250 et seq.) or has restrictions on disclosure in accordance with other applicable state or federal laws, including but not limited to the Information Practices Act of 1977 (Civ. Code, §§1798.1 – 1798.78).

Confidential information will not include information that: (a) is or enters the public domain without breach of this Contract; (b) came into the receiving party's possession from a third party entitled to disclose such information without an obligation of confidentiality; or (c) is independently developed by the receiving party without use or reference to the disclosing party's confidential information.

### 9.2 CONFIDENTIALITY OF STATE DATA(34):

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All financial statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under this Section to keep confidential any data or information that meet the exceptions set forth in Section 9.1.

#### **9.3 CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS:**

Contractor shall sign a security and confidentiality statement. Contractor shall ensure all Contractor employees, subcontractors, agents and any other Contractor-authorized individuals who need access to the State's confidential information, sign confidentiality agreements to enable Contractor to meet its obligations under the Contract.

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 Sections 9.1 and 9.2.

#### **9.4 RIGHTS TO STATE DATA:**

The Parties agree that as between them, all rights, including all intellectual property rights, in and to State Data belong to and inure to the benefit of the State, and that Contractor has a limited, non-exclusive license to access and use the State Data solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the State 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 State 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 purposes, advertising or advertising-related purposes, or for any other purpose, other than security or service delivery analysis, that is not authorized by the Contract.

#### **9.5 RESTRICTIONS ON USE OF STATE DATA:**

Contractor shall not collect, use, disclose, retain, or maintain (collectively, use) State Data except as necessary and proportionate to perform Contractor's obligations under the Contract. Contractor shall not: (a) transfer, share, rent, barter, trade, sell, loan, lease or otherwise distribute or make available to any third party any State Data except as expressly permitted by the Contract; (b) copy, modify, destroy or delete State Data during the Contract term; and (c) shall

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not sell or share Stata Data or personal information collected in the service of the Contract with the State. For the purposes of this Section 9.3: (a) “collect” and “collected” have the meaning provided in Civil Code section 1798.140, subdivision (f); and (b) “sell” has the meaning provided in Civil Code section 1798.140, subdivision (ad)(1).

### **9.6 PROTECTION OF CONTRACTOR’S PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA AND MATERIALS(39):**

All material appropriately marked or identified in writing as proprietary and furnished hereunder are provided for the State’s exclusive use for the purposes of this Contract only. All such proprietary materials (including proprietary data) shall remain the property of Contractor. Subject to the California Public Records Act, or other applicable law or legal process, the State agrees to: (a) take all reasonable steps to ensure that such proprietary materials/data are not disclosed to others; (b) provide prior written notice to the Contractor in sufficient time to obtain a protective order (unless such notice is prohibited by law); (c) ensure, prior to disposing of any media, that any licensed materials have been erased, destroyed or otherwise sanitized; and (d) take appropriate action by instruction, agreement or otherwise, with its employees and other persons permitted access to 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 materials.

### **9.7 LEGAL REQUESTS:**

Contractor shall notify the State of any subpoena, warrant, court order, service of process, Public Records Act request, and or other legal request (Requests) which seeks access to State Data or information about the State’s use of the Service, unless such notification is prohibited by law. Contractor shall not respond to such Requests unless authorized in writing to do so by the State.

Unless otherwise prohibited by law, Contractor shall:

- (a) notify the State of any such Requests by the fastest means available, not later than 48 hours after receipt of the Requests, and also in writing, with additional notification provided to the Agency Chief Information Security Officer or designee of the contracting agency;
- (b) not respond to Requests directed at Contractor regarding this Contract without first notifying the State in writing; and
- (c) provide the State with its intended responses to such Requests with adequate time for the State to review, revise and, if necessary, seek a protective order.

## **SECTION 10. INDEMNIFICATION**

### **10.1 PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY(43):**

Notwithstanding Section 11 (Limitation of Liability), Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third-party claims, costs, expenses (including without limitation reasonable attorneys’ fees), fines, penalties, deficiencies, liabilities and losses (including settlements and judgments) arising from or related

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to any allegation that the Goods or Services violate, misappropriate or infringe of any U.S. Intellectual Property Right.

With respect to such claims arising from Deliverables or Services provided by a third party and supplied by the Contractor to the State, the 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 a third-party manufacturer fails to honor any Third-Party Obligation, Contractor will indemnify, defend, and save harmless the State, its officers, agents and employees, to the same extent as the Third-Party Obligation, subject to any applicable limitation of liability in Section 11 (Limitation of Liability).

Should the Deliverables, Goods, Services, or Cloud Services, whether provided by the Contractor or manufactured by a third party, 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, Contractor shall provide the State with written notice of the circumstances giving rise to such claim or likely claim. If the State receives notice of a claim of infringement, or is made party to, or is threatened with such claim, the State will provide Contractor with notice of such claim or threat. Following receipt of such notice, Contractor will either (at Contractor’s expense): (a) procure for the State the right to continue using the Deliverables, Services or Cloud Services; or (b) replace or modify the same so that they become non-infringing. If none of these options can reasonably be exercised, Contractor shall take back such Deliverables, and terminate any infringing Services or Cloud Service, and make every reasonable effort to assist the State in procuring substitute Deliverables, Services or Cloud Service for the State. If none of the foregoing options is reasonably acceptable to the State, the State shall have the right to terminate the Contract, in whole or in part, without damage, penalty, termination charge, or further obligation. Contractor agrees to take back such Goods and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

Contractor shall have no liability to the State under any provision of this Section 10.1 with respect to any claim of patent, copyright or trade secret infringement which is based upon: (a) the combination or utilization of Deliverables furnished hereunder with Goods not made or furnished by the Contractor; or (b) the combination or utilization of Goods, Services or Cloud Services not made or furnished by the Contractor, and introduced into the State’s computing environment; or (c) The modification initiated by the State, or a third party at the State’s direction, of any Goods Services, or Cloud Services furnished hereunder; or (d) the combination or utilization of Goods furnished hereunder with non-Contractor supplied Goods.

Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of Software in violation of any U.S. Intellectual Property laws

### **10.2 INDEMNIFICATION FOR INJURY OR DAMAGE(28):**

Contractor shall agree to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third-party claims, costs (including, without limitation, reasonable attorneys’ fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or any of its affiliates, agents, subcontractors,

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employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract.

#### 10.3 INDEMNIFICATION PROCESS:

Unless a Third-Party Obligation provides otherwise, the defense and payment obligations for indemnification under Section 10 are conditioned on the following:

The State will notify Contractor promptly in writing of any demand for indemnification and, in the notification, describe the circumstances giving rise to the demand. Contractor will have sole control of the defense of any 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 required by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); or
- (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State,

The State will reasonably cooperate in the defense and in any related settlement negotiations. DGS or CDT, as appropriate, must approve any settlement or compromise.

## SECTION 11. LIMITATION OF LIABILITY

#### 11.1 LIMITATION OF LIABILITY(26):

Except as may be otherwise approved by DGS-PD's Deputy Director or their designee, or as applicable, CDT's Statewide Technology Procurement Deputy Director (STP), 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. "Purchase Price" means 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 Services(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.

Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES, EXCEPT (A) TO THE EXTENT THAT CONTRACTOR'S LIABILITY FOR SUCH DAMAGES IS SPECIFICALLY SET FORTH IN THE STATEMENT OF WORK OR (B) TO THE EXTENT THAT CONTRACTOR'S LIABILITY FOR SUCH DAMAGES FALLS UNDER ONE OF THE EXCEPTIONS IN SECTION 11.2 BELOW.

#### 11.2 EXCEPTIONS:

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The foregoing limitation of liability shall not apply to: (a) any liability under Section 2.3 (Compliance with Statutes and Regulations); (b) liability under Section 10.1 (Patent, Copyright and Trade Secret Indemnity) or to any other liability (including, without limitation, indemnification obligations) for infringement of third-party intellectual property rights; (c) claims arising under provisions herein calling for indemnification for third-party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; (d) costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action; or (e) direct costs of mitigation, remediation, third-party claims, and notification obligations resulting from any Data Breach attributable to Contractor's acts or omissions (including the acts or omissions of Contractor's employees, contractors or agents).

## SECTION 12. STATUTORY AND REGULATORY REQUIREMENTS; CONTRACTOR CERTIFICATIONS

### 12.1 NONDISCRIMINATION CLAUSE(50):

During the performance of this Contract, Contractor and its subcontractors: (a) 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; (b) shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment; (c) shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285.0 et seq.) and (d) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, subdivisions (a) through (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. Contractor shall include the nondiscrimination and compliance provisions of this provision in all subcontracts to perform work under the Contract.

### 12.2 ACCESSIBILITY (7E):

To the extent that this Contract falls within the scope of Government Code section 11135, Contractor shall respond to, and resolve any complaint brought to its attention regarding accessibility of its products or services, in accordance with Government Code section 7405.

### 12.3 AMERICANS WITH DISABILITIES ACT(58):

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

### 12.4 PRIORITY HIRING CONSIDERATIONS(48):

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If this Contract includes Services over \$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 PCC section 10353.

#### **12.5 CHILD SUPPORT COMPLIANCE ACT(57):**

For any Contract in excess of \$100,000, Contractor acknowledges, in accordance with PCC section 7110, that: (a) they recognize the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8, commencing with Section 5200 of Part 5 of Division 9 of the Family Code; and (b) Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

#### **12.6 LOSS LEADER(64):**

Contractor shall comply with PCC section 12104.5, subdivision (b) and shall not engage in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

#### **12.7 GOVERNMENT PROCUREMENT AGREEMENT (7D):**

If the value of this Contract exceeds the US dollar procurement threshold determined by the US Trade Representative (as set forth in the Federal Register), this Contract shall be subject to the requirements of the World Trade Organization Government Procurement Agreement.

#### **12.8 ASSIGNMENT OF ANTITRUST ACTIONS(52):**

Pursuant to Government Code sections 4552, 4553, and 4554, the following provisions are incorporated herein: (a) in submitting a bid to the State, Contractor 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 (Bus. & Prof. Code, Chapter 2, commencing with § 16700 et seq.), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to Contractor; (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.

Upon demand in writing by the assignor, the assignee shall, within 1-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: (a) the assignee has not been injured thereby; or (b) the assignee declines to file a court action for the cause of action.

**GENERAL PROVISIONS – INFORMATION TECHNOLOGY****Cloud Services****12.9 EXECUTIVE ORDER N-6-22-RUSSIA SANCTIONS(65):**

Contractor shall comply with Executive Order N-6-22 (EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Contract. The State shall provide Contractor prior written notice of termination, allowing Contractor at least 30-days to provide a written response. Termination shall be at the State’s sole discretion.

**12.10 NATIONAL LABOR RELATIONS BOARD CERTIFICATION(51):**

Contractor declares 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 2-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 PCC section 10296.

**12.11 DRUG-FREE WORKPLACE CERTIFICATION(53):**

Contractor certifies that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code, § 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, subdivision (a).
- (b) Establish a Drug-Free Awareness Program as required by Government Code section 8355, subdivision (b), to inform employees about all of the following: (a) the dangers of drug abuse in the workplace; (b) the person's or organization's policy of maintaining a drug-free workplace; (c) any available counseling, rehabilitation, and employee assistance programs; and (d) penalties that may be imposed upon employees for drug abuse violations.
- (c) Provide, as required by Government Code section 8355, subdivision (c), that every employee who works on the proposed or resulting Contract: (a) will receive a copy of the company's drug-free policy statement; and (b) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

**12.12 SWEAT FREE CODE OF CONDUCT(55):**

Pursuant to PCC section 6108, Contractor certifies that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive

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forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor.

Contractor certifies that they adhere to the Sweat Free Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov). Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with this provision.

#### **12.13 DOMESTIC PARTNERS:**

For contracts over \$100,000 executed or amended after January 1, 2007, Contractor certifies that they comply with PCC section 10295.3.

#### **12.14 RECYCLED CONTENT REQUIREMENTS(56):**

Pursuant to PCC section 12200 et seq., to the extent this Contract involves products, materials, goods, or supplies offered or sold to the State, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material in the Goods offered or sold to the State that fall under any of the statutory categories regardless of whether the Goods meets the requirements of PCC section 12209. Contractor shall provide the certification, even if the product or good contains no post-consumer recycled material, and even if the post-consumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of PCC section 12156, subdivision (e), the certification required by this subdivision shall specify that the cartridges so comply (PCC, § 12205). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use to the maximum extent economically feasible in the performance of the Contract, recycled content products (PCC, § 12203, subd. (d)).

#### **12.15 ELECTRONIC WASTE RECYCLING ACT OF 2003(59):**

To the extent the Contract involves the purchase or lease of electronic devices, Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

#### **12.16 COVENANT AGAINST GRATUITIES(49):**

Contractor certifies 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 warranty, the State shall have the right to terminate the Contract, either in whole

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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 under this section are not exclusive and are in addition to any other rights and legal or equitable remedies.

#### **12.17 EXPATRIATE CORPORATIONS(61):**

Contractor certifies that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC sections 10286 and 10286.1 and is eligible to contract with the State.

## SECTION 13. CONTRACTOR RESPONSIBILITIES

#### **13.1 INSURANCE(20):**

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.

#### **13.2 ACCIDENT PREVENTION(19):**

If performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract for default.

## SECTION 14. INVOICES, PAYMENT AND TAXES; AUDIT

#### **14.1 INVOICES(29):**

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

#### **14.2 REQUIRED PAYMENT DATE(30):**

Payment will be made in accordance with the provisions of the California Prompt Payment Act (Act) (Gov. Code, § 927 et seq). Unless expressly exempted by statute, the Act requires State

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agencies to pay properly submitted, undisputed invoices not more than 45 days after: (a) the date of acceptance of Deliverables or performance of Services, and/or Cloud Services; or (b) receipt of an undisputed invoice, whichever is later.

#### **14.3 TAXES(31):**

Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any state or local sales or use taxes on the Services, and/or cloud Services rendered or Goods supplied to the State pursuant to this Contract.

#### **14.4 USE TAX COLLECTION(60):**

In accordance with PCC section 10295.1, Contractor shall comply with Section 7101 of the Revenue and Taxation Code. Contractor shall immediately notify the State in writing of any change in its retailer's seller's permit or certification of registration or its applicable affiliate's seller's permit, or certificate of registration as described in subdivision (a) of PCC section 10295.1.

#### **14.5 EXAMINATION AND AUDIT(46):**

The State or its designated representative shall have the right to review and copy any records and supporting documentation directly pertaining to performance of this Contract. Contractor shall maintain such records for audit for a minimum of 3 years after final payment unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to Contractor.

#### **14.6 SOFTWARE LICENSE AUDIT(NEW):**

The State is responsible for monitoring compliance with the terms and conditions of use for any licensed Software delivered pursuant to this Contract. The State agrees that, upon 45 days' prior written notice, Contractor or an independent third party designated by Contractor, may audit the State's compliance with applicable license requirements. License audits requiring on-site presence at the State's facilities shall require the State's express written consent, which shall not be unreasonably withheld. Contractor agrees to limit such license audits to one audit per calendar year. The State, Contractor and/or independent third party shall cooperate in good faith with such audit, which Contractor agrees will be confidential, and commercially reasonable in scope and duration. Each Party shall bear its own costs for such license audits (including the cost of any independent third parties).

The State shall have the opportunity to review the results of any license audit and, within 60 days of receiving such results, shall notify Contractor of any disputed findings. Should the State dispute any findings, the Parties shall work in good faith to resolve the matter and, if the Parties are unable to resolve the matter after 30 days, Contractor may initiate the dispute resolution process described in Section 16 (Dispute Resolution). If the State accepts the audit findings,

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within 60 days of receiving such results, the Parties shall amend the Contract to account for the additional license usage and the State shall order sufficient quantities of licenses at the contracted rate, if applicable.

## SECTION 15. TERMINATION

### 15.1 TERMINATION FOR NON-APPROPRIATION OF FUNDS(21):

The State's obligation to proceed with the Contract is contingent on the appropriation of funds for such purpose by the California Legislature or if applicable, the United States Congress. The State will have the right to terminate the Contract without damage, penalty, cost, or further obligation in the event funding is not appropriated and Contractor agrees to take back any affected Goods furnished under this Contract and terminate any Services, and/or Cloud Services supplied to the State under this Contract. The State and Contractor shall agree to take all reasonable steps to prioritize work and minimize the incurrence of costs prior to the expiration of funding for this Contract.

IF TERMINATION OCCURS UNDER THIS SECTION, THE STATE SHALL RETURN TO CONTRACTOR COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE SHALL PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND SHALL REIMBURSE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN PACKING AND CRATING.

### 15.2 TERMINATION FOR CONVENIENCE(22):

The State may, terminate performance of work under this Contract for its convenience, from time to time, in whole or in part, if DGS-PD's Deputy Director, or designee, or as applicable, CDT's STP Deputy Director, determines that termination is in the State's interest. If such a determination is made, the State shall provide Contractor a Notice of Termination (Termination Notice) specifying the extent of termination and the effective termination date (Termination Date) which shall be no less than 15 days from the Notice date.

**15.2.1 Effect of Termination for Convenience.** After receipt of a Termination Notice, and except as directed by the State, Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this section. Contractor shall: (a) stop work as specified in the Termination Notice; (b) place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract; (c) terminate all subcontracts to the extent they relate to the work terminated; and (d) settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.

**15.2.2 Termination Proposal.** After termination, Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. Contractor shall submit the proposal promptly, but no later than 90 days after the Termination Date, unless otherwise provided in the Statement of Work or in Termination Notice. Contractor

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and the State may agree upon the whole or any part of the amount to be paid pursuant to Subsection 15.2.3 below.

**15.2.3 Payments in Event of Termination.** Unless otherwise specified in the Statement of Work, if Contractor and the State fail to agree on the amount to be paid pursuant to termination under Section 15.2, the State will pay Contractor the following amounts (provided that in no event will total payments exceed the amount payable to Contractor if the Contract had been fully performed):

- (a) the Contract price for Goods or Deliverables accepted or Services utilized or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
- (b) the total of:
  - (i) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or Services paid or to be paid;
  - (ii) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
  - (iii) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by Contractor in winding down and terminating its work.

Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the Parties, and sound business practices in determining all costs claimed, agreed to, or determined under this Section.

### 15.3 TERMINATION FOR DEFAULT(23):

Subject to Section 19.3 (Force Majeure) and to Section 15.3.1 below, the State may, by written notice of default to Contractor, terminate this Contract, in whole or in part, if Contractor fails to: (a) deliver the Goods or perform the Services within the time specified in the Contract or any amendment; (b) make progress, so that the lack of progress endangers performance of the Contract; or (c) perform any provision of the Contract.

The State's termination rights under this Section may be exercised only if the failure constitutes a material breach of this Contract and Contractor fails to cure such default within the time stated in the cure notice, which in no event will be less 15 days, unless otherwise specified in the Statement of Work.

**15.3.1 Effect of Termination for Default.** If the State terminates this Contract in whole or in part for default:

- (a) it may acquire, under terms and in the manner it considers appropriate, Deliverables similar to those terminated, and Contractor will be liable to the State for any excess costs for those Deliverables, including without limitation, costs charged by third-party vendors for such Deliverables. However, Contractor shall continue the work not terminated.

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(b) it may require Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any: (a) completed Deliverables; (b) partially completed Deliverables; and (c) subject to Section 15.3.2 below, any other Deliverables related to the terminated portion of the Contract.

Nothing in this Section will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, Contractor shall also protect and preserve property in its possession in which the State has an interest.

**15.3.2 Payments in the Event of Default.** The State shall pay Contract price for completed Deliverables delivered and accepted, and items the State requires Contractor to transfer under Section 15.3.1 above. Unless otherwise specified in the Statement of Work, Contractor and Buyer shall attempt to agree on the amount of payment for Deliverables including Goods and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under Section 16 (Dispute Resolution). The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

If, after termination, it is determined by a final decision that Contractor was not in default, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of the State.

### 15.4 RIGHTS AND REMEDIES OF STATE FOR DEFAULT(25):

In the event any Goods furnished, or Services or Cloud Services provided by Contractor in the performance of the Contract should fail to conform to the contractual requirements, or to the sample submitted by Contractor (if applicable), the State may reject the same, and Contractor shall reclaim and remove the item promptly or correct the performance of Services or Cloud Services, without expense to the State, and immediately replace all such rejected items with items conforming to the Contract.

The State may require Contractor, at Contractor's expense, to ship Goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Contractor. Further, 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, subject to Section 11 (Limitation of Liability).

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 Contractor.

Both Parties, upon any termination for default, have a duty to mitigate the damages suffered by it. The rights and remedies of the State in this Section are in addition to any other rights and legal or equitable remedies available under law, or provided under this Contract, subject to Section 11 (Limitation of Liability).

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## SECTION 16. DISPUTE RESOLUTION

### 16.1 DISPUTES WITH BUYER:

The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor may submit to the Buyer's department director (Buyer's Director) or designee a written demand for a final decision regarding the disposition of any dispute between the Parties regarding the Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. The Buyer's Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section to render a written decision. If a written decision is not rendered within 30 days after receipt of Contractor's demand, it shall be deemed a decision adverse to Contractor's contention.

If Contractor is not satisfied with the decision of the Buyer's Director or designee, Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30-day period if no decision is rendered by the Buyer's Director), to the DGS-PD Deputy Director, or the CDT Statewide Technology Procurement Deputy Director, as applicable, who shall have 30 days to render a final decision. If Contractor does not appeal the decision of the Buyer's Director or designee, the decision shall be conclusive and binding and Contractor shall be barred from commencing an action in court, or with the Government Claims Program, for failure to exhaust Contractor's administrative remedies.

Pending the final resolution of any dispute regarding the Contract, Contractor agrees to diligently proceed with the performance of the Contract, in accordance with the State's instructions regarding the Contract. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of the Contract.

If Contractor appeals, any final decision of the State shall be in writing, signed by the DGS-PD Deputy Director, or the CDT STP Deputy Director, as applicable, expressly identifying it as final. If the DGS-PD Deputy Director, or the CDT STP Deputy Director fails to render a final decision within 30 days after receipt of Contractor's appeal, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding unless the Contractor files a claim with the Government Claims Program contesting such decision.

### 16.2 DISPUTES WITH DGS-PD:

For disputes involving purchases made by DGS-PD, Contractor shall submit to the DGS-PD Deputy Director or designee a written demand for a final decision, in the manner described in Section 16.1 above. The DGS-PD Deputy Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contention.

### 16.3 FINAL DECISION:

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The final decision rendered under this Section 16 shall be conclusive and binding regarding the dispute unless Contractor files a claim with the Government Claims Program contesting such decision. The dates of decision and appeal in this Section 16 may be modified by mutual written consent, as applicable, except for the time to commence a claim with the Government Claims Program.

## **SECTION 17. STOP WORK**

### **17.1 STOP WORK(45):**

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 up to 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 Section. 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 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: (a) cancel the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided for in Section 15.2 (Termination for Convenience) or Section 15.3 (Termination for Default).

### **17.2 CANCELLATION/EXPIRATION OF STOP WORK ORDER:**

If a Stop Work Order issued under this Section is canceled or the period of the Stop Work Order or any extension expires, Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) 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 (b) Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated pursuant to Section 15.2 (Termination for Convenience), the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

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

## **SECTION 18. SMALL BUSINESS PARTICIPATION & DVBE PARTICIPATION REPORTING REQUIREMENTS**

### **18.1 SMALL BUSINESS PARTICIPATION:**

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If, for this Contract, Contractor made a commitment to achieve small business participation, then Buyer requires Contractor upon completion of this Contract (or within such other period as may be specified elsewhere in this Contract) to report the actual percentage of small business participation that was achieved. (Govt. Code, § 14841).

#### 18.2 DVBE PARTICIPATION:

If, for this Contract, Contractor made a commitment to achieve the disabled veteran business enterprise (DVBE) participation goal, then, pursuant to Military & Veterans Code, section 999.5, subdivision (d), upon completion of this Contract, Buyer requires Contractor to certify using the Prime Contractor's Certification – DVBE Subcontracting Report (STD 817), all of the following:

- (a) the total amount the prime Contractor received under the Contract;
- (b) the name, address, Contract number and certification ID number of the DVBE(s) that participated in the performance of this Contract;
- (c) the amount and percentage of work the prime Contractor committed to provide to one or more DVBE(s) under the requirements of the Contract and the total payment each DVBE received from the prime Contractor;
- (d) that all payments under the Contract have been made to the DVBE(s); and
- (e) the actual percentage of DVBE participation that was achieved.

Upon request, the prime Contractor shall provide proof of payment for the work.

Until Contractor complies with the certification requirements above, Buyer will withhold \$10,000 from the final payment, or the full final payment if less than \$10,000. A Contractor that fails to comply with the certification requirement shall, after written notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 days but not more than 30 days from the date of written notice, the prime contractor refuses to comply with the certification requirements, Buyer shall permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. (Mil. & Vets. Code, § 999.7).

Contractor shall comply with the rules, regulations, ordinances, and statutes that apply to the DVBE program as defined in Section 999 of the Military & Veterans Code, including, but not limited to, the requirements of Section 999.5, subdivision (d). (PCC, § 10230). A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code, § 999.5, subd. (d); Gov. Code, § 14841).

## SECTION 19. GENERAL TERMS

#### 19.1 INDEPENDENT CONTRACTOR(5):

Contractor, its officers, employees, and agents, in the performance of this Contract, shall act in an independent capacity and not as officers, employees or agents of the State.

#### 19.2 NO PUBLICITY(35):

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Unless otherwise exempted, news releases, endorsements, advertising, social media content and any other form of publicity pertaining to this Contract shall not be made without prior written approval of the Buyer's Department, DGS or CDT, as applicable.

#### **19.3 FORCE MAJEURE(24):**

Except for defaults of subcontractors at any tier, and any Contractor responsibilities concerning disaster recovery and/or business continuity, 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 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 Contractor and subcontractor, and without the fault or negligence of either, Contractor shall not be liable for any excess costs for failure to perform.

#### **19.4 NOTICE OF INSOLVENCY(NEW):**

Contractor shall notify the State immediately in writing if Contractor files any federal bankruptcy action or state receivership action, or if any federal bankruptcy or state receivership action is commenced against Contractor, Contractor is adjudged bankrupt, or a receiver is appointed. Should any such event occur, the State may, pursuant to Section 15.2 (Termination for Convenience), terminate this contract.

#### **19.5 COMPLETE INTEGRATION(3):**

This Contract, including any documents incorporated by reference is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract. No oral understanding or Contract not incorporated in the Contract is binding on any of the Parties.

#### **19.6 ASSIGNMENT(9):**

Contractor shall not assign this Contract, in whole or in part, without the written consent of the State, which consent shall not be unreasonably withheld or delayed. The State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its contractual obligations.

#### **19.7 NO WAIVER(10); REMEDIES CUMULATIVE:**

The failure of the State to enforce any provision or exercise rights under the Contract, shall not be construed to be a waiver by the State of its rights to enforce that provision or exercise that right in the future. Except as specifically set forth in Section 7 (Warranties & Representations), all rights and remedies of the State herein are cumulative and are in addition all other available rights or legal or equitable remedies.

#### **19.8 AMENDMENT(33):**

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No amendment or modification of the terms of this Contract shall be valid unless made in writing, signed by the Parties, and approved as required. Notwithstanding the foregoing, with regard to Cloud Services only, service agreements may be modified by Service Provider from time to time without the necessity of amending this Contract so long as any such modification does not degrade the functionality or security features of the Cloud Services or change the limitation of liability or indemnification clauses of the Contract. Service agreements shall be subject to Section 3 (Order of Precedence).

#### **19.9 SEVERABILITY(4):**

If any provision of this Contract is unenforceable, invalid, or conflicts with applicable law, the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

#### **19.10 APPLICABLE LAW(6); JURISDICTION AND VENUE:**

This Contract shall be governed by the laws of the State of California, exclusive of any choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. Any action regarding this Contract shall be subject to the exclusive jurisdiction and venue of the state and federal courts in the City and County of Sacramento, California.

#### **19.11 SURVIVAL:**

Upon expiration or termination of this Contract, this Section and the following provisions will survive: Section 7 (Warranties & Representations), Section 8 (Proprietary Rights), Section 10 (Indemnification), Section 11 (Limitation of Liability), Section 14.5 (Examination and Audit), and Section 20.11 (Transition Period). Further, any other Contract term that expressly states or by its nature should survive, shall survive.

## SECTION 20. DATA PROTECTION PROVISIONS

#### **20.1 ACCESS TO STATE SYSTEMS:**

In the course of providing the Deliverables, Services or Cloud Services under the Contract, Contractor may gain access to State Data and State Systems, electronic communications networks, including but not limited to, voicemail, email, databases, and internet/intranet systems. Access to such systems is intended for legitimate business use related to the fulfillment of the Contract. Contractor acknowledges it has no expectation of privacy regarding the use of the systems and that all use of, or access to, the systems made by or on behalf of Contractor is subject to State scrutiny and oversight.

#### **20.2 COMPLIANCE WITH DATA PROTECTION LAWS:**

Notwithstanding anything to the contrary in the Contract, Contractor shall comply with all applicable laws and regulatory requirements relating to the collection, use, disclosure, retention,

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destruction, unavailability, or other processing of State Data (collectively, Data Protection Laws), in connection with the Contractor's provisions of Goods, Services and/or Cloud Services under the Contract, including but not limited to, and to the extent applicable, the California State Administrative Manual (SAM) (Ch. 5100, available at <https://www.dgs.ca.gov/Resources/SAM/TOC/5100> and Ch. 5300, available at <https://www.dgs.ca.gov/Resources/SAM/TOC/5300>) and Sections 5305A, 5310A and B, 5315-B, 5325A and B, 5340 A and C, and 5360B of the California Statewide Information Management Manual (SIMM) (available at <https://cdt.ca.gov/policy/simm/>), which have the effect of state regulation for purposes of the Contract. Contractor shall not take, or fail to take, any action that would put State in violation of such Data Protection Laws.

### 20.3 CYBERSECURITY AND PRIVACY:

Contractor shall comply with the statutes, policies, frameworks, and regulations set forth herein:

- (a) The California Information Practices Act to the extent that State Data that contains Personal Information is created, received, maintained, transmitted or otherwise used by Contractor;
- (b) Current version of the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53 Security and Privacy Controls for Systems and Organizations. Unless otherwise specified in the Statement of Work, controls shall be applied at the MODERATE level. All contracts requiring NIST SP 800-53 MODERATE, or higher-level Security and Privacy Controls for Systems and Organizations shall undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 18 Service Organization Control (SOC) 2 Type II audit (or successor). If otherwise specified in the Statement of Work and subject to the prior written approval of the State Chief Information Security Officer (or their designee), Contractor may submit a current ISO 27001 certification in satisfaction of the foregoing requirements of this subsection 20.3(b). 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 written request; and
- (c) Contractor shall implement and maintain a System Security Plan in compliance with NIST 800-171 and ensure plan is reviewed annually.

### 20.4 DATA SAFEGUARDS:

Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with Sections 20.2 and 20.3 at all times during the Contract term to secure State Data from Data Breach, protect State Data and Systems, Service, Cloud Service and components thereof, from unauthorized or unlawful use, access or modification, disclosure or destruction, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access.

### 20.5 ENCRYPTION:

End-to-end encryption shall be implemented for all confidential, sensitive or personal information that is transmitted or accessed outside the secure internal network. All confidential, sensitive or

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Personal Information must be encrypted at rest and in transit with validated cryptography standards as referenced in FIPS 140-3 (or higher).

#### 20.6 FEDERAL TAX INFORMATION:

The Parties acknowledge that information transmitted by the State to the Contractor and/or Service Provider may inadvertently contain Federal Tax Information (FTI). The State will use all reasonable efforts to prevent the transmittal of FTI to Contractor and/or Service Provider under this Contract. The State further acknowledges that the Contractor and/or Service Provider does not require any “access” to, or “receipt” or “storage” of FTI to perform the Cloud Services under the Contract. The Contractor and/or Service Provider further acknowledge that Contractor and/or Service Provider shall not knowingly access or permit access to such FTI, unless directed by the State. Access to FTI is out-of-scope of the Cloud Services.

To the extent that Contractor’s and/or Service Provider’s access to FTI is “incidental” to Contractor’s provision of Cloud Services, it is the Parties’ view that such incidental exposure should not legally subject Contractor and/or Service Provider to the Internal Revenue Service (IRS) requirements set forth in IRS Publication 1075, section 11.2. However, if the IRS ultimately takes a contrary position, and determines that Contractor, Service Provider and/or the State should have nevertheless complied with the requirements of IRS Publication 1075, the Parties will immediately evaluate the feasibility of continued performance under the Contract.

#### 20.7 SYSTEM AVAILABILITY:

The minimum standards for System Availability shall be as set forth herein. Nothing herein precludes the State from specifying a higher standard for System Availability in the Statement of Work. Requests for a lower System Availability standard shall require the written approval of the State Information Security Officer.

- (a) The System shall be available 24 hours per day, 365 days per year, excluding agreed-upon maintenance downtime (System Availability).
- (b) If the monthly System 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.
- (c) If the monthly System Availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for 3 or more months in a rolling 12-month period, the State may terminate the contract for material breach in accordance with Section 15.3 (Termination for Default).
- (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 System Availability.

#### 20.8 DATA AVAILABILITY:

The minimum standards for Data Availability shall be as set forth herein. Nothing herein prevents the State from specifying a higher standard for Data Availability in the Statement. Requests for a lower Data Availability standard shall require the written approval of the State CISO.

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- (a) State Data shall be available 24 hours per day, 365 days per year, excluding agreed-upon maintenance downtime (Data Availability).
- (b) If the monthly Data 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 State Data as a result of:
  - (i) Acts or omission of Contractor;
  - (ii) Acts or omissions of third parties working on behalf of Contractor;
  - (iii) 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; or
  - (iv) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- (c) If the monthly Data Availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for 3 or more months in a rolling 12-month period, the State may terminate the contract for material breach.

### 20.9 DATA LOCATION AND ACCESS:

**20.9.1 Data Center Location in US.** The physical location of Contractor's data center where State Data is stored shall be within the continental United States, unless otherwise specified in the Statement of Work and approved in advance in writing by: (a) the Agency Information Security Officer (AISO), with written notice to the State Chief Information Security Officer (CISO); or (b) in the absence of an AISO, the State CISO.

**20.9.2 Data Access.** Remote access to State Data from outside the continental United States, including remote access to State Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance in writing by: (a) the AISO, with written notice to the State CISO; or (b) in the absence of an AISO, the State CISO.

### 20.10 SECURITY INCIDENT:

Upon identification of an actual or suspected Security Incident affecting this Contract or State Data, Contractor shall provide information directly related to the Security Incident including Indicators of Compromise (IOC) to enable the State to complete a timely and cooperative investigation.

### 20.11 DATA BREACH:

Unless otherwise specified in the Statement of Work, upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available, as well as in writing, with additional notification provided to the State CISO or designee of the contracting agency. Contractor shall provide such notification immediately after Contractor reasonably believes there has been such a Data Breach, in no event greater than 48-hours after such determination.

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Contractor's notification shall identify:

- (a) The nature of the Data Breach;
- (b) The State Data improperly accessed, used or disclosed;
- (c) The number of individual records improperly accessed, used or disclosed if personal information is involved;
- (d) The person(s) who improperly accessed, used, disclosed and/or received State Data (if known);
- (e) What Contractor has done or will do to quarantine and remediate the Data Breach; and
- (f) What corrective action(s) Contractor has taken or will take to prevent future Data Breaches.

Contractor will provide daily updates, or more frequently as required by the State, regarding findings and actions performed by Contractor until the Data Breach has been effectively resolved to the State's satisfaction.

Contractor shall contain and mitigate the Data Breach and ensure secure access to State Data in accordance with the service level agreement (SLA), set forth in the Statement of Work, if applicable.

**20.11.1 Breach Obligations.** If Contractor experiences a Data Breach, the State's CISO or designee, shall determine whether notification to any individuals whose State Data has been improperly accessed, lost or breached is appropriate. If Personal Information of any resident of California was, or is reasonably believed to have been improperly accessed or acquired by an unauthorized person as a result of a Data Breach 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, subdivision (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 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.

Contractor shall investigate the Data Breach and shall share the investigation report 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.

**20.11.2 Data Inquiries.** Contractor shall promptly refer to the State any inquiries received by Contractor regarding Contractor's information security or privacy practices relating to the State Data.

### 20.12 TRANSITION PERIOD:

Unless otherwise specified in the Statement of Work, for 90 days prior to the expiration date of the Contract, or upon notice of termination of the Contract and for 90 days thereafter, Contractor shall assist the State in extracting and/or transitioning all State Data in the format determined by the State (Transition Period).

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During the Transition Period, System, Service and State Data access shall continue to be made available to the State without alteration. The State, at its option, may purchase additional transition services as specified in the Statement of Work.

Unless otherwise specified in the Statement of Work, the Contractor shall permanently destroy or render inaccessible any portion of State Data in the possession or control of Contractor (including the possession or control of Contractor's agents, affiliates and subcontractors) following the expiration of all obligations in this section. Within 30 days, Contractor shall issue a written statement to the State confirming the destruction or inaccessibility of State Data.

Contractor shall compensate the State for damages or losses the State incurs as a result of Contractor's failure to comply with this Section subject to any applicable limitation of liability.

### 20.13 DISASTER RECOVERY AND BUSINESS CONTINUITY:

Unless otherwise specified in the Statement of Work, in the event of disaster or catastrophic failure that results in loss of State Data or extended loss of access to State Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the State CISO or designee of the contracting agency. Contractor shall provide such notification within 24 hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:

- (a) The scale and quantity of the State Data loss;
- (b) What Contractor has done or will do to recover State Data and mitigate the effect of the State Data loss; and
- (c) Corrective action(s) Contractor has taken or will take to prevent future State Data loss.

If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under the Contract.

Contractor shall repair and restore continuity of System, Service or data, in accordance with the RPO and RTO, as needed to meet the performance requirements stated in the SLA, if applicable. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract. RPO (Recovery Point Objective) is the point in time to which State Data can be recovered and/or systems restored when service is restored after an interruption. RPO expressed as a length of time between the interruption and the most proximate backup of State Data immediately preceding the interruption. RTO (Recovery Time Objective) is the period within which information technology services, systems, applications, and functions must be recovered following an unplanned interruption.

### 20.14 INSPECTION AND AUDIT OF CONTRACTOR'S SYSTEMS:

Upon advance written request, Contractor agrees that the State or its designated representative shall have access to Contractor's system, Service and data, operational documentation, records, and databases, including online inspections, that relate to the System, Service and/or data purchased by the State under the Contract. 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:

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- (a) Operating system/network vulnerability scans;
- (b) Web application vulnerability scans;
- (c) Database application vulnerability scans; and
- (d) Any other scans to be performed by the State or its authorized representatives.

Upon written request, Contractor shall provide the results of any independent tests performed by Contractor including the results of any penetration testing. The State shall maintain the confidentiality of any information provided by Contractor pursuant to this Section.

**20.14.1 Remediation.** Contractor shall remediate vulnerabilities and correct flaws identified through testing and assessments within the designated time periods. Contractor will notify the State once corrections and remediation have been completed. Contractor shall implement security, policies, procedures, and practices to protect State Data as required by the Contract.

**20.14.2 Post-Breach/Disaster Audit.** After any Data Breach or after any disaster or catastrophic failure that results in a loss of State Data, 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 7 days of Contractor's receipt of such results. Within 30 days of receiving the results of the audit, Contractor will provide the State with written evidence of planned remediation and promptly modify its security measures to meet its obligations under this Contract.