

STANDARD AGREEMENT

STD 213 (Rev 06/03)

AGREEMENT NUMBER

5-06-58-22 (DTS 06E1392)

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

DEPARTMENT OF TECHNOLOGY SERVICES

CONTRACTOR'S NAME

MCI Network Services, Inc. or MCI Financial Management, Corp. on behalf of MCI Communications Services, Inc d/b/a Verizon Business Services and other authorized Verizon companies

2. The term of this Agreement is: Effective Date (date approved by DGS) through five (5) years
The State shall have the option to extend this agreement for two (2) additional one-year periods.

3. The maximum amount of this Agreement is: \$ N/A

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Table of Contents, Module 3	_____ page(s)
Attachment 1 – General Provisions, Module 3	_____ page(s)
Attachment 2 – Statement of Work, Module 3	_____ page(s)
Attachment 3 – Description of Services, Module 3	_____ page(s)
Attachment 4 – Pricing, Module 3	_____ page(s)
Attachment 5 – Ordering and Individual Price Reduction Notification Documents (including Exhibits A-1 through A-5, appended to Attachment 5), Module 3	_____ page(s)
Attachment 6 – Authorized Subcontractors and Business Partners, Module 3	_____ page(s)

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

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

MCI Network Services, Inc. or MCI Financial Management, Corp. on behalf of MCI Communications Services, Inc d/b/a Verizon Business Services and other authorized Verizon companies

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Keith R. Puls, Vice President Sales

ADDRESS

112 Lakeview Canyon Road, Thousand Oaks, CA 91362

STATE OF CALIFORNIA

AGENCY NAME

DEPARTMENT OF TECHNOLOGY SERVICES

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Glen S. Matsuoka, Deputy Director, Administration Division

ADDRESS

P.O. Box 1810, MS 304, Rancho Cordova, CA 95741-1810

California Department of General Services Use Only

R.H.

1/24/07

GENERAL SERVICES
LEGAL SERVICES

DEPARTMENT OF GENERAL SERVICES
INDEPENDENT OFFICE

APPROVED

BY *Rita Hamilton*

DATE *01/30/2007*

Exempt per:

California Integrated Information Network (CALNET) II

APPENDIX B-3, MODEL CONTRACT LANGUAGE

Table of Contents, Module 3

STD 213, Standard Agreement..... 1

Table of Contents, Module 3 I

Attachment 1 - General Provisions, Module 3.....2

1. PURPOSE OF CONTRACT..... 2

2. CONTACT INFORMATION..... 3

3. COMPLETE INTEGRATION 4

4. SEVERABILITY..... 4

5. INDEPENDENT CONTRACTOR 4

6. APPLICABLE LAW 5

7. COMPLIANCE WITH STATUTES AND REGULATIONS 5

8. CONTRACTOR’S POWER AND AUTHORITY..... 6

9. ASSIGNMENT 6

10. WAIVER OF RIGHTS 6

11. ORDER OF PRECEDENCE 7

12. DELIVERY 7

13. SUBSTITUTIONS 7

14. INSPECTION, ACCEPTANCE AND REJECTION..... 7

15. WARRANTY..... 8

16. SAFETY AND ACCIDENT PREVENTION..... 10

17. INSURANCE 10

18. TERMINATION FOR NON-APPROPRIATION OF FUNDS..... 11

19. TERMINATION FOR THE CONVENIENCE OF THE STATE..... 11

20. TERMINATION FOR DEFAULT 12

21. FORCE MAJEURE 14

22. RIGHTS AND REMEDIES OF STATE FOR DEFAULT 15

23. LIMITATION OF LIABILITY 15

24. CONTRACTOR’S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO
PROPERTY 16

25. INDEMNIFICATION 16

26. TIMELINESS 17

27. REQUIRED PAYMENT DATE 17

28. CONTRACT MODIFICATION 17

29. CONFIDENTIALITY OF DATA 18

30. PUBLICITY 19

31. PROTECTION OF CONTRACTOR FURNISHED PROPRIETARY SOFTWARE AND
OTHER PROPRIETARY DATA 19

32. PATENT, COPYRIGHT AND TRADE SECRET PROTECTION 19

33. EXAMINATION AND AUDIT 21

34. CONTINUING STANDARDS OF PERFORMANCE FOR CONTRACTOR SERVICES .. 22

35. DISPUTES 24

36. STOP WORK 25

37. FOLLOW-ON CONTRACTS 26

38. PRIORITY HIRING 27

39. COVENANT AGAINST GRATUITIES 27

40. NONDISCRIMINATION CLAUSE 28

41. NATIONAL LABOR RELATIONS BOARD CERTIFICATION 28

42. ASSIGNMENT OF ANTITRUST ACTIONS 28

43. DRUG-FREE WORKPLACE CERTIFICATION 29

44. FOUR-DIGIT DATE COMPLIANCE 30

45. SWEATFREE CODE OF CONDUCT..... 30

46. RECYCLING 30

47. CHILD SUPPORT COMPLIANCE ACT 30

48. AMERICANS WITH DISABILITIES ACT..... 31

49. [INTENTIONALLY OMITTED]..... 31

50. PERFORMANCE DEFICIENCY CHARGES..... 31

51. SET-OFF RIGHTS 32

52. CONTRACTOR PERSONNEL..... 32

53. RESPONSIBILITIES OF THE STATE 34

54. CONTRACTOR BUSINESS RELATIONSHIP RESPONSIBILITY 34

55. UNANTICIPATED TASKS 35

56. NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY 36

57. NON-EXCLUSIVE AGREEMENT 36

58. CHARGES 37

59. SERVICE COSTS 37

60. SERVICE TAXES, FEES, SURCHARGES, AND SURCREDITS 37

61. ADMINISTRATIVE FEE 38

62. INVOICES AND PAYMENTS..... 39

63. CONTRACTOR COMMITMENTS AND REPRESENTATIONS..... 40

64. SERVICE TO PUBLIC ENTITIES 40

65. [INTENTIONALLY OMITTED]..... 40

66. EXISTING EQUIPMENT 40

67. CUSTOMER PREMISE EQUIPMENT 40

68. AVAILABILITY OF REFRESHED TECHNOLOGY AND ADDITIONAL SERVICE ITEMS
..... 41

69. PRICING AND SERVICE REVIEW..... 42

70. “MOST FAVORED NATION” STATUS OF STATE..... 42

71. INDIVIDUAL CASE BASIS (ICB) PRICING 42

72. INDIVIDUAL PRICE REDUCTIONS (IPR) 44

73. FEDERAL UNIVERSAL SERVICE FUND 44

74. TITLE TO EQUIPMENT 45

75. UNLAWFUL USE 45

76. MIGRATION PLAN FOR CONTRACTOR SERVICES 45

77. DISENTANGLEMENT (TRANSITION-OUT)..... 46

78. REPORTS, DATA AND INVENTORY..... 49

79. DISASTER RECOVERY AND SECURITY PLAN..... 49

80. BENCHMARKING 49

81. OFFER; TERM..... 50

82. SUBCONTRACTORS 51

83. DE MINIMIS SERVICE REQUESTS..... 51

84. GOVERNANCE..... 52

85. SECURITY AND POLICIES..... 52

86. NEWLY MANUFACTURED GOODS..... 53

87. DOCUMENTATION 53

88. RIGHTS IN WORK PRODUCT 53

89. ELECTRONIC WASTE RECYCLING ACT OF 2003 54

90. USE TAX COLLECTION..... 54

91. EXPATRIATE CORPORATIONS..... 55

92. DOMESTIC PARTNERS..... 55

Attachment 2 - Statement of Work, Module 3..... 56

Attachment 3 - Description of Services, Module 3..... 57

Attachment 4 - Pricing, Module 3..... 58

Attachment 5 - Ordering and Individual Price Reduction Notification Documents, Module 359

 Exhibit A-1, STD Form 2060

 Exhibit A-2, Authorization to Order Under State Contract61

 Exhibit A-3, STD Form 65 *

 Exhibit A-4, Work Authorization Form.....64

 Exhibit A-5, Individual Price Reduction Notification65

Attachment 6 - Authorized Subcontractors and Business Partners, Module 369

* STD Form 65 is only provided as separate Adobe PDF file.

CALIFORNIA INTEGRATED INFORMATION NETWORK (CALNET) II**ATTACHMENT 1 - GENERAL PROVISIONS, MODULE 3**

These California Integrated Information Network (CALNET) II (“**CALNET II**”) General Provisions are part of the Contract entered into effective as of the Effective Date by and between the State of California, through its Department of Technology Services, Office of Network Services, and _____*See Below_____, a _____Delaware_____ corporation having a principal place of business at __Roseville, CA_____.

* MCI Network Services, Inc. or MCI Financial Management Corp. on behalf of MCI Communications Services, Inc d/b/a Verizon Business Services and other authorized Verizon companies

1. PURPOSE OF CONTRACT

Pursuant to the RFP, the State may issue one or more contracts for different categories of CALNET II Services (each category, a category of “**Module Services**”). Presently, the State anticipates that there shall be four categories of Module Services:

- Module 1 Services: Core Services (defined and described in Sections 4.4.1 and 6.1 of the RFP)
- Module 2 Services: Long Distance Services for Voice (defined and described in Sections 4.4.2 and 6.2 of the RFP)
- Module 3 Services: Internet Protocol Services (defined and described in Sections 4.4.3 and 6.3 of the RFP)
- Module 4 Services: Broadband Fixed Wireless Access (defined and described in Sections 4.4.4 and 6.4 of the RFP)

Pursuant to this Contract, Contractor shall provide to the State and Agencies the Module 3 Services as defined and described in this Contract (such Module 3 Services deemed “**Services**” for purposes of this Contract). Unless otherwise specified in this Contract, the Services shall be available twenty-four (24) hours a day, seven (7) days a week, as further described in this Contract.

Capitalized terms not defined herein or in the Glossary (Appendix A) shall be given the meaning, if any, ascribed to them in the other portions of the RFP.

2. CONTACT INFORMATION

a. The Contract Representatives during the Term shall be:

State Agency: Department of Technology Services, Office of Network Services	Contractor: MCI Network Services, Inc. or MCI Financial Management Corp. on behalf of MCI Communications Services, Inc d/b/a Verizon Business Services and other authorized Verizon companies
Name: Robert T. Rainbolt	Name: Mark Roese
Phone: (916) 657-6169	Phone: 916-779-5631
Fax: (916) 657-9129	Fax: 415-796-1012
E-Mail: tom.rainbolt@dts.ca.gov	E-Mail: mark.roese@verizonbusiness.com

Direct all inquiries to:

State Agency: Department of Technology Services	Contractor: MCI Network Services, Inc. or MCI Financial Management Corp. on behalf of MCI Communications Services, Inc d/b/a Verizon Business Services and other authorized Verizon companies
Section/Unit: Office of Network Services	Section/Unit:
Attention: ONS Contract Management Section	Attention: Mark Roese
Address: P.O. Box 1810, MS 304, Rancho Cordova, CA 95741-1810	Address: 2998 Douglas Blvd., Suite 322, Roseville, CA 95661
Phone: (916) 657-6169	Phone: 916-779-5631
Fax: (916) 657-9129	Fax: 415-796-1012

Subject to the terms of the Contract, each Party may modify the Contract Representatives listed above during the Term by providing written notice to the other Party identifying the new Contract Representative(s).

b. Contractor shall act as the single point of contact and responsible party for all Services offered under this Contract. This includes all elements of service; ordering; provisioning; maintenance; and trouble reporting. Contractor will also act as the single point of contact in coordinating all entities required in the Contract to meet the State's need for service. Contractor shall act as the

single point of contact and responsible party for Services obtained from its subcontractors and affiliates that are offered to the State or any authorized user of this Contract as further described in the RFP.

- c. Whenever any notice or demand is to be given under this Contract to Contractor or the State, the notice shall be in writing and addressed to the applicable party at the address described in Section 2.a above, or such subsequent address of a party provided to the other party via a written notice in accordance with this paragraph. Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) calendar days after mailing. Notices delivered by any other method shall be deemed given upon confirmed receipt.
- d. The State and Agencies may order Deliverables and Services under this Contract by issuing the appropriate order form described in Attachment 5 to this Contract, or such other form as may be approved by the State (“**Ordering Documents**”).

3. COMPLETE INTEGRATION

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior, contemporaneous, different, or additional agreements pertaining to the subject matter of the Contract. Sections 1, 3, 4, 5, 6 and 7 of the RFP, the Proposal, the Table of Contents (which is included in Appendix B to the RFP), and the Glossary (which is Appendix A to the RFP) are each incorporated herein by this reference.

4. SEVERABILITY

Contractor and the State agree that if any term or provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

5. INDEPENDENT CONTRACTOR

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

6. APPLICABLE LAW

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

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

7. COMPLIANCE WITH STATUTES AND REGULATIONS

- a. Contractor represents, warrants and certifies that in the performance of this Contract, it will comply with all applicable laws, statutes, rules, regulations and orders of the United States and the State of California.
- b. In the event that any term or action required in this Contract requires a regulatory filing, Contractor shall make such filing and such action and/or term shall, to the extent applicable, be made effective pursuant to the rules of the FCC and the CPUC. To the extent applicable, Contractor shall make the appropriate FCC filing in a timely manner with the rates being effective consistent with FCC requirements. Under the CPUC, terms are effective immediately upon signature by the parties; provided, however, that, to the extent applicable, Contractor is obligated to and shall make a formal filing with the CPUC in a timely manner and shall provide the State with written notice that such filing has been made.
- c. In addition to the foregoing, Contractor shall, after execution of this Contract, make all necessary regulatory filings which shall include the rates and charges for Service and any terms and conditions that affect the rates and charges paid by any Customer.
- d. Should the filings described herein not adequately address an issue or fail to address an essential fact, Contractor’s tariffs or published service guides (or other published corporate pricing if Contractor is not required to file tariffs), if applicable, shall be utilized as a basis for providing continuity of Service, and Service offerings, pending subsequent mutual agreement and

modification of this Contract by the parties; provided, however, if the parties are unable to reach such mutual agreement within a reasonable period of time and good faith effort, then the State may take action pursuant to the terms and conditions of this Contract, including but not limited to terminating the affected Service(s) without penalty.

8. CONTRACTOR'S POWER AND AUTHORITY

Contractor represents and warrants to the State that Contractor has full power and authority to grant the rights herein granted. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

The Services provided by Contractor shall be under the control, management, and supervision of Contractor. Contractor is fully responsible for all work performed under this Contract including subcontracted work. Contractor is wholly responsible for the performance of its employees, agents, subcontractors and suppliers in fulfilling its obligations described in this Contract.

9. ASSIGNMENT

This Contract shall not be assignable by Contractor in whole or in part without the prior written consent of the State, which will not be unreasonably withheld.

10. WAIVER OF RIGHTS

Any action or inaction by either party or the failure of either party on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by such party of its rights hereunder and shall not prevent the parties from enforcing such provision or right on any future occasion. The rights and remedies of the parties herein are cumulative and are in addition to any other rights or remedies that the parties may have at law or in equity. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the party waiving its rights.

11. ORDER OF PRECEDENCE

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

- a. These General Provisions and any amendments thereto, including all of the attachments and Contract forms.
- b. The specifications and requirements contained in the RFP as incorporated herein and the agreements to meet the specifications and requirements in the RFP as stated in the Proposal. (The parties acknowledge and agree that silence in the Proposal with respect to a particular RFP specification or requirement equals consent by Contractor.)
- c. All other documents incorporated in the Contract by reference.
- d. All regulatory filings made pursuant to the terms and conditions of this Contract.

12. DELIVERY

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract subject to Section 28. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. If Contractor delivers in excess of the quantities or Services specified herein, the State shall not be required to make any payment for the excess Deliverables or Services, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

13. SUBSTITUTIONS

Substitution of Deliverables and Services may not be tendered without advance written consent of the State. The State will not unreasonably withhold its consent. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the State.

14. INSPECTION, ACCEPTANCE AND REJECTION

Unless otherwise specified in the Contract:

- a. Contractor and its subcontractors will provide and maintain a quality assurance system mutually agreed upon by the Contractor and the State covering Deliverables and Services under this Contract and will tender to the State only those Deliverables and Services that have been inspected and found to conform to this Contract's requirements. Contractor will keep records consistent with the agreed upon quality assurance system, and will make these records available

- to the State, on reasonable prior notice and at reasonable times and places during Contract performance and for four years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the extent to which Contractor's quality assurance system or other similar business practices directly related to performance of the Contract conform to the requirements of this Contract.
- b. All Deliverables and Services may be subject to inspection and test by the State or its authorized representatives.
 - c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors, at no additional cost to the State, all information and data as may be reasonably required to perform their inspection.
 - d. All Deliverables and Services may be subject to final inspection, test and acceptance as determined necessary by the State, notwithstanding any payment or inspection at source.
 - e. The State shall give written notice of rejection of Deliverables delivered or Services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such Services. Such notice of rejection will state the respects in which the Deliverables or Services do not conform to their specifications and/or requirements. 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.

15. WARRANTY

- a. Unless otherwise specified in the Contract the warranties in this subsection a) begin upon acceptance of the Deliverable or Service in question and continue through the Term. Contractor warrants to the State that (i) Deliverables and Services furnished hereunder will conform in all material respects to the requirements of this Contract, and (ii) the Deliverables and Services furnished will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a detailed design document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables and Services furnished will conform in all material respects to the mutually agreed design specifications. The State's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.
- b. Contractor warrants that the Deliverables and Services furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any United States patent, copyright, trade mark, trade secret, or other proprietary right ("**Intellectual Property Right**") of a third party. Without limiting the generality of the foregoing, if harmful code is present in any Deliverable or Service, Contractor will use all commercially reasonable efforts, at no additional charge to the State, to eliminate and reduce the

- effects of such harmful code, including restoration of any lost data using generally accepted data restoration methods.
- c. Contractor warrants that the Services shall be performed, and all Deliverables and other materials prepared and delivered, in a timely, professional, efficient, diligent and workman-like manner, in accordance with the highest recognized professional standards and practices of quality and integrity in the industry, by qualified personnel fully familiar with the technology and methodologies used in performing the Deliverables and Services, and be fit for use as reasonably intended by the parties.
- d. Contractor represents and warrants that, as of the Effective Date, there is no outstanding or reasonably anticipated civil or criminal litigation, arbitrated matter, or other dispute, in any forum, to which Contractor or any of its Affiliates is a party that, if decided unfavorably to Contractor or its Affiliates, would reasonably be expected to preclude Contractor from entering into this Contract or have a material adverse effect on Contractor's ability to fulfill its obligations hereunder.
- e. Contractor represents and warrants (i) all Equipment, networks, Software and other resources utilized or provided by Contractor in connection with the Deliverables and Services (collectively, the "**Provided Resources**") shall be successfully interfaced with, and shall be compatible with, the services, systems, items, and other resources of the State and its other third party service providers with which they will interoperate (collectively, the "**State Resources**"), and (ii) none of the Deliverables, Services or other items provided to the State by Contractor shall be adversely affected by, or shall adversely affect, the State Resources or any Services provided by any such third party service providers, in any material respect, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times, or otherwise.
- f. Contractor represents and warrants that: (i) it has conducted a full and complete analysis of the State's requirements as specified in this Contract; (ii) it has performed sufficient due diligence investigations regarding the scope and substance of the Services and the Deliverables; (iii) it has received sufficient answers to all questions that it has presented to the State regarding the scope and substance of the Services and the Deliverables as well as the workings, capabilities, procedures, and capacities of the State's networks, equipment, hardware, and software associated with the provision of the Services and Deliverables; and (iv) it is capable in all respects of providing the Services and Deliverables in accordance with this Contract. Contractor hereby waives and releases any and all claims that it now has or hereafter may have against the State based upon any inaccuracy or incompleteness of the information it has received with regard to the scope and substance of the Services and the Deliverables, except where such information was willfully withheld or intentionally misrepresented by the State and where such claims are permitted under California law. Further, Contractor covenants that it shall not seek any judicial rescission, cancellation, termination, reformation, or modification of this Contract or any provision hereof, nor any adjustment in the charges to be paid for the Deliverables or Services, based upon any such inaccuracy or incompleteness of information except where such information was willfully withheld or intentionally misrepresented by the State.
- g. Contractor represents and warrants that Contractor, at Contractor's expense, shall (and shall cause all of its subcontractors to) maintain all Equipment, Systems, networks, and Software operated or used in performance of its obligations hereunder so that they operate in accordance with the

- service levels and their respective specifications, including: (i) maintaining such items in good operating condition, subject to normal wear and tear, (ii) performing repairs and preventative maintenance in a timely manner and in accordance with the manufacturer's recommendations and requirements; and (iii) performing Software maintenance in accordance with the applicable Software supplier's recommendations and requirements.
- h. All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, Customers, and End-Users of the Deliverables or Services.
- i. Except as may be specifically provided in this Contract, for any breach of the warranties provided in this Section, the State shall be entitled to:
- i. Re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or Service; or
- ii. Should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or Service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. The payment obligation in this subsection will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability" (Section 23).
- j. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS CONTRACT, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

16. SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract and as required by law or regulation or any State rules applicable to such premises. Contractor's Equipment, Software, Systems and Services provided under this Contract shall comply with applicable laws and Contractor shall be responsible for any acts or omissions of agents or employees of Contractor in contravention of such laws. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes, including receipt of prescribed training prior to entering certain State premises. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

17. INSURANCE

Contractor shall maintain all commercial general liability insurance, worker's compensation insurance and any other insurance that State deems appropriate under the Contract. Contractor reserves the right to

be self-insured with respect to some or all of the above coverage. All such insurance shall be procured with reputable insurance companies, which are admitted sureties in the State of California. Each Contract year, Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially alter the insurance afforded under the policies unless notice of such cancellation, reduction or material alteration has been provided at least thirty (30) calendar days in advance to the State. Upon request by the State, Contractor may be required to have the State shown as an “additional insured” on selected policies. The obligation of Contractor to provide the insurance specified herein shall not limit in any way any obligation or liability of Contractor provided elsewhere in this Contract. The rights of the State to insurance coverage under policies issued to or for its benefit are independent of this Contract and shall not be limited by this Contract.

18. TERMINATION FOR NON-APPROPRIATION OF FUNDS

- a. If the Term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any Services supplied to the State under this Contract, and relieve the State of any further obligation therefore.
- b. STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR’S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

19. TERMINATION FOR THE CONVENIENCE OF THE STATE

- a. The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Chief Deputy Director, DTS, or designee, determines that a termination is in the State’s interest. The Chief Deputy Director, DTS, or designee, shall terminate by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b. After receipt of a Notice of Termination, and except as directed by the State, Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. Contractor shall:
 - i. Stop work as specified in the Notice of Termination (except as required by any Disentanglement Services).

- ii. Place no further subcontracts for materials, Services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - iii. Terminate all subcontracts to the extent they relate to the work terminated.
 - iv. Settle all outstanding liabilities and settlement proposals arising from the termination of subcontracts.
- c. Contractor and the State agree that the State shall have no obligation to pay any amount to Contractor upon the termination for convenience, other than, and in accordance with the terms of this Contract, the agreed price for Deliverables or Services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges plus any unrecovered amortized capital costs originally identified in writing by Contractor and approved in advance by the State, calculated using Generally Accepted Accounting Principles. Contractor shall submit a final termination settlement proposal within ninety (90) calendar days from the effective date of termination.

20. TERMINATION FOR DEFAULT

- a. The State may, subject to the clause titled “Force Majeure” (Section 21) and to subsection d. below, by written notice of default to Contractor, terminate this Contract in whole or in part if Contractor fails to:
- i. Deliver the Deliverables or perform the Services within the time specified in the Contract or any amendment thereto;
 - ii. Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii. Perform in accordance with any of the other provisions of this Contract.
- b. The State’s right to terminate this Contract under subsection a. above, may be exercised if (i) the failure constitutes a material breach of this Contract and if Contractor does not cure such failure within the time frame stated in the State’s cure notice, which in no event will be less than thirty (30) calendar days, unless a shorter period is specifically set forth elsewhere under this Contract; or (ii) there are repeated or numerous failures by Contractor for which the State has provided notice, which collectively constitute a material breach of this Contract. Without limiting the generality of the foregoing, Contractor hereby agrees that each of the following events shall be deemed a material breach by Contractor:
- i. Contractor’s failure to comply with its obligations under Sections 36.a, 77, 78, 83.a and/or 84;
 - ii. Submission of inaccurate reports or invoices that result in a material adverse financial impact on the State;

- iii. Any modifications or alterations to an Ordering Document, Individual Price Reduction Notification document, Authorization to Order Under State Contract or ICB Pricing documentation by Contractor that were not authorized or approved by the State;
 - iv. Contractor's refusal to provide Services and Deliverables requested hereunder pursuant to a proper Ordering or Individual Price Reduction Notification Document; and
 - v. Any efforts by Contractor, without the State's prior approval, to market to or otherwise solicit the following entities to enter into a separate agreement for deliverables and services that are the same or substantially similar to the Deliverables and Services: (a) an entity that is receiving such particular Deliverables and Services under this Contract or (b) an entity that is mandated by the State to obtain Deliverables and Services pursuant to this Contract.
- c. If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire from an alternative provider, under terms and in the manner the State considers appropriate, Deliverables or Services similar to those terminated, and Contractor will be liable to the State for the State's Cost to Cover (but subject to the clause entitled "Limitation of Liability" (Section 23)). However, Contractor shall continue to provide all Deliverables and Services not expressly terminated by the State.
- d. If the Contract is terminated for default, the State shall be entitled to require Contractor to, and Contractor shall, transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the State, any;
- i. Completed Deliverables, and
 - ii. Partially completed Deliverables.
- Upon direction of the State, Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e. The State shall pay the agreed upon Contract price for completed Deliverables, partially completed Deliverables provided pursuant to subsection d. above, and Services delivered and accepted.
- f. If, after termination, it is determined by a final ruling in accordance with the dispute resolution process under this Contract 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.
- g. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability" (Section 23).
- h. Except as may be permitted or required under the United States Bankruptcy Code or Section 36.a, Contractor may not, for any reason whatsoever, terminate this Contract or otherwise repudiate this Contract or refuse to perform its obligations hereunder.

21. FORCE MAJEURE

- a. Contractor shall not be liable for any default or delay in the performance of its obligations under this Contract if and to the extent such default or delay arises from fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of Contractor except to the extent that Contractor is at fault in failing to prevent or causing such default or delay, and provided that such default or delay can not reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A default of a subcontractor at any tier shall not be considered a force majeure event. A strike, lockout or labor dispute involving agents or employees of Contractor shall not excuse Contractor from its obligations hereunder. In addition, the refusal of any agent or employee of Contractor to enter a facility that is the subject of a labor dispute shall excuse Contractor from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of harm. If the delay or 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 (as described above) of both Contractor and subcontractor, and without the fault or negligence of either, Contractor shall not be liable for any default or delay in the performance of such obligations, unless the subcontracted Deliverables or Services were obtainable from other sources (including Contractor itself) in sufficient time for Contractor to meet the required delivery schedule.
- b. In the event of such a force majeure event, Contractor shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and Contractor continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. If Contractor is so prevented or delayed in its performance Contractor shall, as quickly as practicable under the circumstances, notify the State and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address it, and its expected duration.
- c. If any such force majeure event has substantially prevented or delayed the delivery of or performance by Contractor of Deliverables or Services necessary for the performance of critical State functions for longer than the recovery period specified in the applicable disaster recovery plan, Contractor shall, to the extent practicable and at Contractor's expense, procure such Deliverables or Services from an alternate source. In addition, if any such force majeure event substantially prevents or delays the delivery or performance by Contractor of such Deliverables or Services necessary for the performance of critical State functions for more than seven (7) calendar days, the State, at its option, may terminate the whole or any portion of this Contract so affected without payment of termination charges and, if terminated only in part, the charges payable hereunder shall be equitably adjusted to reflect those terminated Deliverables or Services. Contractor shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Contractor's ability to perform.
- d. Upon the occurrence of a force majeure event that constitutes a disaster under the Disaster Recovery and Security Plan, Contractor shall implement promptly, as appropriate, and in accordance with Section (f) below, its Disaster Recovery and Security Plan and provide disaster recovery Services to the State. The occurrence of a force majeure event shall not relieve Contractor of its obligation to implement its Disaster Recovery and Security Plan and provide disaster recovery Services.

- e. If Contractor fails to provide Services in accordance with this Contract due to the occurrence of a force majeure event, all amounts payable to Contractor hereunder shall be equitably adjusted in a manner such that the State is not required to pay any amounts for Services that it is not receiving.
- f. Without limiting Contractor's obligations under this Contract, or impairing Contractor's emergency service and public safety priority requirements for its customers generally, whenever a force majeure event or disaster causes Contractor to allocate limited resources between or among its customers, the State shall receive at least the same treatment as comparable Contractor customers consistent with Contractor's obligations and duties for public safety emergency service priority response and restoration as required by applicable law and regulation and separate contractual obligations with emergency service providers.

22. RIGHTS AND REMEDIES OF STATE FOR DEFAULT

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

23. LIMITATION OF LIABILITY

- a. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to \$50 Million, except as expressly set forth below.
- b. The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the total charges due and payable to Contractor hereunder that have not been paid to Contractor. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

- c. Neither Contractor nor the State will be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except as expressly set forth below.
- d. Sections 23(a) and (c) will not apply to Contractor's liability for damages (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work; (ii) in connection with liability under the provision, entitled "Patent, Copyright, and Trade Secret Protection" (Section 32) or to any other liability (including without limitation indemnification obligations) for infringement of third party Intellectual Property Rights; (iii) in connection with claims covered by any specific provision herein calling for performance deficiency charges; (iv) in connection with claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; (v) in connection with costs or attorneys' fees that the State becomes entitled to recover as a prevailing party in any action; (vi) in connection with breaches of Contractor's obligations of confidentiality; (vii) in connection with claims based upon a breach of Section 36.a hereof or upon any repudiation of this Contract by Contractor or Contractor's refusal to perform its duties and obligations hereunder; (viii) for Cost to Cover damages; or (ix) in connection with Contractor's failure to perform its obligations under Section 21 in the event of a force majeure event.

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

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

25. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, Deliverables, Services,

materials, or supplies in connection with the performance of this Contract. The following shall apply with respect to such claims:

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

26. TIMELINESS

Time is of the essence in this Contract with respect to Contractor's performance and obligations.

27. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 *et seq.* Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of Services; or (ii) receipt of an undisputed invoice, whichever is later. Non-State Customers shall be subject to a late payment fee if payment is issued after the late payment date. The late payment date shall be forty-five (45) calendar days after receipt of an undisputed invoice. The amount of the late payment fee shall be as set forth in Government Code Sections 927.6 and 927.7.

28. CONTRACT MODIFICATION

Subject to Sections 2.a, 55 and 72, no amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties. Notwithstanding this provision:

- a. The State and Contractor may agree orally on issues of immediate State operational need or emergency necessity with the concurrence of the State and Contractor Program Managers, respectively. In such situations, Contractor will prepare a Letter of Concurrence within three (3)

Business Days and submit it to the State for concurrence. The Letter of Concurrence will be considered binding on both parties for the period of the term of the Letter of Concurrence or until written modification of the Contract is made in accordance with this Section 28, whichever applies.

- b. The State and Contractor may propose informal changes or revisions to the activities, tasks, deliverables and/or performance time frames specified in the Statement of Work, provided such changes do not alter the overall goals and basic purpose of this Contract. Informal Statement of Work changes may include, subject to Sections 12 and 13, the substitution of specified activities or tasks; the alteration or substitution of Contract Deliverables; and modifications to anticipated completion/target dates. Informal Statement of Work changes processed hereunder shall not require a formal amendment to this Contract, provided Contractor's annual budget (or the fees received hereunder) does not increase or decrease as a result of the informal Statement of Work change. Unless otherwise stipulated in this Contract, all informal Statement of Work changes and revisions are subject to prior written approval by the State. In implementing this provision, the State may provide a format for the State and Contractor to use to request informal Statement of Work changes. If no format is provided by the State, Contractor may devise its own format for this purpose.

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

29. CONFIDENTIALITY OF DATA

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

30. PUBLICITY

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

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

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

32. PATENT, COPYRIGHT AND TRADE SECRET PROTECTION

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

Section 32a. The provisions of the preceding sentence apply only to third party Hardware or Software sold as a distinct unit and accepted by the State.

The following shall apply with respect to such claims:

- i. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor or tender the defense to Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
 - ii. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b. Contractor may be required to furnish a bond of reasonable amount to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Should the Deliverables or Software, or the operation thereof, become, or in Contractor's opinion are likely to become, the subject of a claim infringement or violation of a Intellectual Property Right, Contractor shall, at its sole expense, either procure for the State the right to continue using the Deliverables or Software, or replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, Contractor agrees to take back such Deliverables or Software and assist the State in procuring substitute Deliverables or Software. In such event, Contractor shall be liable to the State for the State's Cost to Cover. If in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables of Software acquired from Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. Under circumstances where the State has a right of return, Contractor agrees to take back such Deliverables and Software and refund all sums the State has paid Contractor for such items.
- d. Contractor's obligations under this Section 32 shall not apply to the extent that the applicable claim of patent, copyright or trade secret infringement is based upon:
- i. The combination or utilization of Deliverables furnished hereunder with equipment or devices not made or furnished by Contractor; or,
 - ii. The operation of Equipment furnished by Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or

- iii. The modification by the State of the Equipment furnished hereunder or of the Software;
or
 - iv. The combination or utilization of Software furnished hereunder with non-Contractor supplied or approved Software.
- e. Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

33. EXAMINATION AND AUDIT

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

For avoidance of doubt, audits may include those conducted by personnel of the State, or its designated representative, in performance of Contract oversight responsibilities in reviewing invoices, monthly fiscal management and/or other required reports, as well as the application of service taxes, fees, surcharges and surcredits on invoices.

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

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

Contractor agrees to include an equivalent right of the State to audit records and facilities and interview staff in any subcontract related to performance of and invoicing under this Contract.

- b. Notwithstanding anything to the contrary in Section 33.a above, DTS/ONS, on behalf of the State or any auditing body or its designated representative, agrees that it will not exercise the audit rights described in Section 33.a above for purposes of conducting an enterprise-wide audit of Contractor's performance under this Contract (i.e., Contractor's performance hereunder with respect to all issued Ordering Documents) more than once per calendar year, however, any follow-up reviews or other investigations related to an audit initiated under this Section may be conducted at any time and from time to time.
- c. Where Contractor conducts an internal audit of Contractor's performance under this Contract which shows any significant failures by Contractor to meet its obligations hereunder, Contractor shall provide to the State a written summary describing in reasonable detail such findings of such internal audit. If Contractor determines at any time that it has overcharged any Customer, then Contractor shall promptly provide to the applicable Customer a credit equal to the amount of such overcharge plus interest from the date of Contractor's receipt of such overcharge at a rate which is consistent with the rate provided in the California Prompt Payment Act, Government Code Section 927 *et seq.*
- d. Contractor agrees that (i) DTS/ONS or its delegate will have the right to obtain, copy and review all billing records of public entities purchasing under this Contract, provided that notice of such rights is included within the Authorization to Order Under State Contract used by non-State Agencies purchasing under the Contract; and (ii) the State may forward audit results showing call rate discrepancies to the CPUC.

34. CONTINUING STANDARDS OF PERFORMANCE FOR CONTRACTOR SERVICES

a. Applicability

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

b. Causes and Effects of Contractor Service Malfunctions

- i. The State recognizes that Equipment Failures do occur, and that Software is not infallible. Moreover, the State concedes that conditions external to Equipment may cause it to fail, particularly environmental conditions, that are outside the Equipment design operating parameters. The State agrees, therefore, that unsatisfactory Contractor Service

performance which is outside the control of Contractor or Contractor Personnel will not be considered in a determination of the level of performance.

- ii. In the event Contractor's Service failure or unsatisfactory performance is a result of factors external to CALNET II, Contractor agrees to make appropriate recommendations to the State in order that such external factors may be corrected to preclude future problems of a similar nature. Within five (5) business days after such failure occurs, Contractor shall meet and confer with the State regarding appropriate next steps, which may include preparation, for the State's review, comment and approval, of a milestone-based action plan making such recommendations and corrections described in the preceding sentence.
- iii. In the event that the precise cause of a failure cannot be readily determined, both the State and Contractor shall continue to research the situation until the probable cause has been identified or until agreement is reached that the probable cause cannot be identified. Within five (5) business days after such failure occurs (or such other timeframe specified in the RFP), Contractor shall meet and confer with the State regarding appropriate next steps, which may include preparation, for the State's review, comment and approval, of a milestone-based action plan for researching the probable cause of the failure.

c. Levels of Performance Required

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

d. Remedies for Unacceptable Levels of Performance

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

- i. Provide on site Contractor personnel for analysis of the problem;
- ii. Replace the faulty Equipment, Deliverable or Service;
- iii. Provide substitute Equipment, Deliverable or Service satisfactory to the State;
- iv. Modify the Equipment, Deliverable or Service; or

- v. Take any other action with which the State concurs.

If Contractor fails to correct an unacceptable level of performance with respect to any Equipment, Deliverable, or Service to the satisfaction of the State during the thirty (30) calendar days following receipt of written notice from the State (or such other timeframe specified in the Contract), the State and Contractor can mutually agree to extend the time to a specified date. If Contractor fails to correct the situation to the satisfaction of the State by the end of the specified time period, then, without limiting any other remedy specified in the Contract, the State may (i) secure replacement Equipment, Deliverables, or Services with Contractor responsible for payment of Costs to Cover, and/or (ii) terminate that portion of the Contract relating to the deficient Equipment, Deliverable, or Service. The above-described remedies are not intended to constrain either party from any other action mutually agreed to by Contractor and the State as being more appropriate or to limit any of the State's other rights and remedies under this Contract, at law or in equity, including the application of Performance Deficiency Charges (Section 50) or the exercise of Set-Off Rights (Section 51).

- e. Replacement or Substitution of Equipment by Contractor

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

- f. Review of Performance

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

35. DISPUTES

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. All disputes, for which California law (e.g., the California Prompt Payment Act) does not otherwise specify a dispute resolution process, shall immediately be brought to the attention of the parties' respective project managers. If the dispute persists, and the project managers are not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute initially became known to each party, then either party may submit the dispute to a CALNET II leadership group consisting of DTS/ONS Senior Management and Senior Program Management of the Contractor for resolution. This CALNET II leadership group will convene in person or by telephone within three (3) business days after the dispute is submitted to the CALNET II leadership group. If the dispute persists, and the CALNET II leadership group is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the CALNET II leadership group, then Contractor shall submit the dispute to an executive committee consisting of the State's project manager and representatives of DTS/ONS's executive management, a representative of DGS/PD, and Contractor's project manager and

designated senior representatives of Contractor for resolution. This executive committee will convene in person or by telephone within three (3) Business Days after the dispute is submitted to the executive committee. If the dispute persists and the executive committee is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the executive committee, then Contractor shall submit to the Chief Deputy Director, DTS, or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable.

- b. Pending the final resolution of any dispute arising under, related to or involving this Contract, for which California law (e.g., the California Prompt Payment Act) does not otherwise specify a dispute resolution process, both parties agree to diligently proceed with the performance of this Contract, including State's payment for and Contractor's delivery of goods or providing of Services in accordance with this Contract. The failure to diligently proceed in accordance with this Contract shall be considered a material breach of this Contract.
- c. Any final decision of the State shall be expressly identified as such in writing, and shall be signed by the Chief Deputy Director, DTS, or designee. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

36. STOP WORK

- a. Notwithstanding anything to the contrary contained herein, and even if any dispute arises between the parties and regardless of whether or not it requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall Contractor interrupt the provision of Services to the State or any obligations related to Disentanglement under Section 77, disable any Equipment or Software used to provide Services, or perform any other action that prevents, impedes, or reduces in any way the provision of Services or the State's ability to conduct its activities (other than minimal, routine interruptions necessary in order for Contractor to provide the Services), unless: (i) authority to do so is granted by the State or conferred by a court of competent jurisdiction; or (ii) the Term of this Contract has been terminated or has expired pursuant to Section 19 or 20 and a Disentanglement has occurred in accordance with Section 77.
- b. Without limiting the generality of Section 36.a, above, the State may, at any time, by written Stop Work Order to Contractor, require Contractor to stop all, or any part, of the work called for by this Contract for a period of ninety (90) days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order shall

be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

- i. Cancel the Stop Work Order; or
 - ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- c. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, this Contract price, or both, and this Contract shall be modified, in writing, accordingly, if:
- i. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Contract; and
 - ii. Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- d. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- e. The State shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this clause.

37. FOLLOW-ON CONTRACTS

- a. If Contractor or its Affiliates provides Technical Consulting and Direction (as defined below), Contractor and its Affiliates:
 - i. Will not be awarded a subsequent Contract to supply the Deliverables, Services, or Systems, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - ii. Will not act as consultant to any person or entity that does receive a Contract described in subsection i. This prohibition will continue for one (1) year after termination of this

Contract or completion of the termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.

- b. **“Technical Consulting and Direction”** means Services for which Contractor received compensation from the State and includes:
- i. Development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - ii. Development or design or test requirements;
 - iii. Evaluation of test data;
 - iv. Direction of or evaluation of another Contractor;
 - v. Provision of formal recommendations regarding the acquisition of Information Technology products or Services; or
 - vi. Provisions of formal recommendations regarding any of the above.
- c. The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law (“**Conflict Laws**”). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

38. PRIORITY HIRING

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

39. COVENANT AGAINST GRATUITIES

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

40. NONDISCRIMINATION CLAUSE

- a. During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

41. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

42. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a. In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, or Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material and other items, or Services by the supplier of sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.

- b. If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i. The assignee has not been injured thereby, or
 - ii. The assignee declines to file a court action for the cause of action.

43. DRUG-FREE WORKPLACE CERTIFICATION

Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 *et seq.*) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The person's or organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and,
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

44. FOUR-DIGIT DATE COMPLIANCE

Contractor represents and warrants to the State that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or Services to the State. “**Four Digit Date Compliant**” Deliverables and Services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality or warranty obligations set forth elsewhere herein.

45. SWEATFREE CODE OF CONDUCT

- a. Contractor declares under penalty of perjury that no Equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at <http://www.dir.ca.gov> and Public Contract Code Section 6108.
- b. Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor’s compliance with the requirements under paragraph (a).

46. RECYCLING

Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this section shall specify that the cartridges so comply (PCC 12205).

47. CHILD SUPPORT COMPLIANCE ACT

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

- a. Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support

enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

- b. Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

48. AMERICANS WITH DISABILITIES ACT

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

49. [INTENTIONALLY OMITTED]

50. PERFORMANCE DEFICIENCY CHARGES

- a. General

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

Section 35 will be followed prior to the Contractor being obligated to pay the disputed part of the invoice. Such performance deficiency charges shall constitute agreed fee reductions and not penalties or liquidated damages hereunder.

- b. Without limiting paragraph (a) of this Section: (i) the State has identified in RFP Section 4.5.10, Table 4A, certain amounts the State may assess as performance deficiency charges for certain situations (which may be modified from time to time upon agreement by the parties); and (ii) the parties presently anticipate that (a) DTS/ONS shall issue any invoices for performance deficiency charges and facilitate the meetings described in this Section, and (b) Contractor shall pay any performance deficiency charges to the entity identified by the State as the beneficiary of the Deliverables and Services to which the performance deficiency charges relate.
- c. Contractor shall provide all assistance and support reasonably necessary for the administration of such performance deficiency charges, including, the provision of additional documentation regarding Contractor's performance hereunder and the payment of the performance deficiency charges as directed by the State.
- d. Contractor may not earn back, with subsequent performance or otherwise, the amounts of any performance deficiency charges that become due the State.

51. SET-OFF RIGHTS

Notwithstanding anything to the contrary in this Contract, and in addition to the other rights of the State and/or the applicable Customer hereunder with respect to disputing invoices or withholding amounts, the State and/or the applicable Customer, in its sole discretion, may set off against any and all amounts otherwise payable to Contractor pursuant to any of the provisions of this Contract: (i) any and all amounts claimed by the State and/or the applicable Customer in good faith to be owed by Contractor to the State and/or the applicable Customer pursuant to any of the provisions of this Contract; and (ii) any and all amounts that the State and/or the applicable Customer believes in good faith that it does not owe to Contractor pursuant to any of the provisions of this Contract. Within twenty (20) calendar days after any such set-off by the State and/or applicable Customer, the State and/or applicable Customer shall provide Contractor with a written accounting of such set-off, a written statement of the reasons therefore, and a reasonable opportunity to meet and discuss the claimed set-off. In the event Contractor does not agree with the set-off applied, Contractor or applicable Customer may contact DTS/ONS to seek equitable resolution or exercise its right under applicable law. The escalation procedure beyond the project manager in Section 35 shall not apply.

52. CONTRACTOR PERSONNEL

- a. When Contractor needs access to State's premises to perform the required Services under this Contract, Contractor personnel shall perform their duties during State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State and Contractor.

- b. The State reserves the right to disapprove the continuing assignment of Contractor personnel working on State premises. If the State exercises this right, and Contractor cannot immediately replace the disapproved personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected hereby.
- c. Contractor will make every effort consistent with sound business practices to honor the specific request of the State with regard to assignment of its employees; however, subject to the above paragraph and the paragraph below, Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond Contractor's control, Contractor will make every reasonable effort to provide suitable substitute personnel.
- d. Contractor represents that the individuals designated as Key Personnel in the Contract are, and promises that any subsequent Key Personnel shall be, experienced professionals, possessing the appropriate knowledge, skills, and expertise to perform properly their assigned duties. With regard to each of the Key Personnel, including replacements for the Key Personnel, Contractor shall exercise every reasonable effort to not transfer the Key Personnel during the first eighteen (18) months (or such other time periods as may be specified in the RFP or any Statement of Work) after the date that such individual commences performing Services as one of the Key Personnel hereunder. Contractor may transfer or terminate Key Personnel at any time in the event the needs of Contractor's business support a transfer, or the individual is eligible for a promotion or other positive type of employment opportunity, or the individual's personal life experience requires a transfer, or the individual's employment is terminated for "good cause" (which term, as used in this Contract, means cause for termination, including a lay-off, as determined in accordance with Contractor's employment policies, consistently applied). Contractor shall exercise every reasonable effort to notify the State prior to the transfer of Key Personnel to another position within Contractor's organization, including upon any such replacement or reassignment if the function being performed by the individual being replaced or reassigned is eliminated from the Services. If any of the Key Personnel is reassigned, becomes incapacitated, or ceases to be employed by Contractor, and therefore becomes unable to perform the functions or responsibilities assigned to such person, Contractor shall promptly replace such person with another person at least as well qualified to perform such functions and responsibilities as the person being replaced, and the State shall have the right to interview (in the presence of a Contractor representative) and provide input to Contractor concerning each such replacement. The parties acknowledge that qualifications include a mix of experience and education and that equally qualified individuals may have different mixes thereof. Contractor shall cause its subcontractors to comply with this provision with respect to any of individuals of such subcontractors that are designated as Key Personnel.
- e. In recognition of the fact that Contractor personnel providing Deliverables or Services under this Contract may perform similar services from time to time for others, subject to the above paragraph, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, providing that such use does not conflict with the performance of Services under this Contract.
- f. Contractor shall submit annually a business plan that demonstrates a commitment to providing qualified staff and resources to support authorized user, business activities and Contract management.

53. RESPONSIBILITIES OF THE STATE

- a. The State shall cooperate with Contractor by, among other things, making available, as reasonably requested by Contractor, information, approvals, acceptances and management decisions so that Contractor may accomplish its obligations and responsibilities hereunder.
- b. The State is responsible for providing required information, data, Documentation, and test data to facilitate Contractor's performance of the work, and will provide such additional reasonable assistance as is specifically set forth in the Statement of Work.
- c. Unless otherwise agreed in writing by the parties, the State shall not have any operational responsibilities other than those set forth in this Section 53.
- d. Contractor's failure to perform its responsibilities under this Contract, shall be excused if and to the extent that it is caused directly by the State's breach of its material responsibilities set forth in this Section 53, but only if (i) Contractor promptly notifies the State of such material breach and its inability to perform under such circumstances, (ii) Contractor provides the State with every reasonable opportunity to correct such material breach and thereby avoid such Contractor non-performance, and (iii) Contractor uses commercially reasonable efforts to perform notwithstanding the State's material breach. Contractor's performance shall only be excused under this Section for an amount of time equal to the duration of the State's delay in meeting its applicable obligation. In the event of any claim for equitable adjustment to schedule, the parties will negotiate in good faith regarding execution of a Contract amendment.

54. CONTRACTOR BUSINESS RELATIONSHIP RESPONSIBILITY

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

55. UNANTICIPATED TASKS

- a. Any services, functions or responsibilities not specifically described in this Contract that are consistent with industry standards, an inherent, necessary or customary part of the Services or are, consistent with industry standards, required for proper performance or provision of the Services in accordance with this Contract shall be deemed part of the Services and Contractor shall provide them as part of the Services without additional charge.
- b. In the event that any other work must be performed which was wholly unanticipated and is not specified in the Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined for particular Deliverable(s) and/or Service(s), the procedures outlined in this Section will be employed.
- c. For each item of wholly unanticipated work not specified in the Statement of Work, a Work Authorization will be prepared.
- d. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization. Such Work Authorization shall in no way constitute a Contract other than as provided pursuant to this Contract and shall not in any way amend or supersede any of the other provisions of this Contract.
- e. Each Work Authorization shall consist of a detailed statement including justification of the need for the wholly unanticipated work, a description of the work to be accomplished by Contractor, the job classification or approximate skill level of the personnel to be made available by Contractor, an identification of all significant material to be developed by Contractor and delivered to the State, an identification of all significant material to be delivered by the State to Contractor, an estimated time schedule for the provision of the work by Contractor, completion criteria for the work to be performed, the name or identification of Contractor personnel to be assigned, Contractor's estimated work hours per person (and/or estimated subtotal of rates and charges per Deliverable(s) and/or Service(s)) required to accomplish the work, Contractor's billing rates per work hour per person (and/or estimated rates and charges per unit for Deliverable(s) and/or Service(s)) required to accomplish the work, and Contractor's estimated total cost of the Work Authorization.
- f. All Work Authorizations must be in writing prior to beginning work and signed by Contractor and the State. (See Attachment 5, Exhibit A-4 Work Authorization Form.)
- g. The State has the right to require Contractor to stop or suspend work on any Work Authorization pursuant to the "Stop Work" provision (Section 36) of this Contract.
- h. Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:
 - i. If, in the performance of the work, Contractor determines that a Work Authorization to be performed under this Contract cannot be accomplished within the estimated work hours, Contractor will immediately notify the State in writing of Contractor's estimate of the

work hours which will be required to complete the Work Authorization in full. Upon receipt of such notification, the State may:

- a. authorize Contractor to expend the estimated additional work hours in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization will not be unreasonably withheld), or
- b. terminate the Work Authorization, or
- c. alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining originally estimated work hours.

The State will notify Contractor in writing of its election within seven (7) calendar days after receipt of Contractor's notification. If notice of the election is given to proceed, Contractor may expend the estimated additional work hours. The State agrees to reimburse Contractor for such additional work hours.

56. NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY

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

57. NON-EXCLUSIVE AGREEMENT

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

58. CHARGES

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

- a. Contractor agrees that services not identified in this Contract may not be provided nor charged to the State or any Customer pursuant to this Contract, but that Contractor may use the invoicing process of this Contract so as to allow for invoicing of services not related to this Contract, provided that such items are clearly identified as not related to this Contract and Contractor otherwise complies with the requirements in the Contract related to invoicing.
- b. Contractor agrees that charges not identified in this Contract may not be assessed to the State or any Customer except in accordance with paragraph (a) of this Section.
- c. Invoices for all contracted Services shall not be subject to late payment charges prior to the Contract defined due date.
- d. Contractor agrees that the charges shall comply with Section 70 below.

59. SERVICE COSTS

Contractor shall provide a complete list of all Service and product descriptions accepted by the State under this Contract and correlate the Services to the associated costs in applicable attachment of this Contract. Cost will include all monthly recurring and usage charges, volume discounts, and non-recurring charges as applicable. Listed pricing will include all elements necessary to configure an instance of working Service (planning, application design, engineering, testing, wiring, termination, installation, and training) whether priced separately or bundled. Any no-cost items will be clearly identified with applicable rate schedule. Contractor agrees that Service elements without associated pricing will be considered no charge items.

60. SERVICE TAXES, FEES, SURCHARGES, AND SURCREDITS

Service taxes, fees, surcharges, and surcredits identified in Section 5 of the Proposal may be charged under this Contract. The State reserves the right to verify and, if necessary, challenge, the application by Contractor of such service taxes, fees, surcharges, and surcredits with Contractor and the applicable regulatory authority. The State and authorized users of this Contract will be subject to service taxes, fees, surcharges, and surcredits that are mandated by the FCC, CPUC, and local jurisdictions to be recovered from end users of the applicable Service, as currently set forth in the RFP and as may hereafter be imposed by applicable federal, state, and local governmental entities where such service taxes, surcharges, and surcredits are mandated to be recovered from end users of the applicable Service. With respect to any service taxes, fees, surcharges, and surcredits that the FCC or CPUC has authorized service providers the discretionary right to collect from end users, Contractor shall provide written notice to the

State of Contractor's intent to impose such items hereunder and a business justification (including reference to the underlying regulatory decisions). In addition, Contractor shall provide written notice to the State of: (i) the Service(s), location(s), and Customer(s) to be affected by such service taxes, fees, surcharges, and surcredits, (ii) the effective period of such items, (iii) a description of how such items are to be applied, and (iv) a description of how the accuracy of such items may be verified by Customers. Should the State consider the application of such items to be inappropriate, the State and Contractor shall meet and confer regarding the applicability of such items. If thereafter a dispute exists regarding the proper application of such items, the parties may resolve such disputes in accordance with Section 35. Either party may seek guidance or clarification from the applicable regulatory authority regarding the appropriate application of such items. If the application of such items is deemed inappropriate by the regulatory authority, the Contractor shall cease and/or revise the application of such items and, if appropriate, issue retroactive credits to the impacted Customer(s). Contractor agrees to notify DTS/ONS in writing sixty (60) days prior to the effective date of any additions or changes to such taxes, surcharges, or surcredits (including reference to the underlying regulatory decisions). Applicable taxes, surcharges, or surcredits will not be included in Service pricing but will be listed in appropriate pricing attachments to this Contract. All charges under this Contract are exclusive of applicable federal, state and local sales, use, excise, utility, and gross receipt taxes, other similar tax-like charges and surcharges. Contractor agrees to exempt the State and authorized users from all federal taxes as of the date Contractor receives a duly authorized and valid exemption certificate. Contractor will provide the State the exemption certificate that complies with the requirements of the Internal Revenue Code and Regulations; see Internal Revenue Regulations section 49.4253-11 and IRS Publication 510 (2/2004). Contractor agrees, for the purpose of exemption, that the State will act as the authorized agent for this Contract in submitting a single exemption request on behalf of all state agencies. The State will make available the certification form to authorized local government users. Local government entities will be responsible for submitting exemption requests to Contractor.

61. ADMINISTRATIVE FEE

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

amount shall appear on the monthly detailed fiscal management reports referenced in this Contract to be delivered to DTS/ONS.

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

62. INVOICES AND PAYMENTS

The consideration to be paid Contractor, as provided in this Contract, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise provided in this Contract or a writing executed by the State. Unless otherwise specified, invoices shall be made available in accordance with this Contract. Invoices shall include the information set forth in this Contract and shall otherwise be consistent with the provisions of this Section and this Contract. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable, along with other taxes, fees, surcharges, and surcredits that are required to be separately itemized. Any approved discretionary service taxes, fees, surcharges, and surcredits may be separately identified on each invoice as applicable. In addition, each invoice shall be in the form specified by the State (including whether issued as a single, aggregate invoice or separate invoices for different Services or entities) and shall (i) comply with all applicable legal, regulatory and accounting requirements, (ii) allow the State to validate volumes and charges, (iii) permit the State to chargeback internally, and (iv) meet the State's billing requirements in accordance with this Contract. Invoices with a name other than that established in the original Contract (including approved subcontractors or Affiliates) cannot be paid prior to execution of a Contract Amendment. The data underlying each invoice shall also be delivered to the State electronically in a form and format specified in this Contract but compatible with the State's accounting systems. When provision is made for a testing period preceding acceptance by the State, the date of acceptance shall mean the date the Equipment, Software or Service was accepted by the State during the specified period. The backbilling limitation of charges shall be controlled by Government Code Section 911.2. Should the State or any authorized user dispute, in good faith, any portion of the amount due, the State or such authorized user shall notify Contractor in writing of the nature and basis of the dispute as soon as possible. In the event the dispute is not resolved prior to the due date, the State or such authorized user may deduct the disputed amount from the amount due. No late payment charge shall apply to the disputed amount. The parties agree to use their best efforts to resolve disputes in a timely manner.

63. CONTRACTOR COMMITMENTS AND REPRESENTATIONS

Any written commitment by a duly authorized representative of Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill any such commitment shall render Contractor liable for performance deficiency charges or other damages due to the State as set forth herein. Such written commitments include but are not limited to (1) any warranty or representation expressly made by Contractor as to Deliverables, Service, Equipment or Software performance, total System performance, or other physical design or functioning characteristics of a Machine or Software System, (2) any warranty or representation expressly made by Contractor concerning the characteristics of the items described in (1) above, made in any publication, drawings, or specifications accompanying or referred to in the Contract, and (3) any written notification of or affirmation or representation as to the above which is made by Contractor in or during the course of negotiations and which is incorporated into a formal amendment to the Contract.

64. SERVICE TO PUBLIC ENTITIES

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

65. [INTENTIONALLY OMITTED]**66. EXISTING EQUIPMENT**

Contractor agrees to accommodate all State and other authorized users which currently utilize existing Equipment that could be used with Contractor's proposed Services by supporting the use of such existing Equipment where feasible.

67. CUSTOMER PREMISE EQUIPMENT

Contractor agrees to provide an option to obtain the necessary Customer Premise Equipment ("CPE") required in order to receive Services, including any CPE exclusively available from Contractor. In

addition, to the extent that the Services include CPE or Equipment exclusively available from Contractor, the State may, at its sole option, procure alternative equipment from Contractor or from a manufacturer or authorized representative and use such alternative Equipment in connection with the Services, provided that it meets the functional and technical specifications required to obtain the Services.

68. AVAILABILITY OF REFRESHED TECHNOLOGY AND ADDITIONAL SERVICE ITEMS

Contractor shall evolve, supplement and enhance the Services in the normal course of business during the Term, both to keep pace with and utilize technological advancements and improvements in the method of delivering telecommunications-related services (and the pricing thereof), and to keep pace with changes and additions to the Services and products offered by Contractor (and the pricing thereof). Contractor also acknowledges that the telecommunications environment is critical to the State's business success, that the State's needs and requirements with regard to the telecommunications environment may evolve and change over time, and that the need for enhanced or modified functionality may arise from time to time. Therefore, from time to time during the Term, but not less frequently than once each Contract year, Contractor shall meet and confer with the State, and either party may suggest any reasonable and appropriate changes or additional Service items needed or that might be considered to keep pace with and take advantage of the latest and most useful technological advancements and improvements in Contractor's performance of the Services (collectively, "**Enhancements**"). Contractor agrees that when such Enhancements substitute, replace or improve Deliverables or Service items already being received by the State (e.g., network backbone upgrades that generally benefit all users of the network and are not specifically requested by the State), Contractor will make such Enhancements available to the State under this Contract at no additional cost to the State. When the Enhancements do not substitute, replace or improve Deliverables or Service items already being received by the State under this Contract, but instead add to the Deliverables or Service items additional material functionality and features, Contractor will make such Enhancements available to the State under this Contract and provide competitive pricing therefore unless Contractor in its sole discretion determines that the Enhancement would be provided at no additional charge. With each proposal to add an Enhancement, Contractor will provide a business case that includes potential users and market analysis that illustrates competitive pricing, if applicable. The State, in its sole discretion, shall determine whether to approve of such Enhancement's inclusion under this Contract. If the State chooses to proceed hereunder, the State and Contractor will negotiate in good faith to agree on the additional terms and conditions, if any, under which the Enhancement will be added to this Contract through amendment and Contractor shall update any applicable marketing plans used in connection with the provision of the Deliverables and Services hereunder. Contractor understands that DTS/ONS is fully responsible for this approval and agrees, absent written approval from DTS/ONS, Enhancements cannot be added to this Contract at the request of any State or non-State Agency. Consistent with and without limiting anything set forth in Section 57, nothing in this Section shall prohibit the State from pursuing or obtaining the same or similar Enhancements with or from its other providers of Module Services or requiring that certain Enhancements may only be obtained from certain providers of Module Services.

69. PRICING AND SERVICE REVIEW

For the purpose of maintaining competitiveness throughout the Term, Contractor agrees to joint review of its pricing and Service functionality annually, or more frequently (not to exceed three (3) such reviews in any twenty-four (24) month period unless otherwise agreed by the parties) at the State's request, to ensure the State and its Customers will receive cost-competitive and technologically competitive Services throughout the Term. Contractor agrees that written amendments to this Contract to reduce statewide rates and introduce technological Service improvements may be submitted throughout the Term.

70. "MOST FAVORED NATION" STATUS OF STATE

Contractor agrees to give the State and Customers of this Contract "Most Favored Nation" status, in that Contractor agrees that no other similarly situated public customer of Contractor or any of its Affiliates will receive rates for a substantially similar service, or suite of services, offered under substantially similar terms and conditions that are lower than the statewide rates provided hereunder when the volume of business from the other public customer is equal to or less than the volume of business the State delivers under this Contract. Contractor agrees to promptly bring to State's attention instances in which other public customers of Contractor or any of its Affiliates may receive lower rates for substantially similar services. If Contractor or its Affiliates offer lower rates to any other public customer for the same or a substantially similar service, or suite of services, offered under substantially similar terms and conditions, Contractor shall adjust the State's rates prospectively to match or beat such rates. If Contractor offers a bundled package of Deliverables and/or Services under substantially similar terms and conditions to other public Customers at a rate lower than the rate(s) charged to the State for such Deliverables and/or Services provided under this Contract, the State reserves the right to order a similarly bundled package of Deliverables and/or Services at such lower rate. At the end of each Contract year, an executive level officer of Contractor shall certify in writing to the State that Contractor has complied with this provision. If Contractor is not in compliance with this Section, Contractor and the State shall make adjustments and/or payment as necessary and described above and in Section 50. Nothing herein shall be construed to require Contractor to offer, provision or sell Services in a manner that conflicts with applicable laws or regulations.

Rates established through the ICB and IPR processes described in Sections 71 and 72 respectively are exempt from this "Most Favored Nation" qualification.

71. INDIVIDUAL CASE BASIS (ICB) PRICING

The State requires Contractor to list all Services in Attachment 3 and all Service pricing in Attachment 4. However, the State recognizes there may be instances where Contractor cannot anticipate or establish a specific cost for a Service because of issues such as complexity, facility availability, or other Service provisioning requirements. The State will consider the use of Individual Case Based Pricing only in specific situations and under the parameters detailed below:

- a. Contractor will provide documentation to the State that demonstrates that its ICB Pricing is developed through its corporate ICB process and is consistent with CPUC and other appropriate regulatory guidelines as applicable. Contractor further affirms that ICB Pricing opportunities will be offered in a consistent manner to all eligible Customers.
- b. ICB Pricing is a Customer specific pricing methodology approved by applicable regulatory agencies. The following components are examples of elements to be considered in developing an ICB Pricing methodology:
 - i. Capital investment required by Contractor, including the pro-rata share of existing capital and new incremental capital dedicated to the opportunity.
 - ii. Related expense to provide the Service, including expense such as installation, repair, billing, monitoring, on-going maintenance and other business and operating expense.

Contractor shall provide to the State a description of the components of its approved ICB Pricing methodology as part of the documentation required under subsection (a), above.

ICB Prices will only be offered if the prices are determined by Contractor and the State to be financially feasible and in the interest of the Customer. In the event a Customer requests Service that Contractor deems financially unfeasible, Contractor will provide the rationale for its decision and discuss other potential Service options with DTS/ONS before advising the Customer of the unavailability of ICB Prices.

ICB Pricing that is defined as a Managed Project shall be consistent with the terms and conditions of this Contract.

ICB Pricing for regulated entities is supported by the following CPUC decisions, which are provided for reference herein:

General Order 96-A
CPUC Decision 91-07-010
CPUC Decision 94-09-065
CPUC Decision 96-03-020

- c. Consistent with DTS/ONS Contract oversight responsibilities, the following ICB Pricing conditions will apply:
 - i. In the event that CPUC or other appropriate regulatory guidelines (as applicable) regarding pricing methodology, or Contractor's corporate processes relating thereto, are materially revised, Contractor shall obtain approval from DTS/ONS prior to presenting ICB Pricing opportunities utilizing the changed guidelines or corporate processes applying such changed guidelines.
 - ii. DTS/ONS approval is required for ICB Pricing to become effective. DTS/ONS has the ability to disapprove any ICB Pricing offered.

- iii. Contractor will provide DTS/ONS with monthly ICB Pricing documentation in the form of a report that identifies: (a) Customer, (b) location, (c) Service, (d) pricing, (e) whether the offer was accepted or rejected, and (f) duration.
- iv. Contractor and Customer shall agree upon special provisions such as: (a) payment structure (as applicable), (b) reclamation, distribution and determination of asset ownership, (c) duration based on payment schedule, and (d) other material information.
- v. Authorized users may not sign up for ICB Pricing that extends beyond the Term of this Contract, including any extension period(s).
- vi. All Services with ICB Pricing shall be identified in Attachments 3 and 4.
- vii. DTS/ONS may request that Contractor evaluate an ICB Pricing opportunity for a Customer.
- viii. DTS/ONS may request an explanation of ICB Pricing presented to or implemented for Customers of this Contract.
- ix. In the event that a Customer elects to terminate Service(s) subject to ICB Pricing for reasons other than (1) a Contractor default, or (2) circumstances outside such Customer's reasonable control, such Customer shall be liable to Contractor for any unrecovered amortized capital costs originally identified in the approved ICB Pricing documentation, calculated using Generally Accepted Accounting Principles.

72. INDIVIDUAL PRICE REDUCTIONS (IPR)

In accordance with this Contract, Contractor shall be given the opportunity within the terms of this Contract to provide Individual Price Reductions (IPR) consistent with State policy (Management Memo 04-08 or updated versions or replacements), Section 57 and Section 70. Contractor may offer IPR to Customers.

73. FEDERAL UNIVERSAL SERVICE FUND

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

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

74. TITLE TO EQUIPMENT

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

75. UNLAWFUL USE

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

76. MIGRATION PLAN FOR CONTRACTOR SERVICES

- a. Migration Plan. Contractor shall prepare and deliver to the State, for the State's review, comment and approval, a Migration Plan for Migration of the Services pursuant to this CALNET II as set forth in this Contract. To the extent Contractor deems appropriate, or as otherwise requested by the State, Contractor shall design the Migration Plan to use a phased-implementation strategy.
- b. No Disruption. Except for any one-time charge set forth in Attachment 4 hereto, Contractor shall perform all of its obligations pursuant to this Section at Contractor's sole expense. Contractor shall implement the Migration Plan, provide all Contractor labor resources necessary to implement the Migration Plan and perform all tasks in accordance with the approved Migration Plan schedule, so that there is no disruption or discontinuity caused with respect to the operations of the State or applicable public Agency, to the extent practicable.

- c. Non-Compliance. If the State determines that Contractor has not complied, or is unlikely to comply, with Migration requirements identified in the Migration Plan, and such non-compliance was a direct result of Contractor, its subcontractors or suppliers, and not due to any other third party or situations outside the control of Contractor, the State shall give written notice to Contractor of non-compliance. After such notice, Contractor shall provide to the State the services of all necessary additional Contractor personnel to accelerate performance as may be required or necessary to timely achieve compliance or, if Contractor has already failed to comply, achieve compliance within a re-adjusted time frame established by the State. Contractor shall have seven (7) days, or longer if agreed to by the State in writing, to achieve compliance. For each material Migration requirement not completed after the notice of non-compliance period, the State shall be entitled to invoice Contractor for up to \$2,000 per day for each material deficiency, not to exceed \$10,000 per day for all deficiencies until Contractor is in material compliance with the requirements of the Migration Plan. Any duties and obligations of Contractor under the Contract necessary to complete Migration that have not been performed at the time of Contract termination shall holdover and continue in effect beyond any expiration or termination of the Contract Term and the State's rights and remedies for Contractor's failure to comply shall be as set forth in Sections 20 and 22. The Contractor may exercise its dispute rights under Section 35 above in the event that Contractor disagrees with the State's application of this Section; however, pending final resolution of any dispute, Contractor shall diligently proceed without disruption or delay with the performance of the Migration Plan and the provisioning of all Services.

77. DISENTANGLEMENT (TRANSITION-OUT)

- a. Term of Disentanglement. The Disentanglement process shall begin on the earlier of the following dates (as applicable, the "**Disentanglement Commencement Date**"): (a) as elected by the State, up to sixty (60) calendar days prior to the end of the Term that the State has not elected to extend pursuant to Section 81 or has already extended fully as permitted under Section 81; (b) the date a Notice of Termination is delivered pursuant to Section 19 or 20; or (c) the State's election pursuant to Section 57 to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, including other Module Contractors, or to provide the same to itself. Contractor shall provide Disentanglement Services until it has completed the obligations of this Section. Contractor's obligation to continue to provide the affected Services shall continue until the earlier of (i) completion of a transition to a new service provider as provided in this Section, or (ii) eighteen (18) months after the effective date of any termination or expiration. During Disentanglement, Contractor shall continue to provide Service(s) in a manner consistent with Contractor's provision and performance of such Service(s) during the period such Service(s) were provided to the State hereunder.
- b. Disentanglement (Transition-Out) Plan. Contractor shall prepare and deliver to the State, as set forth in this Contract, a Disentanglement Plan, or Transition-Out Plan, for transitioning the provision of Services, or portion thereof, under this Contract to the State's alternate service provider pursuant to RFP SECTION 6.3 – Internet Protocol Services, Section 6.3.18.2 Transition-Out Requirements of Termination in the event of: (i) the expiration or termination of the Term; or (ii) the State's election during the Term pursuant to Section 57 to obtain any portion, component,

- subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, including other Module Contractors, or to provide the same to itself. Contractor shall implement the Transition-Out Plan and perform all tasks in a timely manner, so that there is no disruption or discontinuity in CALNET II service from Contractor to the State or State's designee for the Transition-Out to the extent practicable. Contractor shall participate in meetings with the State and the State's alternate service provider (e.g., CALNET III) as reasonably required by the State in planning for a transition and implementing the Transition-Out Plan.
- c. Disentanglement Services. Subject to the performance by the State and any subsequent provider of services similar to the Services of all actions reasonably expected of each party in connection with the transition, Contractor shall cooperate fully with the State and third parties and shall take all actions reasonably requested by the State or necessary to accomplish, by no later than eighteen (18) months after: (i) the effective date of expiration or termination of the Term or (ii) the State's election during the Term pursuant to Section 57 to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or to provide the same to itself, a smooth, complete transition of responsibility for the Services being terminated from Contractor to the State, or to any replacement provider designated by the State (a "**Disentanglement**"), with no material interruption of or adverse impact on the State in any way, including on the Services. In the event the State elects to terminate any Service (but not all Services in the aggregate) pursuant to the terms hereof, Contractor shall perform its Disentanglement obligations hereunder to the extent applicable to the Service or Services being terminated. Contractor's obligations hereunder regarding the collection and payment to the State of administrative fees shall continue throughout Disentanglement.
- d. Non-Compliance. If the State determines that Contractor has not complied, or is unlikely to comply, with Disentanglement or Transition-Out requirements identified in the Transition-Out Plan, and such non-compliance was a direct result of Contractor, subcontractor or supplier, and not due to any third party or situations outside the control of Contractor, the State may give written notice to Contractor of non-compliance. After such notice, Contractor shall provide to the State all necessary additional Contractor personnel to accelerate performance as may be required or necessary to timely achieve compliance or, if Contractor has already failed to comply, achieve compliance within a re-adjusted time frame established by the State. Contractor shall have seven (7) calendar days, or longer if agreed to by the State in writing, to achieve compliance. For each material Disentanglement or Transition-Out requirement not completed after the notice of non-compliance period, the State shall be entitled to invoice Contractor for up to \$2,000 per day for each material deficiency, not to exceed \$10,000 per day for all deficiencies until Contractor is in material compliance with the requirements of the Transition-Out Plan. The Contractor may exercise its dispute rights under Section 35 above in the event that Contractor disagrees with the State's application of this Section; however, pending final resolution of any dispute, Contractor shall diligently proceed without disruption or delay with the performance of the Transition-Out Plan.
- e. Charges. All Disentanglement Services performed by Contractor during the transition shall be performed by Contractor at no additional cost to the State beyond what the State would pay for the Services. Unique services requested by the State will be priced as agreed upon by the parties.

- f. Delivery of State Data. Contractor shall provide to the State all State data and documentation and other information reasonably requested by the State in connection with the transition that is sufficient to enable the State, or another reasonably competent service provider, to fully assume the provision of any terminated Services. Except as Contractor is otherwise required to retain such data under this Contract or by law, Contractor shall destroy all copies of State data not turned over to the State.
- g. Inventory. To the extent applicable to the Services provided by Contractor hereunder, Contractor shall provide to the State as complete and accurate an inventory as is reasonably practicable of all Software, data, Equipment, materials, third party licenses, third party leases, and third party contracts used to provide the Services, as well as the location thereof, entities serviced under this Contract by such items, and such other information regarding such items as the State reasonably requests.
- h. Transfer of Assets. Effective as of the date of termination, Contractor shall, subject to Section 87, use commercially reasonable efforts to convey to the State (or its designee) such physical assets as the State may, in its sole discretion, select from among those assets that are onsite CPE and substructure not already fully paid for by the State and used by Contractor solely in or for the provision of Services to the State, excluding those assets expressly agreed upon by the parties in writing from time to time, at a price consisting of the aggregate net book value of such selected assets at that time, less the amount(s) already paid by the State for such assets.
- i. Transfer of Leases, Licenses and Contracts. Effective as of the date of termination, Contractor, at its expense, shall use commercially reasonable efforts to convey or assign to the State (or its designee) such leases, licenses, and other contracts as the State may, in its sole discretion, select from among those directly associated with the use of properties, Software, or other goods or services by Contractor that were specifically obtained, licensed or purchased in order for the State to obtain Services. Notwithstanding anything to the contrary in this Contract, Contractor shall be responsible for the satisfaction and performance of all obligations (including all financial obligations) under any such leases, licenses, and other contracts that may be assigned or conveyed to the State (or its designee) with respect to periods prior to the date of any such conveyance or assignment.
- j. License. Except as otherwise provided herein, Contractor shall use commercially reasonable efforts to assign or license to the State (or its designee) whatever rights Contractor possesses at the time of Disentanglement with regard to Software, materials and other items that are needed in order to allow the State (or its designee) to continue to perform and receive the benefit of the Services. To the extent allowed by the applicable owner or licensor and to the extent the following are accessible by Contractor, Contractor shall provide the State with a full and complete copy of each such item that constitutes Software, in such forms and media as reasonably requested by the State, together with all object code, source code, and then-available documentation thereto.

78. REPORTS, DATA AND INVENTORY

Contractor shall provide all reports required by this Contract or otherwise reasonably requested by the State. In addition to performing its obligations under Sections 77.f and 77.g as part of Disentanglement Services, upon the State's reasonable request, at reasonable intervals and for any reason related to the Contract and Services provided under the Contract, during the Term of the Contract, Contractor shall: (a) provide to the State all State data and documentation and all other information reasonably requested by the State; and (b) Contractor shall provide to the State as complete and accurate an inventory as is reasonably practicable of all Deliverables and Services provided under the Contract, including Software, data, Equipment, materials, third party licenses, third party leases, and third party contracts used to provide the Services, as well as the location thereof, entities serviced under this Contract by such items, and such other information regarding such items as the State reasonably requests.

79. DISASTER RECOVERY AND SECURITY PLAN

Within ninety (90) calendar days after the Effective Date, Contractor shall develop and submit to the State, for the State's review, comment and approval, a detailed disaster recovery and security plan applicable to all of the Services ("**Disaster Recovery and Security Plan**"); provided, however, that to the extent any portions of the Disaster Recovery and Security Plan are developed prior to the expiration of such ninety (90) day period, Contractor shall deliver such portions to the State as soon as they are so developed. Except where agreed to by the State, such detailed Disaster Recovery and Security Plan shall be consistent in all respects with the requirements (if any) set forth in this Contract (including the RFP) and the Disaster Recovery and Security processes submitted by Contractor as part of the Proposal. Immediately upon the State's approval of the Disaster Recovery and Security Plan, Contractor shall implement the same in accordance with its provisions. Contractor shall ensure that the Disaster Recovery and Security Plan, and the corresponding disaster recovery and security Services provided by Contractor, shall be consistent with any limitations imposed by law and shall be appropriate and comprehensive, using industry best practices and methods and state-of-the-art technology, to at all times ensure the availability, security, integrity and confidentiality of the Deliverables and Services. At least thirty (30) calendar days prior to each anniversary of the Effective Date, Contractor shall revise the Disaster Recovery and Security Plan as appropriate to reflect any changes to the State's information-technology and/or telecommunications environment or requirements and submit it to the State for review, comment, and approval.

80. BENCHMARKING

Beginning twelve (12) months after the Effective Date and annually thereafter until any termination or expiration, the State may engage an independent third party (a "**Benchmarker**"), to benchmark Service(s), suite(s) of Services, Service Level Agreements, and/or the charges (other than ICB Pricing and IPR) hereunder. The cost for such benchmarking shall be equally shared by the State and Contractor. The selection of the Benchmarker shall be made by the State, subject to Contractor's approval, such approval not to be unreasonably withheld. In addition to the annual benchmarking activity, the State shall

have the right to engage, at the State's own expense, a Benchmarking Process to conduct additional benchmarking activities prior to any termination or expiration of the Contract, provided that each such additional benchmarking activity is conducted no sooner than six (6) months after the annual benchmarking activity. The State and Contractor will discuss and determine in advance the scope, methodology, relative comparisons and execution for each benchmarking process (the "**Benchmarking Process**"). Each Benchmarking Process will be conducted, and the results documented, by the Benchmarking Process in a commercially reasonable manner and in accordance with the applicable Benchmarking Process. The State and Contractor will review the results of each benchmark and determine if such benchmark results show that the charges for the benchmarked Service(s) are less favorable than the most favorable of the prices charged by any other service provider examined by the Benchmarking Process for similarly situated service(s) or a similar suite of services (the "**Benchmarking Standard**"). In comparing charges, the charges under this Contract shall be considered exclusive of the Administrative Fee. If the benchmark results show a variance between the charges for the benchmarked Service(s) charged by Contractor hereunder and the Benchmarking Standard by greater than five percent (5%), then Contractor shall reduce its charges hereunder such that Contractor's total charges for the benchmarked Service(s) are within five percent (5%) of the Benchmarking Standard. Notwithstanding the foregoing, Section 70 shall apply as appropriate. The parties agree that in no event shall the results of a benchmarking result in the increase of Contractor's charges.

81. OFFER; TERM

From the date that Contractor executes this Contract ("**Signing Date**") until such time as the State executes this Contract and DTS/ONS approves the award of this Contract to Contractor, and as such process is further described herein, this Contract constitutes the irrevocable, firm offer by Contractor to provide the Services to the State for the charges in accordance herewith. This Contract shall not be binding or of any legal force or effect on the State until the authorized execution of this Contract by the State and such approval by DTS/ONS ("**Effective Date**"). Notwithstanding the foregoing, from the Signing Date until the Effective Date, Contractor shall actively continue planning and working with the State to ensure the timely completion of all tasks necessary and sufficient to prepare for and achieve a smooth and seamless transition of the services related to the ongoing operation, support, and maintenance of the State's infrastructure related to Services hereunder that is from the State and its current third party service-providers to Contractor. The Term of this Contract shall commence on the Effective Date and shall continue until the end of the fifth (5th) anniversary of the Effective Date (the "**Term**"). In addition, the State may, at its sole option, elect to extend the Term for up to two (2) additional periods of one (1) year each. The State may exercise its option to extend by giving written notice of extension to Contractor prior to expiration of the Term. Contractor shall provide a reminder letter to the State ninety (90) calendar days prior to the end of the Term and each extension thereof if the State shall not have previously provided written notice to Contractor of its intent to extend the Contract prior to such dates.

82. SUBCONTRACTORS

Except as reflected in Contractor's Proposal, Contractor shall not subcontract all or any part of the Service without the prior written consent of the State, which will not be unreasonably withheld; provided, however, that Contractor may subcontract for internal infrastructure support, not specifically for this Contract, without notice to or consent from the State. Each subcontractor will perform only the specific Services described with regard to such subcontractor in a written request submitted by Contractor to the State when seeking such consent; and no change may be made to the specific Services performed by a particular subcontractor, and no substitution, replacement, or change of subcontractors may be made, without the advance written consent of the State, which will not be unreasonably withheld. All performance of Services by each subcontractor shall at all times be in accordance with the terms and conditions of this Contract. Contractor covenants that its arrangements with subcontractors shall not prohibit or restrict any such subcontractor from, at any time, entering into direct agreements with the State. The State's consent with respect to Contractor's use of a particular proposed subcontractor, shall be given or withheld in writing within Contractor's reasonably requested timeframe, and, if such consent is withheld, the State's notice thereof to Contractor shall set forth the reasons for such withholding of consent. If the State determines in good faith and in a commercially reasonable manner that the performance or conduct of any subcontractor is unsatisfactory, the State may notify Contractor of its determination in writing, indicating the reasons therefore, in which event Contractor shall promptly take all necessary actions to remedy the performance or conduct of such subcontractor or to replace such subcontractor by another third party or by Contractor personnel. Contractor shall be solely and exclusively responsible for supervising the activities and performance of each subcontractor. Contractor and each such subcontractor shall be jointly and severally responsible for any act or omission of such subcontractor engaged to provide Deliverables and Services under this Contract. Notwithstanding the fact that a subcontractor may be the party actually performing a particular Service or providing a particular Deliverable hereunder, Contractor shall at all times: (i) constitute the primary obligor for all of Contractor's duties and obligations hereunder; and (ii) be liable and responsible as a principal for the performance of all of the duties and obligations of Contractor hereunder that Contractor may elect to subcontract to any of its subcontractors or to any other third party.

83. DE MINIMIS SERVICE REQUESTS

Notwithstanding anything to the contrary provided in this Contract, if (i) the DTS/ONS at any time during the Term requests services, products, or resources from Contractor and the parties cannot agree as to whether such services, products, or resources are included as part of the Services offered under this Contract, and (ii) the financial impact on Contractor of satisfying such request is less than Twenty-Five Thousand Dollars (\$25,000.00), then to the extent that the cumulative and aggregate amount of all such services, products, or resources so provided does not result in a financial impact on Contractor in excess of One Hundred Thousand Dollars (\$100,000.00) during any contract year: (a) such failure to agree shall not be deemed a disagreement; (b) such request shall be deemed a request for Services; and (c) all such services, products, or resources shall be provided to the State by Contractor in accordance with the terms of this Contract.

84. GOVERNANCE

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

85. SECURITY AND POLICIES

In addition to any other requirements in the Contract, at all times during the Term, Contractor shall provide all Services, use all resources related thereto, and use, operate, support, and maintain any Systems, in an appropriately secure manner and in accordance with the State's security requirements, policies, and procedures as communicated, modified, supplemented, or replaced by the State from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective ("**Security Policies**"). Contractor shall at all times take all reasonably necessary and appropriate action with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to and use of Systems and the networks involved with the provision or receipt of Services, including the implementation and deployment network management and maintenance applications and tools, the use of appropriate encryption technologies, and other security-related Services. In addition, all Contractor personnel (including personnel of any subcontractors) shall be subject to, and shall at all times conform to, all of the State's policies, procedures, rules, and requirements regarding the protection of premises, materials, equipment, and personnel, as the State shall provide (in writing or electronically) in advance to Contractor. Contractor shall, and shall cause Contractor personnel and subcontractors to, fully comply with and abide by all such Security Policies provided in advance to Contractor at all times during the Term. Any violation or disregard of such Security Policies by an individual shall be cause for denial of access of such individual to the State's

property. Contractor shall exercise due care and diligence to prevent any injury to person or damage to property while on the State's premises. The operation of Contractor vehicles or private vehicles of Contractor personnel on the State's property shall conform to posted and other regulations and safe driving practices. Vehicular accidents on the State's property and involving Contractor personnel shall be reported promptly to the appropriate State personnel. Contractor shall, and shall cause Contractor personnel and subcontractors, to not exceed (or attempt to exceed) the level of authorized access, if any, to any networks, computer or electronic data storage systems of the State that may be granted during the Term for purposes only of performing the Services hereunder.

86. NEWLY MANUFACTURED GOODS

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

87. DOCUMENTATION

Contractor agrees to provide to the State, at no charge, a reasonable number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Services, Equipment or Software provided hereunder, including any marketing information. Contractor agrees to provide additional Documentation at prices not in excess of charges made by Contractor to its other customers for similar Documentation. Contractor may, at its option, provide any such Documentation in electronic form, unless otherwise specified in this Contract.

88. RIGHTS IN WORK PRODUCT

- a. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "**Work Product**"), shall be Contractor's exclusive property. The provisions of this subsection a. may be revised in a Statement of Work.
- b. Software and other materials developed or otherwise obtained by or for Contractor or its Affiliates independently of this Contract or applicable purchase order ("**Pre-Existing Materials**") 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 original elements of Pre-Existing Materials do not. Nothing in this Section 88 will be construed to interfere with Contractor's or its Affiliates' ownership of Pre-Existing Materials.

Intellectual property rights embodied in the Pre-Existing Materials shall remain with Contractor, its Affiliates, and/or its suppliers or manufacturers, as appropriate.

- c. The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. “**Government Purpose Rights**” are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. “**Government Purpose Rights**” also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. “**Government Purpose Rights**” do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
- d. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by Contractor or jointly by Contractor and the State may be used by either party without obligation of notice or accounting.
- e. This Contract shall not preclude Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

89. ELECTRONIC WASTE RECYCLING ACT OF 2003

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

90. USE TAX COLLECTION

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

91. EXPATRIATE CORPORATIONS

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

92. DOMESTIC PARTNERS

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

ATTACHMENT 2 – STATEMENT OF WORK, MODULE 3

This Statement of Work consists of the terms and conditions set forth in Sections 1, 3, 4, 5, 6, and 7 of the RFP and the Glossary (Appendix A to the RFP), the Proposal, and such other provisions of the Contract that describe the Deliverables and/or the Services, all of which are incorporated by reference into and considered part of this Statement of Work. This Statement of Work may be revised upon mutual agreement of the State and the Contractor in accordance with the terms of the Contract.

ATTACHMENT 3 – DESCRIPTION OF SERVICES, MODULE 3

Contractor shall provide to the State all of the Deliverables and Services described in the Statement of Work. Subsequent to the Notification of Intent to Award, Contractor shall provide herein a list of all Deliverables and Services (with descriptions, availability and unique identifiers, including features) available under the Contract for attachment to and inclusion in the Contract as Attachment 3. This list shall correspond with Attachment 4, Pricing, and shall be maintained on a public Web Site in accordance with this Contract. Such list may be modified by mutual agreement of the State and Contractor via a written amendment.

ATTACHMENT 4 – PRICING, MODULE 3

All Pricing language, along with details of Attachment 3, shall be developed by the Contractor and provided to the State subsequent to the Notification of Intent to Award for attachment to and inclusion in the Contract. Contractor shall provide herein a list of all Deliverables and Services rates, including features, available under the Contract as Attachment 4. The prices contained in this list shall correspond exactly with the cost tables submitted with the Bidder's Final proposal in response to Section 7, Costs. This price list shall be maintained on a public Web Site in accordance with this Contract. Such list may be modified by mutual agreement of the State and Contractor via a written amendment.

ATTACHMENT 5**ORDERING AND INDIVIDUAL PRICE REDUCTION
NOTIFICATION DOCUMENTS, MODULE 3****1. PROVISION OF DELIVERABLES AND SERVICES:**

As described in the General Provisions, public Agencies may order Deliverables and Services under this Contract by issuing the appropriate Ordering Document form(s) as follows:

- Std. Form 20 for State Agencies. Also to be submitted by non-State Agencies for ordering all Deliverables and Services. (Exhibit A-1).
- Authorization to Order Under State Contract for non-State Agencies. To be submitted with initial order along with Std. Form 20. (Exhibit A-2).
- Std. Form 65 for State Agencies (Exhibit A-3).
- Work Authorization Form (Exhibit A-4).

Contractor will not commence provisioning Deliverables or Services for a given State or non-State Agency until Contractor receives a complete and accurate Std. Form 20, Authorization to Order Under State Contract, Std. Form 65, or Work Authorization, as applicable, or other authorized Service ordering mechanism for such entity. In addition, the provisioning of Deliverables or Services may be authorized via a web-enabled application in accordance with this Contract. The following Exhibits are made part of this Attachment 5:

EXHIBIT A-1 - STD. FORM 20

EXHIBIT A-2 - AUTHORIZATION TO ORDER UNDER STATE CONTRACT

EXHIBIT A-3 - STD. FORM 65

EXHIBIT A-4 – WORK AUTHORIZATION

2. INDIVIDUAL PRICE REDUCTIONS (IPR):

As described in Section 72 of the General Provisions and the RFP, Contractor may offer Individual Price Reductions (IPR) to Customers and prospective Customers. Contractor shall provide documentation to the State of any agreed upon IPR by issuing the appropriate Individual Price Reduction Notification Document as follows:

EXHIBIT A-5 – INDIVIDUAL PRICE REDUCTION NOTIFICATION

STATE OF CALIFORNIA TELECOMMUNICATIONS SERVICE REQUEST (Attach additional information as needed)		¹ AGENCY REQUEST NO. ² DATE	
3. REQUEST IS FOR:	<input type="checkbox"/> SERVICE <input type="checkbox"/> EQUIPMENT (needs a Form 65) <input type="checkbox"/> OTHER		
4. AGENCY INFORMATION	DEPARTMENT	DIVISION, BUREAU, ETC.	PERSON TO CONTACT FOR ACCESS
	E-MAIL ADDRESS	TELEPHONE NO. ()	FAX NO. ()
	ADDRESS OF PRESENT SERVICE (Include City, Zip Code, Room #'s)		ADDRESS OF REQUESTED SERVICE (Include City, Zip Code, Room #'s)
	BILLING ADDRESS (Include City, Zip Code, Room #'s)		C60 Account Number
	TELEPHONE NUMBER(S) INVOLVED	UTILITY PRIMARY BILL NO.	REQUESTED DATE OF SERVICE
5. ELIGIBILITY	Must complete Authorization to Order (ATO) to obtain eligibility prior to first Form 20 request		
	<input type="checkbox"/> STATE AGENCY <input type="checkbox"/> FEDERAL	<input type="checkbox"/> NON-PROFIT & TAX -SUPPORTED	<input type="checkbox"/> LOCAL GOVERNMENT (i.e. city, county) <input type="checkbox"/> JOINT POWERS AGREEMENT
6. CHECK TYPE OF REQUEST <small>(Describe in Section 7)</small>	<input type="checkbox"/> BUSINESS SERVICE <input type="checkbox"/> SINGLE LINE <input type="checkbox"/> KEY SYSTEM <input type="checkbox"/> PBX <input type="checkbox"/> TRUNKS		<input type="checkbox"/> CENTREX SERVICE <input type="checkbox"/> SINGLE LINE (s) <input type="checkbox"/> ISDN (Integrated Services Digital Network) <input type="checkbox"/> ACD (Automatic Call Distribution)
	<input type="checkbox"/> DATA SERVICE	<input type="checkbox"/> CALNET CALLING CARD (Include TD-907)	<input type="checkbox"/> LONG DISTANCE SERVICE <input type="checkbox"/> LOCAL TOLL SERVICE
	<input type="checkbox"/> CELLULAR TELEPHONE	<input type="checkbox"/> OTHER (Please Describe)	
	<input type="checkbox"/> DTS/ONS MASTER CONSULTING CONTRACT		
7. ADDITIONAL INFORMATION	BRIEFLY DESCRIBE PRESENT SERVICE (Attach page as needed)		BRIEFLY DESCRIBE SERVICE REQUESTED (Attach page as needed.)
	SERVING UTILITY		
	TOTAL COST OF REQUESTED SERVICE		METHOD OF ACQUISITION
	RECURRING NON-RECURRING	<input type="checkbox"/> PURCHASE <input type="checkbox"/> INSTALLMENT <input type="checkbox"/> PURCHASE <input type="checkbox"/> RENT <input type="checkbox"/> OTHER (Describe)	
8. CATR/ATR INFORMATION	NAME (PLEASE PRINT)		TELEPHONE NO.
	E-MAIL ADDRESS		CALNET:
	ADDRESS CITY STATE ZIPCODE		PUBLIC:

	TITLE	DATE
	SIGNATURE "This request complies with SAM Chapter 4500, and state telecommunications policies."	

*SAM = [State Administrative Manual](#)

*STMM = [State Telecommunications Management Manual](#)

*ATR = [Agency Telecommunications Representative](#)

[STD. 20 Instructions](#)

EXHIBIT A-2**AUTHORIZATION TO ORDER UNDER STATE CONTRACT**

_____ ("Contractor") and the State of California ("State") have entered into a Contract for California Integrated Information Network (CALNET) II ("CALNET II") Module 3 Services dated _____ ("Contract"), for a term of five years. The State may, at its sole option, elect to extend the Contract term for up to two (2) additional periods of one (1) year each. Pursuant to the Contract, which is incorporated herein by reference, any public agency as defined in Government Code Section 11541 is allowed to order services and products solely as set forth in the Contract ("Service(s)").

A non-State public Agency (herein "Non-State Agency") shall also be required to complete and submit this Authorization to Order Under State Contract (ATO) prior to ordering Services. A description of the Service(s), applicable rates and charges and the specific terms and conditions under which the Service(s) will be provided to a Non-State Agency are fully set forth in the Contract. Access to the Contract is available at www.stnd.dts.ca.gov.

_____ ("Non-State Agency") desires to order Service(s) and Contractor agrees to provide such Service(s) as identified in the State of California, Telecommunications Service Request (STD. 20), pursuant to the terms and conditions and rate tables contained in the Contract.

1. This ATO shall become effective upon execution by Non-State Agency, Contractor, and the Department of Technology Services, Statewide Telecommunications and Network Division (DTS/STND) ("Effective Date"). No Service(s) shall be ordered by Non-State Agency or provided by Contractor until this ATO has been executed by both parties and approved by DTS/STND.
2. With respect to Services ordered under this ATO, Non-State Agency hereby agrees to obtain such Services exclusively through the Contract and this ATO for a two (2) year commitment period starting from the Effective Date of the ATO, provided that such commitment does not extend beyond the Term of the Contract, including any extension periods. Any Services ordered subsequent to the end of the two (2) year commitment period shall not extend the two (2) year commitment period.
3. Upon expiration of the two (2) year commitment period, this ATO shall continue in effect through the remainder of the Term of the Contract, unless earlier terminated by Non-State Agency. The Non-State Agency will automatically continue to receive Services at Contract terms and conditions when the two year commitment period completes, and may add, delete or change Services without penalty or additional commitment periods (unless a specific Service requires a term per the Contract).
4. Subject to paragraph 5 below, Non-State Agency may terminate this ATO, for specific Service(s) or in total, prior to termination of the Contract by providing the Contractor with thirty (30) calendar days written notice of cancellation.
5. If Non-State Agency elects to terminate Service prior to completion of the two (2) year commitment period, a termination charge may apply. The termination charge may not exceed sixty-five percent (65%) of the Non-State Agency's average monthly bill for the disconnected Service(s) multiplied by the number of full months remaining in the two (2) year commitment period. If Service(s) are terminated after the two (2) year commitment period, no termination liability shall apply.

6. No termination charge will be assessed when Non-State Agency transfers Service(s) to a like Service offered under this Contract, or from one CALNET II Module to another, if the Contractor is the same for both Modules or is affiliated with the Contractor for the other Module.
7. By executing this ATO, Non-State Agency agrees to subscribe to and Contractor agrees to provide Service(s) in accordance with the terms and conditions of this ATO and the Contract. Within seven (7) business days after execution of this ATO by Non-State Agency and Contractor, Contractor shall deliver this ATO to DTS/STND for review and approval.
8. The DTS/STND will provide Contract management and oversight, and upon request by the Non-State Agency or Contractor, will advocate to resolve Contract service issues. The ATO and any resulting STD. 20 is a Contract between the Non-State Agency and the Contractor. The State will not represent the Non-State Agency in resolution of litigated disputes between the parties.
9. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency understands that Contractor and the State may, from time to time and without Non-State Agency's consent, amend the terms and conditions of the Contract thereby affecting the terms of service Non-State Agency receives from Contractor.
10. Non-State Agency, upon execution of this ATO, certifies that Non-State Agency has reviewed the terms and conditions, including the rates and charges, of the Contract.
11. Non-State Agency, upon execution of this ATO, certifies the Non-State Agency understands that billing invoices for Service(s) subscribed to under the Contract are subject to review and/or audit by the State pursuant to provisions of the Contract.
12. All Service(s) ordered under this ATO will be submitted using the STD. 20, signed by the Non-State Agency's authorized signatory. Any additions or deletions to Service(s) shall likewise be accomplished by submission of a STD. 20, noting changes.
13. Non-State Agency may, by placing Service orders issued by its duly authorized representative with Contractor, order any of the Service(s) listed in the Contract. Contractor shall bill Non-State Agency, and Non-State Agency shall pay Contractor according to the terms and conditions and rate tables set forth in the Contract for such Service(s).
14. If the Service(s) ordered under a STD. 20 are installed, and after the first fiscal year funds are not appropriated to enable the Non-State Agency to continue paying for services, or universal service discounts are not received, the Non-State Agency may terminate impacted Service(s) without penalty.
15. Whenever any notice or demand is to be given under this Contract to Contractor or Non-State Agency, the notice shall be in writing and addressed to the following:

Non-State Agency:

Contractor:

Address:

Address:

Attn: _____

Attn: _____

Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) days after mailing. Notices delivered by any other method shall be deemed given upon receipt.

IN WITNESS WHEREOF, the parties hereto have caused this ATO to be executed on the date shown below by their respective duly authorized representatives

Contractor:

Non-State Agency:

By:

By:

Title:

Title:

Date Signed:

Date Signed:

Approved By:
Department of Technology Services,
Statewide Telecommunications and Network Division

By: _____

Title: _____

Date Signed: _____

Department of Technology Services (DTS)
 Statewide Telecommunications and Network Division (STND)
 P.O. Box 1810
 Rancho Cordova, CA 95741-1810

Telecommunications Services

STND-XXX (Future)

DTS/STND Work Authorization

Contractor		Agency Project Contact	
Contract Number		Title	
Agency		Phone Number	
Attach additional pages as needed			
Justification of the need for the wholly unanticipated work			
Description of the work to be accomplished by Contractor			
Job Classification or approximate skill level of personnel to be made available by Contractor			
Identification of all significant material to be developed by Contractor and delivered to the State			
Identification of all significant material to be delivered by the State to Contractor			
Estimated time schedule for the provision of this work by Contractor			
Completion criteria for the work to be performed			
Name or identification of Contractor personnel to be assigned			
Contractor's estimated work hours per person (and/or estimated subtotal of rates and charges per Deliverable(s) and/or Service(s)) required to accomplish the work			
Contractor's billing rates per work hour per person (and/or estimated rates and charges per unit for Deliverable(s) and/or Service(s)) required to accomplish the work			
Contractor's estimated total cost of this Work Authorization		\$	

Approval _____ Date _____
 Department of Technology Services (DTS)
 Statewide Telecommunications and Network Division (STND)

EXHIBIT A-5

INDIVIDUAL PRICE REDUCTION NOTIFICATION

The State of California (“State”) and _____ (“Contractor, Module_____”) have entered into a Contract for Service(s) dated _____ (“Contract”). All terms and conditions (including Definitions) set forth in the Contract are incorporated herein by reference.

This Individual Price Reduction Notification (IPRN) document provides notice to DTS/ONS of the Service(s), location(s) and IPR Service rate(s) offered by Contractor for the listed Agency as specified below. The IPR Service rate(s) specified below shall become effective upon approval of this IPRN by DTS/ONS, unless otherwise noted in this IPRN document, subject to the conditions provided in the Contract (see RFP Section 4.5.2 and Sections 60 and 72 of the referenced Contract) and herein below:

_____ (“Agency”) desires to purchase and the Contractor agrees to provide the following Service(s) available pursuant to Module___ at the location(s) and reduced rate(s) set forth below:

Description of Contract Service(s):

IPR Service rate(s):

Location(s) (service address(es)) where reduced rate(s) apply:

Requested effective date of rate reduction(s):

Use additional pages as necessary and attach to the IPRN document.

Set forth below are Contract provisions that apply to the IPR process:**General IPR Provisions**

The following provisions apply to all IPRs:

1. Contractor may enter into price negotiations with Agencies. These price negotiations allow Contractor to reduce prices: a) on one or more Services; b) for one or more Customers at a time; and/or c) by geographic area or location(s).
2. IPRs shall be for reduced Service pricing only. All other Contract terms and conditions, including Service Level Agreements, will remain unchanged.
3. DTS/ONS has final approval or disapproval authority for all IPRs. An IPR shall not be implemented until approved in writing by DTS/ONS. An IPR becomes effective on the date that it is approved by DTS/ONS, unless otherwise noted in the IPR Notification (IPRN) document.
4. Within ten (10) business days of an Agency's concurrence to an IPR, the Contractor shall submit the IPR on an IPRN document to the DTS/ONS for written approval.
5. No additional service taxes, fees, surcharges or surcredits will be allowed except as per RFP Section 5.5.2 and Appendix B, Model Contract Language, Section 60.
6. Once an IPRN is approved by DTS/ONS, Contractor shall not cancel, or increase pricing for, any Service listed in the IPRN.
7. The Contractor shall post the IPR Service rate(s) on a DTS/ONS designated website within ten (10) business days of the IPRN's approval. DTS/ONS shall, at its sole discretion, determine and inform Contractor of the specific information to be posted.
8. All IPRs shall be subject to examination and audit pursuant to Appendix B, Model Contract Language, Section 33.
9. The IPRN and information regarding the approved IPR Service rate(s) shall be subject to the California Public Records Act.
10. Implementation of an approved IPR does not require reduction of statewide rate(s) for Service(s) subject to the IPR, pursuant to Appendix B, Model Contract Language, Section 70. However, if statewide rate(s) are reduced below the IPR rate(s) for such Service(s), the reduced statewide rate(s) shall automatically apply to the IPR.

Contract Duration IPRs

The following provisions apply to Contract Duration IPRs:

1. The Contractor shall be allowed to reduce one or more statewide Service prices for an Agency for the duration of the Contract. Refer to Appendix B, Model Contract Language, Section 72.
2. Customer may cancel any or all Services subject to the Contract Duration IPR without penalty.
3. The Contract Duration IPR Service rate(s) shall continue in effect from the date of IPRN approval by DTS/ONS through the remainder of the term of the Contract unless terminated earlier by Customer or DTS/ONS in accordance with the terms and conditions of the Contract, or if RFP Section 4.5.2.1 (10) applies.

Additional Instruction:

Whenever any notice or demand is given or required pursuant to this IPRN to Agency, Contractor or State, the notice shall be in writing and delivered to the authorized signatories identified below. Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) days after mailing. Notices delivered by any other method shall be deemed delivered upon receipt.

Signature page follows.

The undersigned Agency, upon execution of this IPRN, certifies that it has received, reviewed and concurs to the proposed rate (s) applicable to the Service(s) described herein above.

(Contractor, Module _____)

(Agency)

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

	Approved		Denied	(Check appropriate response.)
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Department of Technology Services,
Office of Network Services

By: _____

Title: _____

Date Signed: _____

ATTACHMENT 6

AUTHORIZED SUBCONTRACTORS AND BUSINESS PARTNERS, MODULE 3

Listed below are the subcontractors and business partners that are authorized to submit invoices and receive payment for services provided under the authority of the CALNET II Contract.

Business Name

Address
