

STATE OF CALIFORNIA - GENERAL SERVICES PROCUREMENT DIVISION  
**PURCHASING AUTHORITY PURCHASE ORDER**  
 STD. 65 (REV. 7/2009)

CONTRACT REGISTRATION NUMBER	AGENCY ORDER NUMBER 0000013915	AMENDMENT NO.
SUPPLIER: The numbers identified above MUST be shown on Invoice & Packing Slip.	DATE 11/1/2021	PAGE OF PAGE 1 55

SHIP TO	CALIFORNIA DEPT OF TECHNOLOGY ADMIN WAREHOUSE 10173 CROYDON WAY STE 4 SACRAMENTO CA 95827 ATTN: WENDY MOORE (916) 432-5051	BILL TO	CALIFORNIA DEPT OF TECHNOLOGY ADMIN DIVISION-ACCOUNTING OFFICE PO BOX 1810 RANCHO CORDOVA CA 95741	AGENCY BILLING CODE 33000
			PURCHASING AUTHORITY NUMBER CDT-7502	
			LEVERAGED PROCUREMENT AGREEMENT NO. SLP-21-70-00171	

TO SUPPLIER ADDRESS  
 (Type or Print Legibly)  
 ALLIED NETWORK SOLUTIONS, INC.  
 5718 LONETREE BLVD  
 ROCKLIN CA 95765

INFORMATION TECHNOLOGY PROJECT IDENTIFICATION NUMBER	
AGENCY OR BUYER INFORMATION	AGENCY TRACKING/REQUISITION NUMBER (optional) SC 21-0053375/ RITM0038943
AGENCY NAME Tech	CONTACT NAME Jamie Wong
CONTACT E-MAIL ADDRESS Jamie.Wong@state.ca.gov	
CONTACT PHONE NUMBER 916/431-4105	CONTACT FAX NUMBER 916/463-9909

SUPPLIER CONTACT NAME ZAK BERG	SUPPLIER PHONE NUMBER (916) 774-2670	SUPPLIER FAX NUMBER (916) 774-2654	SUPPLIER E-MAIL ADDRESS zberg@ans-it.com
PAYMENT TERMS Net 45	CERTIFICATION NUMBER 24852	<input type="checkbox"/> Certified Small Business	<input type="checkbox"/> Certified Microbusiness
REQUIRED DELIVERY DATE 11/1/2021	SHIPPING INSTRUCTIONS	<input type="checkbox"/> F.O.B. Destination FRT. PPD	<input type="checkbox"/> F.O.B. Destination FRT. PPD/ADD Freight not to exceed cost stated on P.O.

ITEM NUMBER	QUANTITY	UNIT	COMMODITY CODE or PRODUCT CODE or SERVICES ID NUMBER	RECYCLED PRODUCT	PRODUCT OR SERVICES DESCRIPTION	UNIT PRICE	EXTENSION TOTAL
					CONTRACT TERM: 11/01/2021 To 10/31/2022		
1	1	EA			DocuSign VHSS eSignature/Digital Signature SaaS Renewal	1,500,000.00	1,500,000.00
					Comments: SEE ATTACHED		
					Exhibit A – Statement of Work		
					Exhibit A-1 – Service Level Agreements (SLAs)		
					Exhibit A-2 – Work Authorization (WA)		
					Exhibit B – Budget Detail and Payment Provisions		

A-1 <input type="checkbox"/> General Provisions are incorporated herein by reference to: <input type="checkbox"/> Form GSPD -401 Non-IT Commodities (revision date _____) OR <input type="checkbox"/> Form GSPD -401 IT (revision date _____) <input type="checkbox"/> ATTACHED OR <input type="checkbox"/> Published at website: <a href="http://www.dgs.ca.gov/pd">www.dgs.ca.gov/pd</a>	TAXABLE SUBTOTAL	0.00
TERMS AND CONDITIONS A-2 <input checked="" type="checkbox"/> This order is issued under a Department of General Services (DGS) Leveraged Procurement Agreement (LPA). Terms and Conditions set forth in that agreement (LPA number referenced in the block titled Leveraged Procurement Agreement No.) are incorporated herein by reference as if set forth in full text. B <input checked="" type="checkbox"/> Agency Special Provisions are attached and titled <b>CLOUD SAAS</b> C <input checked="" type="checkbox"/> Any other attachments, such as specifications, Statement of Work, or Information Technology Model Language Modules, are identified in the product or services description area or on continuation pages.	TAX RATE	0.00
	SALES TAX	0.00
	* INSTALLATION	0.00
	* SHIPPING/FREIGHT	
	* OTHER NON-TAXABLE	0.00
PROCUREMENT METHOD <input checked="" type="checkbox"/> COMPETITIVE: Solicitation Number (if applicable) RFO21-0053375.1 <input checked="" type="checkbox"/> LEVERAGED <input type="checkbox"/> DVBE / SMALL BUSINESS [GC 14838.5(a)] <input type="checkbox"/> NON-COMPETITIVELY BID <input type="checkbox"/> EXEMPT	GRAND TOTAL	1,500,000.00

**\* NOTE: If there are variable charges for installation, shipping or freight, or other Non-Taxable Services, detail per line item and enter total here.**

PROGRAM / CATEGORY (Code and Title) CLEARING ACCOUNT	FUND TITLE Tech Svcs Rev Fund	VERIFIED NO STATE SURPLUS AVAILABLE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	PAID BY CAL CARD <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	OBJECT OF EXPENDITURE (CODE AND TITLE)	<input type="checkbox"/> O.E. <input type="checkbox"/> EQ.
ITEM 7502-001-9730	CHAPTER 21	STATUTE 2021	FISCAL YEAR 21 / 22	280.522643.195	

<b>CERTIFICATION AND APPROVAL OF EXECUTIVE OFFICER</b>		UNENCUMBERED REMAINDER AFTER POSTING THIS ORDER TO ALLOTMENT EXPENDITURE LEDGER
I HEREBY CERTIFY, on personal knowledge, that this order for purchasing the items specified above is issued in accordance with the procedure prescribed by law governing the purchase of such items for the State of California; and that all such legal requirements have been fully complied with		ADJUSTMENT INCREASING ENCUMBRANCES
AUTHORIZING NAME (Print or Type) Lea Anne Basco	TITLE Purchasing Manager	ADJUSTMENT DECREASING ENCUMBRANCES
AUTHORIZING SIGNATURE 		CERTIFIED CORRECT (SIGNATURE) 

**PURCHASING AUTHORITY PURCHASE ORDER  
CONTINUATION**

STD. 65A (REV. 7/2003)

CONTRACT REGISTRATION NUMBER	AGENCY ORDER NUMBER 0000013915	AMENDMENT NO.
<b>SUPPLIER: The numbers identified above MUST be shown on Invoice &amp; Packing Slip.</b>		DATE 11/01/2021
AGENCY BILLING CODE 33000	PURCHASING AUTHORITY NUMBER CDT-7502	LEVERAGED PROCUREMENT AGREEMENT NO. SLP-21-70-00171

ITEM NUMBER	QUANTITY	UNIT	COMMODITY CODE or PRODUCT CODE or SERVICES ID NUMBER	RECYCLED PRODUCT	PRODUCT OR SERVICES DESCRIPTION	UNIT PRICE	EXTENSION TOTAL
					Exhibit C – Cost Worksheet		
					Exhibit D – Special Terms and Conditions to		
					Safeguard Federal Tax Information		
					Exhibit E – Cloud Computing – Software as a Service		
					(SaaS) General Provisions		
					Exhibit F – State Model Cloud Computing Services		
					Special Provisions (Software as a Service)		
					Request for Offer (RFO) # 21-0053375.1 is hereby		
					incorporated by reference and made a part of this		
					Agreement as if attached hereto.		
					DEPARTMENT OF TECHNOLOGY TECHNICAL CONTACT:		
					Wendy Moore		
					(916) 431-5051		
					Wendy.Moore@state.ca.gov		
					Electronic download – no media to be received		
					(non-taxable)		
					Paid in advance upon receipt of a correct invoice		
					CDT Coding Info Only		
					Coding:		
					Per Cost Allocation: 9730.280.522643.195 DC		

**ENTER GRAND TOTAL ON FRONT PAGE**

**PURCHASING AUTHORITY PURCHASE ORDER  
CONTINUATION**

STD. 65A (REV. 7/2003)

CONTRACT REGISTRATION NUMBER	AGENCY ORDER NUMBER 0000013915	AMENDMENT NO.
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<b>SUPPLIER: The numbers identified above MUST be shown on Invoice &amp; Packing Slip.</b>	DATE 11/01/2021	PAGE OF PAGE 3   55
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AGENCY BILLING CODE 33000	PURCHASING AUTHORITY NUMBER CDT-7502	LEVERAGED PROCUREMENT AGREEMENT NO. SLP-21-70-0017I
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ITEM NUMBER	QUANTITY	UNIT	COMMODITY CODE or PRODUCT CODE or SERVICES ID NUMBER	RECYCLED PRODUCT	PRODUCT OR SERVICES DESCRIPTION	UNIT PRICE	EXTENSION TOTAL
					REQ 21-0036489/ ORDER LOG # 0053/ CON0000475		
					Prior PO 16-10783/ SC 16-2053204		

**ENTER GRAND TOTAL ON FRONT PAGE**

**EXHIBIT A  
STATEMENT OF WORK**

**1. Contract Description:**

ALLIED NETWORK SOLUTIONS, INC. (hereinafter referred to as “the Contractor”) agrees to provide the California Department of Technology (hereinafter referred to as the “State,” “CDT,” and/or the “Licensee”) with the DOCUSIGN ESIGNATURE SOFTWARE AS A SERVICE (SaaS) SUBSCRIPTION RENEWAL, as listed on Page 1 of the RFO 21-0053375.1 and on Exhibit C – Cost Worksheet of this Agreement.

**2. Licensee Site/Location:**

The “Licensee Site” shall mean CDT, as identified in this Agreement, which Licensee represents, is operated or controlled by the Licensee. The Licensee may change the Licensee Site to another location located within the United States without incurring additional charges.

<b>CDT, Office of Technology Services</b>	
Gold Camp Campus	Vacaville Campus
3101 Gold Camp Drive	1020 Vaquero Circle
Rancho Cordova, CA 95670	Vacaville, CA 95688

**3. License Type:** SaaS Subscription per designated user, per year.

**4. Term:** November 1, 2021 through October 31, 2022

**5. Installed on:** All the software associated with this SaaS is installed at the manufacturer’s or Contractor’s site.

**6. Notices:**

All notices required by or relating to this Agreement shall be in writing and shall be sent to the parties of this Agreement at their address as set below unless changed from time to time, in which event each party shall notify the other in writing, and all such notices shall be deemed duly given if deposited, postage prepaid, in the United States mail and directed to the following addresses:

The technical representative during the term of this Agreement will be:

<b>State Agency</b>		<b>Manufacturer</b>	
CDT, IT Program Management		DocuSign	
Attn:	Wendy Moore	Attn:	Jennifer Baker (Primary)
Phone:	(916) 431-5051	Phone:	(650) 561-5033
E-mail:	<a href="mailto:Wendy.Moore@state.ca.gov">Wendy.Moore@state.ca.gov</a>	E-mail:	<a href="mailto:Jennifer.Baker@docusign.com">Jennifer.Baker@docusign.com</a>
		Attn:	Tracey Reliford (Secondary)
		Phone:	(916) 534-0071
		E-mail:	<a href="mailto:Tracey.Reliford@docusign.com">Tracey.Reliford@docusign.com</a>

Contract inquiries should be addressed to:

State Agency		Contractor	
CDT, Acquisitions & IT Program Management Branch		Allied Network Solutions, Inc.	
Attn:	Jamie Wong	Attn:	Zak Berg
Address:	PO Box 1810 Rancho Cordova, CA 95741	Address:	5718 Lonetree Blvd. Rocklin, CA 95765
Phone:	(916) 431-4105	Phone:	(916) 771-2670 x114
E-mail:	<a href="mailto:Jamie.Wong@state.ca.gov">Jamie.Wong@state.ca.gov</a>	E-mail:	<a href="mailto:zberg@ans-it.com">zberg@ans-it.com</a>

**7. Data/Information Categorization:**

Per SAM 5305.5, State data housed on the eSignature / Digital Signature service shall be classified as Medium Impact.

**8. Work Authorization**

Product quantities listed on Exhibit C, Cost Worksheet are for bid and evaluation purposes only. Any additional products on the SLP price list can be added by an approved Work Authorization (WA), Exhibit A-2 only. If you do not see the products you wish to procure from Exhibit C, Cost Worksheet, please refer to the DocuSign SLP price list and provide an approved WA, Exhibit A-2.

- a. The Work Authorization (WA), Exhibit A-2, also referred to as “Subscription Change Transactions”, will be the approved authorization process for the State and Contractor to execute all eSignature / Digital Signature subscription WAs which include category items, unit quantities (additions or deletions) and/or monthly subscription costs to this Agreement. CDT is in the process of revising the attached WA template, a final draft will be provided to the Contractor upon completion.
- b. Activation and Exit of Services. WAs shall be prepared for each new Authorized User for all products/tools being subscribed. All WAs must be signed by Contractor, CDT with cc to the CDT Accounting Office.
- c. Termination of Authorized User Subscription. Authorized Users subscribing to the eSignature/Digital Signature services may choose to terminate their subscription with 30-day notice via WA. The credit balance remaining on their activated service will be credited back to State based on pro-rated monthly cost. Credit back to the State will be in the form of check payable to the “State of California- Department of Technology”
- d. Annual Valid WA. WAs are only valid for 1-year subscription. To renew service after 1 year, a new WA is required.
- e. Each WA shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by the Contractor and all information requested to be provided per WA form.
- f. All WAs must be in writing prior to beginning work and signed by the Contractor and the CDT Contract Administrator.
- g. The CDT has the right to require the Contractor to stop or suspend work on any WA.

**9. Support:**

The Contractor shall ensure that Support is provided by the manufacturer, DocuSign, through the term of the Agreement.

- a. **Phone Support:** (800) 370-9973
- b. **Website:** <https://support.docusign.com/en/contactSupport>

**10. Configuration**

Contractor to provide up to a maximum of 500 hours of configuration support activities that provide system access and basic configurations to enable the service. The configuration service should include but not limited to:

- a. Basic department specific content. Pricing for configuration shall not exceed the prices set forth in the SLP pricelist.
- b. Setup of one (1) user manually to facilitate administration access of the system

**11. Information and Data Ownership**

All information and data stored by the State of California (State; this includes all public agencies in the State of California that may use this Agreement) using the service provider's system(s) remains the property of the State. As such, the service provider agrees to not scan, capture or view such information or data unless expressly authorized by the appropriate representatives of the State of California. Prior to the release of any information or data belonging to the State of California to any law enforcement agency, the service provider must notify and gain the express approval of the CDT and the California Department of Justice. Upon the conclusion of service as notified by the State, the service provider must provide to the State a copy of all State data stored in the service providers system within five (5) business days in the Exit Data Format specified in the technical requirements. Upon acceptance of this data by the State of California, the service provider shall purge the data from any and all of its systems and provide the State confirmation that such steps have occurred within 10 business days. Failure to comply with any of these terms may be grounds for termination for default.

**12. Problem Escalation**

- a. The parties acknowledge/agree that certain technical and project-related problems or issues may arise and that each party shall bring such matters to the immediate attention of the other party when identified. Known problems or issues shall be reported in regular weekly status reports or meetings. However, there may be instances where the severity of the problem justifies escalated reporting. To this extent, the State's Primary Contact will determine the next level of severity, and notify the appropriate State and Contractor personnel. The personnel notified, and the time period taken to report the problem or issue, shall be at a level commensurate with the severity of the problem or issue.
- b. The State personnel include, but are not limited to the following:

First Level: VHSS IT Specialist I, IT Program Management Office
Second Level: VHSS IT Supervisor II, IT Program Management Office
Third Level: IT Manager II, Assistant Branch Chief, Acquisitions & IT Program Management Branch
Fourth Level: IT Manager III, Branch Chief, Acquisitions & IT Program Management Branch

- c. The Contractor personnel include, but are not limited to the following:

First Level: Director of Contracts
Second Level: Director of Services
Third Level: President

**13. Amendments**

Consistent with the terms and conditions of the original solicitation, and upon mutual consent, the CDT and the Contractor may execute amendments to this Agreement for quantity, money and/or time. In place of an amendment, an approved WA is required to add/change/delete products in this Agreement. Only products available via the most current SLP pricelist can be added. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, and agreed upon by both parties and approved, as required. No verbal understanding or agreement not incorporated into the Agreement is binding on any of the parties.

**14. Cancellation Provisions:**

CDT may exercise its option to terminate the resulting Agreement at any time with 30 calendar days' prior written notice.

**15. Federal Tax Administration Requirements**

CDT must notify the United States Internal Revenue Service (IRS) prior to executing, or amending, any agreement to disclose, or provide access to, federal tax information (FTI) to a Contractor or Sub-Contractor, at least 45 calendar days prior to the disclosure of FTI, to ensure appropriate contractual language is included and that Contractors are held to safeguarding requirements. This procedure conforms to IRS Publication 1075.

Subject to the IRS, FTI requirements, if an unfavorable response is received by the IRS, this contract will be terminated immediately, per the Cloud Computing - Software as a Service (SaaS) General Provisions, clause 17, Termination for Default (Exhibit E). In conformation with IRS Publication 1075, Contractor must comply with Exhibit D - Special Terms and Conditions to Safeguard Federal Tax Information.

**16. Security and Data Protection Requirements:**

CDT must ensure agreements with state and non-state entities include provisions which protect and minimize risk to the state when engaging in the development, use, or maintenance of information systems, products, solutions, or services. The Contractor must comply with the State Administrative Manual (SAM) Section 5305.8.

**EXHIBIT A-1**  
**SERVICE LEVEL AGREEMENTS (SLAs)**

A. Service Credits

- 1) In the event the Contractor does not meet the service commitment, the State will be eligible to receive a Service Credit as described below. Service Credits are calculated in accordance with the table below as a percentage of the total subscription charges paid by State for eSignature / Digital Signature Subscription Services for the month in which the Contractor does not meet the Service Commitment.

<b>Monthly Availability Percentage</b>	<b>Service Credit Percentage</b>
Less than 95%	6% of monthly subscription charges

- 2) Service Credits will be applied against State's next invoice. A Service Credit will be applicable and issued only if the credit amount is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other Contractor service or account. The State's remedy for any non-excluded down time is the receipt of a service credit (if eligible) in accordance with the terms of this Exhibit A-1. Upon expiration or non-renewal of this Agreement, all service credits will be forfeited (for example, if the non-excluded downtime occurs in the last month of the Agreement term and State does not renew, then the service credit is forfeited).





## DocuSign Service & Support Level Commitment (“SLA”)

### 1. Description of Services Covered

This Service and Support Level Commitment (“SLA”) covers the following service levels in relation to the Subscription Service: availability, problem response support, problem resolution support, and system performance. All capitalized terms used but not defined in this SLA shall have the respective meanings given to them in the associated DocuSign Corporate Subscriber Terms and Conditions or Master Services Agreement.

### 2. Definitions

“**Function/Functionality**” means a material feature or functionality described in the Subscription Service Specifications.

“**Scheduled Uptime**” means all hours (i.e. 24 x 7 x 365).

“**Service Level Credits**” mean credits against amounts payable by Subscriber to DocuSign for the Subscription Service. Service Level Credits are computed as a percentage of the pro-rated fees for the Subscription Service for the calendar month in which the applicable service level(s) was not met. Per use charges, such as ID check, are not subject to Service Level Credits.

“**Subscription Service Availability**” means the percentage of time that the Subscription Service is in service and fully available for access and data input by Subscriber, and is calculated as follows: for each month, the aggregate amount of actual uptime expressed as a percentage of the Scheduled Uptime (i.e. Subscription Service Availability = Actual Uptime/Scheduled Uptime). When the Subscription Service is not in service and not fully available for access and data input by a Subscriber, the Subscription Service shall be deemed to be “Unavailable” as such term is used in the table in Section 5.1 below.

### 3. Response & Resolution Service Levels

DocuSign has a Services Availability target of 100%. However, Service Level Credits will be owed by DocuSign to Subscriber only if DocuSign fails to meet the service availability thresholds set forth in Section 5.1 below.

Service	Service Level
Scheduled Uptime	24 hours per day, 7 days per week, 52 weeks per year
Subscription Service Availability	100%

### 4. Problem Response & Resolution Service Levels

DocuSign will respond to and resolve problems identified by Subscriber as set forth in the table below. These service levels are not applicable to non-reproducible errors. In addition, once a problem has been reported, during the time period in which DocuSign is seeking to fix that problem, additional reportings of the same problem do not restart the time period for resolving such problem.



Problem Severity Level	Response Time Service Level	Resolution Time Service Level
<b>Level 1:</b> The Subscription Service is not available for use, including any Function that is required to complete the signing or sending of an Envelope.	DocuSign will respond to and DocuSign's senior engineers will commence efforts to fix Level 1 problems within 15 minutes after Subscriber reports such problem or DocuSign's detection of such problem, whichever is earlier.	DocuSign will use commercially reasonable efforts, twenty-four (24) hours per day, seven (7) days per week, to as quickly as possible resolve or provide Subscriber with an acceptable work-around for the applicable Level 1 problem.
<b>Level 2:</b> A Function is unavailable but does not prevent the completion of the signing or sending of an Envelope.	DocuSign will respond to and will commence efforts to fix Level 2 problems no later than eight (8) business hours after Subscriber reports such problem or DocuSign's detection of such problem, whichever is earlier.	DocuSign will use commercially reasonable efforts, during normal business hours, to resolve or provide Subscriber with an acceptable solution for the Level 2 problem within seven (7) calendar days after Subscriber reports such problem or DocuSign's detection of such problem, whichever is earlier.
<b>Level 3:</b> A Function is impaired but does not prevent the completion of the signing or sending of an Envelope.	DocuSign will respond to Level 3 problems within seventy-two (72) hours for Premier Support Subscribers and within one hundred twenty (120) hours for Plus Support Subscribers, after Subscriber reports such problem or DocuSign's detection of such problem, whichever is earlier.	DocuSign will resolve or provide Subscriber with a reasonably acceptable work-around for the Level 3 problem within sixty (60) calendar days for Premier Support Subscribers and within one hundred twenty (120) calendar days for Plus Support Subscribers, after Subscriber reports such problem or DocuSign's detection of such problem, whichever is earlier. DocuSign will provide a permanent fix in the next Update.

**5. Service Level Credits**

5.1 The table below sets forth Service Level Credits to which Subscriber will be entitled to, except to the extent expressly excused per Section 5.7 below. In order to be entitled to Service Level Credits, Subscriber must provide DocuSign with written notice no later than the end of the Term during which the breach occurred:

The aggregate amount of time that the Subscription Service is Unavailable in a calendar month is more than...	OR Response Time More Than...				THEN Service Level Credit of...
	Level 1	Level 2	Level 3		
			Premier Support	Plus Support	
45 minutes	1 hour	8 hours	72 hours	120 hours	5%
4.5 hours	2 hour	16 hours	96 hours	144 hours	10%
9.0 hours	4 hour	24 hours	120 hours	168 hours	15%

- 5.2 The Service Level Credits will be applied against the next payment due to DocuSign for the Subscription Services. Subscribers with prepaid accounts may, upon reasonable prior written request, receive Service Level Credits in the form of a cash refund, calculated by applying the Service Level Credit percentage against 1/12 of the annualized prepaid amount.
- 5.3 DocuSign will monitor its actual performance of the Subscription Service against these service levels.



- 5.4 DocuSign will make monthly reports available to Subscriber via DocuSign's website to verify DocuSign's performance and compliance with the Availability Key Performance Indicators noted above.
- 5.5 The Service Level Credits will be deemed as liquidated damages, and will constitute Subscriber's sole and exclusive remedy for DocuSign's failure to meet the applicable service levels in the above table.
- 5.6 If a single incident gives rise to a breach of multiple Service Levels, as determined by DocuSign in its reasonable judgment, then Subscriber will only be entitled to a Service Level Credit for the breach that is associated with the largest Service Level Credit.
- 5.7 DocuSign will be excused from a failure to meet a service level, and Subscriber will not be entitled to any Service Level Credit, that is caused by: (i) acts or omissions of Subscribers, its affiliates, or representatives or agents of the foregoing; (ii) any events outside of DocuSign's reasonable control (including, for the avoidance of doubt, any force majeure events); or (iii) delay or failure of Subscriber, its affiliates, or representatives or agents of the foregoing, to perform Subscriber's obligations under the Agreement, including, without limitation, delay or failure of Subscriber to act (e.g., review, approve, or reject) in a manner reasonably requested by DocuSign (but such request shall not cause Subscriber to incur material out-of-pocket costs) in a timely manner and any other breach of the Agreement by or on behalf of Subscriber that materially adversely impacts DocuSign's ability to achieve the service levels.

v160212



#### About DocuSign

DocuSign® is the global standard for electronic signature®. DocuSign accelerates transactions to increase speed to results, reduce costs, and delight customers with the easiest, fastest, most secure global network for sending, signing, tracking, and storing documents in the cloud.

For U.S. inquiries: toll free 866.219.4318 | [docuSign.com](http://docuSign.com)

For EMEA inquiries: phone +44 203 510 6500 | email [emea@docuSign.com](mailto:emea@docuSign.com) | [docuSign.co.uk](http://docuSign.co.uk)

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**EXHIBIT A-2  
WORK AUTHORIZATION (WA)**

Subscription service agreements arising out of this Agreement will be subject to a 12-month (annual) subscription term. Each subscription term will automatically expire at the end of the 12-month period. The customer department must submit a new ServiceNow request to the Department of Technology's Technical Contact (as specified below) requesting to renew subsequent 12-month subscription service agreements. The customer department should submit the WA 90-days prior to its current subscription term expiration date.

A pro-ration of annual fees will be allowed only if a customer is adding to an existing account subscription.

**SAMPLE:**

WA Number:   1   (Page 1 of   2  )

Customer Service Request (SR) #:   TBD  

**To Be Completed by the Customer:**

WA Number:   1   (Page 1 of   1  )

Customer Service Request (SR) #:   <INSERT SR # HERE>  

Task Summary:

**<INSERT CUSTOMER NAME HERE>**

**<INSERT DESCRIPTION AND DETAIL>** (e.g. additions or deletions)

Customer Account Information

**Technical Contact:** [xxx.xxx@xxx.ca.gov](mailto:xxx.xxx@xxx.ca.gov)

**PMO Point of Contact:** [xxx.xxx@xxx.ca.gov](mailto:xxx.xxx@xxx.ca.gov)

**Fiscal Point of contact (if different from above):** [xxx.xxx@xxx.ca.gov](mailto:xxx.xxx@xxx.ca.gov)

Schedule Dates

Start Date: **<Month/Day/Year>**

Completion Date: **<Month/Day/Year>**

Category _____ - Line Item #____	Annual Rate	Qty	Cost* (\$)
			\$
Category _____ - Line Item #____	Annual Rate	Qty	Cost* (\$)
			\$
<b>Total Cost</b>			\$

\* Cost (\$) = Annual rate x the quantity

This service will be performed in accordance with this WA and the provisions and cost rates of Agreement No. **TBD**

DESIGNATED REQUIRED APPROVALS:

\_\_\_\_\_  
(Contractor – Name/Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Department of Technology Technical Representative)

\_\_\_\_\_  
(Date)

Cc: Accounts Payable



**EXHIBIT B**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Payment and Invoicing:**

a. SAAS SUBSCRIPTION AND SUPPORT

Payment for License(s) and Support Maintenance will be made annually in advance upon receipt of a correct invoice.

A pro-rated fee will be assessed for customers who submit a subsequent service request (SR) and a WA to add end-users during a previously established account term. The customer's fees will be assessed by pro-rating the total annual cost of the product(s).

EXAMPLE: if a customer requests to add fifty (50) additional users with full functionality at a total annual cost of \$30,000 with six (6) months remaining on the customer's account term, the formula would be calculated as follows:

$\$30,000 \div 12 \text{ months} = \$2,500$ ; Then multiply \$2,500 by 6 months for a prorated amount of \$15,000.

b. CONTRACT PAYMENT STRUCTURE

Bidder proposes and agrees to furnish all labor, materials, tools, equipment, and supervision; pay all taxes, insurance, bonds, license and permit fees and other costs incidental to the work to be performed in accordance with the attached Scope of Work identified in Exhibit A at the rates offered in Exhibit C, Cost Worksheet.

c. Invoices must be approved by the CDT IT Program Analyst before processing for payment.

d. Payment will be made in advance upon receipt of a correct invoice. **The invoice shall include booking confirmation of the CDT Purchase Order; including but not limited to, the product name, code (if applicable), and term date;** and shall reference the Agency Order Number and SLP-21-70-00171.

e. Submit your invoice using only **one** of the following options:

1) Send via U.S. mail in **TRIPLICATE** to:

California Department of Technology  
Administration Division – Accounting Office  
P. O. Box 1810  
Rancho Cordova, CA 95741

**OR**

2) Submit electronically at: [APIInvoices@state.ca.gov](mailto:APIInvoices@state.ca.gov)

- f. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927. Payment to small/micro businesses shall be made in accordance with and within the time specified in Chapter 4.5, Government Code 927 et seq.

**2. Budget Contingency Clause:**

- a. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Contract does not appropriate sufficient funds for the program, this Contract shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this contract and Contractor shall not be obligated to perform any provisions of this contract.
- b. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Contract with no liability occurring to the State, or offer a contract amendment to the Contractor to reflect the reduced amount.

**EXHIBIT C  
COST WORKSHEET**

**DocuSign eSignature Software as a Service (SaaS) Subscription Renewal**

**Term: 11/1/2021 – 10/31/22**

ITEM	SKU #	DESCRIPTION	UNIT OF MEASURE	UNIT PRICE
1	APT-0011	DocuSign Retrieve	Per Year	\$5,715.00
2	APT-0045-L*	Classic DocuSign Platform Offering. Annual Pricing	Per Year	\$952,500.00
3	APT-0061	Installation/Implementation/Customization - Per hour	Per Hour	\$281.00
4	APT-0075	Premier Support	15% of Net Price	15%
5	APT-0086	DocuSign for Microsoft Office 365 - Seat Subscription	Per Seat/Yr.	\$116.50
6	APT-0148	Enterprise Premier Support	22% of Net Price	22%
7	APT-0210	DocuSign Connector - Salesforce - Per Seat	Per Seat/ Yr.	\$137.00
8	APT-0271	eSignature Business Pro Edition - Per Seat	Per Seat/ Yr.	\$457.00
9	APT-0272	eSignature Enterprise Pro Edition - Per Seat	Per Seat/ Yr.	\$743.00
10	APT-0372	Custom Engagement - Per Hour	Per Hour	\$238.00
11	APT-0475	eSignature Business Pro with FedRAMP - Seats	Per Seat/ Yr.	\$571.50
12	APT-0480	eSignature Enterprise Pro with FedRAMP - Env	Per Envelope/ Yr.	\$9.30
13	APT-0483	eSignature Business Pro for Gov - Seats	Per Seat/ Yr.	\$514.50
14	APT-0484	eSignature Business Pro for Gov - Env	Per Envelope/ Yr.	\$5.10

15	APT-0488	eSignature Enterprise Pro for Gov - Env	Per Envelope/ Yr.	\$8.15
16	APT-0490	eSignature Enterprise Pro for Gov - Env (Adopt. Accel.)	Per Envelope/ Yr.	\$8.00
17	APT-0491	Enterprise Premier Support with FedRAMP	22% of Net Price	22%

\*Volume Purchase Discount (SLP): Should 1 Eligible entity make a purchase of \$500,001 or more in on single transaction, the additional Volume Purchase discount prices shall apply.

In addition to the following products listed above, products not listed can be ordered utilizing the SLP contract per the current pricelist available via the Cal eProcure website and an approved WA, Exhibit A-2 must be provided.

SLP Contract Number: SLP-21-70-00271

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SB/DVBE Certification Number: 24852

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Retailer's Seller's Permit Number: SR KH 97-902196

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FEIN Number: 68-0480187

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Signature and Date: *Zachary S Berg* 9/1/21

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Printed Name and Title: Zak Berg Account Manager

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Company Name: Allied Network Solutions, Inc.

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Company Address: 5718 Lonetree Blvd. Rocklin, CA 95765

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Contact Phone Number: 916-774-2670 x114



**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS TO SAFEGUARD FEDERAL TAX INFORMATION**

Federal statute, regulations and guidelines require that all contracts for services relating to the processing, storage, transmission, or reproduction of federal tax returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services, for tax administration purposes include the provisions contained in this exhibit. (See 26 U.S.C. §6103(n); 26 C.F.R. §301.6103(n)-1(a)(2) and (d); Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies (Rev. 9-2016), Section 5.5 and Exhibit 7.)

The contractor agrees to comply with 26 U.S.C. §6103(n); 26 C.F.R. §301.6103(n)-1; IRS Publication 1075 (Rev. 9-2016); and all applicable conditions and restrictions as may be prescribed by the IRS by regulation, published rules or procedures, or written communication to the contractor. (See 26 C.F.R. §301.6103(n)-1(d); IRS Publication 1075 (Rev. 9-2016))

**I. PERFORMANCE**

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the contractor or the contractor's employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the

same level of protection as required for the source material.

- (4) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (7) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (8) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

- (9) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

## II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for

Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

- (3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section

10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.<sup>1</sup>

### III. INSPECTION

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

### REFERENCES

#### 26 U.S.C. §6103(n)

Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in section 7513 (a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.

#### **26 C.F.R. §301.6103(n)-1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.**

(a) *General rule.* Pursuant to the provisions of section 6103(n) of the Internal Revenue Code and subject to the requirements of paragraphs (b), (c), and (d) of this section, officers or employees of the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, are authorized to disclose returns and return information (as defined in section 6103(b)) to any person (including, in the case of the Treasury Department, any person described in section 7513(a)), or to an officer or employee of such person, to the

extent necessary in connection with contractual procurement of—

- (1) Equipment or other property, or
- (2) Services relating to the processing, storage, transmission, or reproduction of such returns or return information, the programming, maintenance, repair, or testing of equipment or other property, or the providing of other services, for purposes of tax administration (as defined in section 6103(b)(4)).

No person, or officer or employee of such person, to whom a return or return information is disclosed by an officer or employee of the Treasury Department, the State tax agency, the Social Security Administration, or the Department of Justice, under the authority of this paragraph shall in turn disclose such return or return information for any purpose other than as described in this paragraph, and no such further disclosure for any such described purpose shall be made by such person, officer, or employee to anyone, other than another officer or employee of such person whose duties or responsibilities require such disclosure for a purpose described in this paragraph, without written approval by the Internal Revenue Service.

- (b) *Limitations.* For purposes of paragraph (a) of this section, disclosure of returns or return information in connection with contractual procurement of property or services described in such paragraph will be treated as necessary only if such procurement or the performance of such services cannot otherwise be reasonably, properly, or economically carried out or performed without such disclosure.

Thus, for example, disclosures of returns or return information to employees of a contractor for purposes of programming, maintaining, repairing, or testing computer equipment used by the Internal Revenue Service or a State tax agency should be made only if such services cannot be reasonably, properly, or economically performed by use of information or other data in a form which does not identify a particular taxpayer. If, however, disclosure of returns or return information is in fact necessary in order for such employees to reasonably, properly, or economically perform the computer related

<sup>1</sup> A 30 minute disclosure awareness training video produced by the IRS can be found at <http://www.irsvideos.gov/Governments/Safeguards/DisclosureAwarenessTrainingPub4711>

services, such disclosures should be restricted to returns or return information selected or appearing at random. Further, for purposes of paragraph (a), disclosure of returns or return information in connection with the contractual procurement of property or services described in such paragraph should be made only to the extent necessary to reasonably, properly, or economically conduct such procurement activity. Thus, for example, if an activity described in paragraph (a) can be reasonably, properly, and economically conducted by disclosure of only parts or portions of a return or if deletion of taxpayer identity information (as defined in section 6103(b)(6) of the Code) reflected on a return would not seriously impair the ability of the contractor or his officers or employees to conduct the activity, then only such parts or portions of the return, or only the return with taxpayer identity information deleted, should be disclosed.

(c) *Notification requirements.* Persons to whom returns or return information is or may be disclosed as authorized by paragraph (a) of this section shall provide written notice to their officers or employees—

- (1) That returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized by paragraph (a) of this section;
- (2) That further inspection of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section constitutes a misdemeanor, punishable upon conviction by a fine of as much as \$1,000, or imprisonment for as long as 1 year, or both, together with costs of prosecution;
- (3) That further disclosure of any returns or return information for a purpose or to an extent unauthorized by paragraph (a) of this section constitutes a felony, punishable upon conviction by a fine of as much as \$5,000, or imprisonment for as long as 5 years, or both, together with the costs of prosecution;
- (4) That any such unauthorized further inspection or disclosure of returns or return information may also result in an award of civil damages against any

person who is not an officer or employee of the United States in an amount not less than \$1,000 for each act of unauthorized inspection or disclosure or the sum of actual damages sustained by the plaintiff as a result of such unauthorized disclosure or inspection as well as an award of costs and reasonable attorneys fees; and

(5) If such person is an officer or employee of the United States, a conviction for an offense referenced in paragraph (c)(2) or (c)(3) of this section shall result in dismissal from office or discharge from employment.

(d) *Safeguards.* Any person to whom a return or return information is disclosed as authorized by paragraph (a) of this section shall comply with all applicable conditions and requirements which may be prescribed by the Internal Revenue Service for the purposes of protecting the confidentiality of returns and return information and preventing disclosures of returns or return information in a manner unauthorized by paragraph (a). The terms of any contract between the Treasury Department, a State tax agency, the Social Security Administration, or the Department of Justice, and a person pursuant to which a return or return information is or may be disclosed for a purpose described in paragraph (a) shall provide, or shall be amended to provide, that such person, and officers and employees of the person, shall comply with all such applicable conditions and restrictions as may be prescribed by the Service by regulation, published rules or procedures, or written communication to such person. If the Service determines that any person, or an officer or employee of any such person, to whom returns or return information has been disclosed as provided in paragraph (a) has failed to, or does not, satisfy such prescribed conditions or requirements, the Service may take such actions as are deemed necessary to ensure that such conditions or requirements are or will be satisfied, including—

(1) Suspension or termination of any duty or obligation arising under a contract with the Treasury Department referred to in

this paragraph or suspension of disclosures by the Treasury Department otherwise authorized by paragraph (a) of this section, or

- (2) Suspension of further disclosures of returns or return information by the Service to the State tax agency, or to the Department of Justice, until the Service determines that such conditions and requirements have been or will be satisfied.

(e) *Definitions.* For purposes of this section—

- (1) The term *Treasury Department* includes the Internal Revenue Service and the Office of the Chief Counsel for the Internal Revenue Service;
- (2) The term *State tax agency* means an agency, body, or commission described in section 6103(d) of the Code; and
- (3) The term *Department of Justice* includes offices of the United States Attorneys.

**IRS Publication 1075 (Rev. 9-2016) Section 5.5 Control over Processing**

Processing of FTI, in an electronic media format, including removable media, microfilms, photo impressions, or other formats (including tape reformatting or reproduction or conversion to punch cards, digital images or hard copy printout) will be performed pursuant to one of the following procedures:

**5.5.1 Agency Owned and Operated Facility**

Processing under this method will take place in a manner that will protect the confidentiality of the information on the electronic media. All safeguards outlined in this publication also must be followed and will be subject to IRS safeguard reviews.

**5.5.2 Contractor or Agency Shared Facility – Consolidated Data Centers**

Recipients of FTI are allowed to use a shared facility but only in a manner that does not allow access to FTI by employees, agents, representatives or contractors of other agencies using the shared facility.

**Note:** For purposes of applying sections 6103(l), (m) and (n), the term “agent” includes contractors. Access restrictions pursuant to the IRC authority by which the FTI is received continue to apply. For example, since human services agencies administering benefit eligibility programs may not allow contractor access to any FTI received, their data within the consolidated data center may not be accessed by any contractor of the data center.

The requirements in Exhibit 7, Contract Language for General Services, must be included in the contract in accordance with IRC Section 6103(n).

The contractor or agency-shared computer facility is also subject to IRS safeguard reviews.

**Note:** The above rules also apply to releasing electronic media to a private contractor or other agency office even if the purpose is merely to erase the old media for reuse.

Agencies utilizing consolidated data centers must implement appropriate controls to ensure the protection of FTI, including a service level agreement (SLA) between the agency authorized to receive FTI and the consolidated data center. The SLA should cover the following:

1. The consolidated data center is considered to be a “contractor” of the agency receiving FTI. The agency receiving FTI – whether it is a state revenue, workforce, child support enforcement or human services agency – is responsible for ensuring the protection of all FTI received. However, as the “contractor” for the agency receiving FTI, the consolidated data center shares responsibility for safeguarding FTI as well.
2. Provide written notification to the consolidated data center management that they are bound by the provisions of Publication 1075,

relative to protecting all federal tax information within their possession or control. The SLA should also include details concerning the consolidated data center's responsibilities during a safeguard review and support required to resolve identified findings.

3. The agency will conduct an internal inspection of the consolidated data center every eighteen months (see section 6.3). Multiple agencies sharing a consolidated data center may partner together to conduct a single, comprehensive internal inspection. However, care should be taken to ensure agency representatives do not gain unauthorized access to other agency's FTI during the internal inspection.
4. The employees from the consolidated data center with access to FTI, including system administrators and programmers, must receive disclosure awareness training prior to access to FTI and annually thereafter and sign a confidentiality statement. This provision also extends to any contractors hired by the consolidated data center that has access to FTI.
5. The specific data breach incident reporting procedures for all consolidated data center employees and contractors. The required disclosure awareness training must include a review of these procedures.
6. The Exhibit 7 language must be included in the contract between the recipient agency and the consolidated data center, including all contracts involving contractors hired by the consolidated data center.
7. Identify responsibilities for coordination of the 45-day notification of the use of contractors

or sub-contractors with access to FTI.

**Note:** Generally, consolidated data centers are either operated by a separate state agency (example: Department of Information Services) or by a private contractor. If an agency is considering transitioning to either a state owned or private vendor consolidated data center, the Office of Safeguards strongly suggests the agency submit a request for discussions with Safeguards as early as possible in the decision-making or implementation planning process. The purpose of these discussions is to ensure the agency remains in compliance with safeguarding requirements during the transition to the consolidated data center.

**26 U.S.C. §7213. Unauthorized disclosure of information**

**(a) Returns and return information**

**(1) Federal employees and other persons**

It shall be unlawful for any officer or employee of the United States or any person described in section [6103\(n\)](#) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section [6103\(b\)](#)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

**(2) State and other employees**

It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section [6103\(b\)](#)) acquired by him or

another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii), (l)(6), (7), (8), (9), (10), (12), (15), (16), (19), or (20) or (m)(2), (4), (5), (6), or (7) of section [6103](#).

Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

**(3) Other persons**

It shall be unlawful for any person to whom any return or return information (as defined in section [6103\(b\)](#)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

**(4) Solicitation**

It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section [6103\(b\)](#)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

**(5) Shareholders**

It shall be unlawful for any person to whom a return or return information (as defined in section [6103\(b\)](#)) is disclosed pursuant to the provisions of section [6103\(e\)\(1\)\(D\)\(iii\)](#) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount

not to exceed \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution

**(b) Disclosure of operations of manufacturer or producer**

Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

**(c) Disclosures by certain delegates of Secretary**

All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section [7701\(a\)\(12\)\(B\)](#).

**(d) Disclosure of software**

Any person who willfully divulges or makes known software (as defined in section [7612\(d\)\(1\)](#)) to any person in violation of section [7612](#) shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

**(e) Cross references**

**(1) Penalties for disclosure of information by preparers of returns**

For penalty for disclosure or use of information by preparers of returns, see section [7216](#).

**(2) Penalties for disclosure of confidential information**



For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

**26 U.S.C. §7213A. Unauthorized inspection of returns or return information**

**(a) Prohibitions**

**(1) Federal employees and other persons**  
It shall be unlawful for—

**(A)** any officer or employee of the United States, or

**(B)** any person described in subsection (l)(18) or (n) of section 6103 or an officer or employee of any such person, willfully to inspect, except as authorized in this title, any return or return information.

**(2) State and other employees**

It shall be unlawful for any person (not described in paragraph (1)) willfully to inspect, except as authorized in this title, any return or return information acquired by such person or another person under a provision of section 6103 referred to in section 7213 (a)(2) or under section 6104 (c).

**(b) Penalty**

**(1) In general**

Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

**(2) Federal officers or employees**

An officer or employee of the United States who is convicted of any violation of subsection (a) shall, in addition to any other punishment, be dismissed from office or discharged from employment.

**(c) Definitions**

For purposes of this section, the terms “inspect”, “return”, and “return information” have the respective meanings given such terms by section 6103 (b).

**26 U.S.C. §7431. Civil damages for unauthorized inspection or disclosure of returns and return information**

**(a) In general**

**(1) Inspection or disclosure by employee of United States**

If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

**(2) Inspection or disclosure by a person who is not an employee of United States**

If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

**(b) Exceptions**

No liability shall arise under this section with respect to any inspection or disclosure -

**(1)** which results from a good faith, but erroneous, interpretation of section 6103, or

**(2)** which is requested by the taxpayer.

**(c) Damages**

In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of -

**(1)** the greater of -

**(A)** \$1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or



**(B)** the sum of -

**(i)** the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus

**(ii)** in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus

**(2)** the costs of the action, plus

**(3)** in the case of a plaintiff which is described in section [7430\(c\)\(4\)\(A\)\(ii\)](#), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section [7430\(c\)\(4\)](#)).

**(d)** Period for bringing action

Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

**(e)** Notification of unlawful inspection and disclosure

If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of -

**(1)** paragraph (1) or (2) of section [7213\(a\)](#),

**(2)** section [7213A\(a\)](#), or

**(3)** subparagraph (B) of section 1030(a)(2) of title 18, United States Code, the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

**(f)** Definitions

For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section [6103\(b\)](#).

**(g)** Extension to information obtained under section [3406](#)

For purposes of this section -

**(1)** any information obtained under section [3406](#) (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

**(2)** any inspection or use of such information other than for purposes of meeting any requirement under section [3406](#) or (subject to the safeguards set forth in section [6103](#)) for purposes permitted under section [6103](#) shall be treated as a violation of section [6103](#). For purposes of subsection (b), the reference to section [6103](#) shall be treated as including a reference to section [3406](#).

**(h)** Special rule for information obtained under section [6103\(k\)\(9\)](#)

For purposes of this section, any reference to section [6103](#) shall be treated as including a reference to section 6311(e).

EXHIBIT E

CLLOUD COMPUTING – SOFTWARE AS A SERVICE (SaaS) GENERAL PROVISIONS

THESE CLOUD COMPUTING – SOFTWARE AS A SERVICE GENERAL PROVISIONS ARE ONLY TO BE USED FOR SOFTWARE AS A SERVICE (SaaS), AS DEFINED BELOW, AND ANY ANCILLARY SERVICES. THE CLOUD COMPUTING SERVICES SPECIAL PROVISIONS (SOFTWARE AS A SERVICE) ARE INCORPORATED BY REFERENCE UNLESS SPECIFICALLY MODIFIED AND ATTACHED HERETO. THIS CONTRACT SHALL BE ACCOMPANIED BY A STATEMENT OF WORK (SOW) AND SERVICE LEVEL AGREEMENT (SLA), IN ADDITION TO STANDARD EXHIBITS.

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1. DEFINITIONS:

Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.

- a) **"Application Program"** means a computer program that is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application Programs are developed or otherwise acquired by the User of the Hardware/Software system, but they may be supplied by the Contractor.
- b) **"Buyer"** means the State's authorized contracting official.
- c) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
- d) **"Contractor"** means the business entity with whom the State enters into this Contract. Contractor shall be synonymous with supplier, vendor, Reseller, Service Provider, or other similar term.
- e) **"Customer"** means the State or an Eligible Public Entity using the Contractor's or the Service Provider's Services.
- f) **"Deliverables"** means the tangible products or works of authorship and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished that are incidental to the provision of Services.
- g) **"Documentation"** means manuals and other published materials necessary or useful to the State in its use or maintenance of the products and Services provided hereunder and includes online materials, virtual help, and help desk where available. In addition, manuals and other published materials customized for the State hereunder constitute Work Product as defined below.

- h) **“Eligible Public Entity”** means each of the non-State public entities authorized to purchase the Deliverables and Services offered hereunder. “Eligible Public Entity” includes the county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the State. “Eligible Public Entity” also includes a federally-recognized tribal entity acting in its tribal governmental capacity.
- i) **“Goods”** means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer and telecommunications equipment).
- j) **“Hardware”** refers to computer equipment and is contrasted with Software.
- k) **“Information Technology”** includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interaction between people and machines.
- l) **“Maintenance”** includes: i) remedial maintenance performed by the Contractor which results from a Services failure and which is performed as required, i.e., on an unscheduled basis; and ii) the maintenance performed on a scheduled basis by the Contractor.
- m) **“Reseller”** means the agent(s) of the Service Provider or the business entity authorized by the Service Provider to resell the Services or perform aspects of this Contract as specified herein including, but not limited to sales, fulfillment, invoicing, returns, and customer service.
- n) **“Service Provider”** means the Contractor, subcontractors, agents, Resellers, third parties and affiliates of the Contractor, the cloud service provider, or managed service provider who may provide the Services agreed to under the Contract.
- o) **“Services”** means the cloud computing services, including Software as a Service (but not Infrastructure as a Service or Platform as a Service), and any related services, offered to the State by the Contractor herein.
- p) **“Software”** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating Software, Application Programs, and enabling software (“Software Products”) that the State downloads to the State’s systems to facilitate use of the Service.
- q) **“Software as a Service (SaaS)”** is the capability provided to the Customer to use applications made available by the Service Provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser (e.g., web-based email). The Customer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

- r) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- s) **"State Data"** means all data owned by the State, and submitted to, processed by, or stored by the Service Provider under this Contract and includes, but is not limited to, all data that originated with the State or Users, all data provided by the State or Users, and data generated, manipulated, produced, reported by or otherwise emanating from or by applications run by the State or Users on the Services. For clarity, State Data is synonymous with "Customer Data", "Customer Content", or similar terms, as used in various provisions of the service agreements and incorporated into the Contract and includes the following:
  - i. "Non-Public Data" means data submitted to the Service Provider, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that may be exempt by statute, regulation, or policy from access by the general public as public information.
  - ii. "Personal Data" means Personal Information as defined by the California Information Practices Act (Civil Code sections 1798 et seq.) submitted to the Service Provider.
  - iii. "Public Information" means any information prepared, owned, used, or retained by the State and not specifically exempt from the disclosure requirements of the California Public Records Act (Government Code section 6250 et. seq.) or other applicable state or federal laws. For clarity, "Public Information" is also interchangeable with "Public Data".
- t) **"Statement of Work" (or "SOW")** means a document provided by the State which defines the timeline, and specifies the objectives, Services, Deliverables and tasks that the Contractor is expected to perform, their responsibilities and expectations, indicating the type, level and quality of service that is expected, all of which form a contractual obligation upon the Contractor in providing Services to the State. The SOW includes detailed technical requirements and pricing, with permitted modifications ("carve- outs") to the SaaS General and Special Provisions.
- u) **"User"** means any authorized end user of the Services under this Contract and includes Customer's employees, subcontractors, or any system utilized by the Customer to access the Services, whose compliance with the terms of this Contract is the responsibility of the Customer.
- v) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

## 2. CONTRACT FORMATION:

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

- b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.

**3. COMPLETE INTEGRATION:**

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

**4. SEVERABILITY:**

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

**5. INDEPENDENT CONTRACTOR:**

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

**6. APPLICABLE LAW:**

This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

**7. COMPLIANCE WITH STATUTES AND REGULATIONS:**

- a) The State and the Contractor warrant and certify that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California, including the California Information Practices Act (Civil Code sections 1798 et seq.). The Contractor agrees to indemnify, defend, and save harmless the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within reasonable time.
- c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of

the State, the Department of General Services or the Department of Technology, as applicable, will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this Contract falls within the scope of Government Code section 7405, the Contractor will be responsible to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or Services. The State shall designate an authorized representative who will be responsible for submission to Contractor of complaints received by the State regarding the accessibility of Contractor's products and Services. Contractor shall be responsible to review and respond to all complaints regarding accessibility brought to the attention of the State. The State and Contractor shall work together to determine a reasonable response and resolution of all complaints. The State acknowledges that Contractor can satisfy its duty to respond to and resolve complaints under this provision by taking action it deems appropriate under the circumstances, which may in some instances include no further action beyond responding to the complaint.

#### **8. CONTRACTOR'S POWER AND AUTHORITY:**

The Contractor warrants that it has full power and authority to grant the rights herein granted and will reimburse the State for any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty.

Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

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

#### **9. ASSIGNMENT:**

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

## **10. WAIVER OF RIGHTS:**

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. Except as specifically set forth in Section 13 (Warranty) below, the rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

## **11. 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 Cloud Computing - Software as a Service General Provisions (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) Contract form, e.g., Purchase Order STD 65, Standard Agreement STD 213, FI\$Cal generated Purchase Order, etc., and any amendments thereto;
- c) The Cloud Computing Special Provisions – Software as a Service (hereafter referred to as, the "SaaS Special Provisions"), which are incorporated by reference unless specifically modified and attached hereto, and other Special Provisions;
- d) Statement of Work, including any specifications incorporated by reference herein;
- e) Cost worksheets;
- f) The Service Provider's service agreement and attachments; and
- g) All other attachments incorporated in the Contract by reference.

## **12. INSPECTION, ACCEPTANCE AND REJECTION:**

Unless otherwise specified in the Statement of Work:

- a) When acquiring SaaS, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing.
- b) For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and Services under this Contract and will tender to the State only those Deliverables and Services that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of the Contractor's quality assurance system or other similar business practices related to performance of the Contract.
- c) In the event any Goods or Deliverables furnished by the 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 the Contractor to reclaim and remove the item promptly without expense to the State.

### 13. WARRANTY:

- a) Limited Warranty for Services. Unless otherwise specified in the Statement of Work, Contractor warrants that Services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and:
  - i. Services will be performed in accordance with the Contract; and
  - ii. All customer support for Services will be performed with professional care and skill.
- b) Duration of Limited Warranty. The limited warranty will be for the duration of State's use of the Services, unless the underlying Service Provider's warranty is shorter in duration, in which case the parties will specify the length of the applicable limited warranty in the Statement of Work. This limited warranty is subject to the following limitations:
  - i. any implied warranties, guarantees, or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
  - ii. the limited warranty does not cover problems caused by the State's accident, abuse or use in a manner inconsistent with this Contract or any applicable service agreement, or resulting from events beyond Contractor's reasonable control;
  - iii. the limited warranty does not apply to components of Software that the State may be permitted to redistribute;
  - iv. the limited warranty does not apply to free, trial, pre-release, or beta Services; and
  - v. the limited warranty does not apply to problems caused by the State's failure to meet minimum system requirements.
- c) **Remedies for breach of Limited Warranty.** Unless otherwise specified in the Statement of Work, if Contractor fails to meet any of the above limited warranties and the State notifies Contractor within the warranty period, then the State's remedy and the Contractor's obligation will be re-performance, repair, replacement, or refund of fees paid. In the event the Contractor fails to re-perform, repair, replace, or refund fees paid for the products and/or Services as appropriate, the State may terminate the Contract.
- d) **Warranty for Software Products.** Any Software Products provided by the Service Provider shall be covered by the developer's consumer warranty that will be passed to the Customer.
- e) **DISCLAIMER OF OTHER WARRANTIES.** OTHER THAN THIS LIMITED WARRANTY, CONTRACTOR PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. CONTRACTOR DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES, OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR TITLE. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.
- f) Contractor shall ensure that the Service Provider shall apply anti-malware controls to the Services to help avoid malicious software gaining unauthorized access to State Data, including malicious software originating from public networks. Such controls shall at all times equal or exceed the controls consistent with the industry standards for such data, but in no event less than the controls that Contractor applies to its own internal corporate



electronic data of like character.

- g) Unless otherwise specified elsewhere in the Contract:
- i. The Contractor does not warrant that any Services provided hereunder is error-free or that it will run without immaterial interruption; and
  - ii. The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from:
    - a. a modification made by the State, unless such modification is approved or directed by the Contractor,
    - b. use of Services in combination with software or services other than as specified by the Contractor, or
    - c. misuse by the State.
- h) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or Services.

#### **14. SAFETY AND ACCIDENT PREVENTION:**

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

#### **15. 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 or the United States Congress, if applicable. If funds to effect such continued payment are not appropriated, the Contractor agrees to terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
- b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and minimize the incurrence of costs prior to the expiration of funding for this Contract.

#### **16. TERMINATION FOR THE CONVENIENCE OF THE STATE:**

- a) The State may terminate performance under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, or the Department of Technology, Deputy Director, Statewide Technology Procurement, or designee, as applicable, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof, which shall be no less than fifteen (15) days from the Notice of Termination date.

- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately stop work as specified in the Notice of Termination, regardless of any delay in determining or adjusting any amounts due under this clause.
- c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State except that in no instance shall the Contractor seek nor will the State pay for Services not utilized or costs not specified on an order for Services regardless of Contractors' liability or costs for materials, equipment, Software, facilities, or sub- contracts. The Contractor shall submit the proposal promptly, but no later than thirty (30) days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
- d) The Contractor and the State may agree upon the whole or any part of the amount to be paid or refunded as requested under subsection (c) above;
- e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience.
  - i. The State will pay the Contractor the Contract price for Services accepted or utilized by the State; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed.
- f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

#### **17. TERMINATION FOR DEFAULT:**

- a) The State may, subject to the clause titled "**18. Force Majeure**", by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
  - i. Perform the Services within the time specified in the Contract or any amendment thereto;
  - ii. Make progress, so that the lack of progress endangers performance of this Contract; or
  - iii. Perform any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under subsection a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than thirty (30) days, unless otherwise provided.
- c) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it. The State shall pay Contract price for completed and accepted Deliverables and Services.
- d) 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 "**20. Limitation of Liability**."

#### **18. FORCE MAJEURE:**

Except for defaults of subcontractors at any tier, and any Contractor responsibilities concerning disaster recovery and/or business continuity, the Contractor shall not be liable for any excess

costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

#### **19. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**

- a) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any subsequent loss or damage sustained by the State in procuring any Deliverables or Services which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability"); and
- b) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefore.

#### **20. LIMITATION OF LIABILITY:**

- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, or the Department of Technology, Deputy Director, Statewide Technology Procurement, or designee, as applicable, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this subsection a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or Service(s) that gave rise to the loss, such that the Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply:
  - i. to any liability under provisions herein entitled "Compliance with Statutes and Regulations";
  - ii. to liability under provisions herein entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights;
  - iii. to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the Contractor's negligence or willful misconduct;
  - iv. to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action; or

- v. to direct costs of mitigation, remediation, and/or notification obligations set forth in the SaaS Special Provisions, resulting from any Data Breach as defined therein, and resulting from the Contractor's failure to perform or negligent acts of its personnel.
- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) IN NO EVENT WILL EITHER THE CONTRACTOR OR THE STATE BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES, EXCEPT (I) TO THE EXTENT THAT THE CONTRACTOR'S LIABILITY FOR SUCH DAMAGES IS SPECIFICALLY SET FORTH IN THE STATEMENT OF WORK OR (II) TO THE EXTENT THAT THE CONTRACTOR'S LIABILITY FOR SUCH DAMAGES ARISES OUT OF SUBSECTION b) (i), b)(ii), OR b)(iv) ABOVE.

## **21. INDEMNIFICATION:**

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

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

## **22. INVOICES:**

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if

applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

**23. 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 forty-five (45) days after:

- a) the date of acceptance of Deliverables or performance of Services; or
- b) receipt of an undisputed invoice, whichever is later.

**24. TAXES:**

Unless otherwise required by law:

- a) the State of California is exempt from Federal excise taxes; and
- b) the State will only pay for any applicable State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

**25. CONTRACT MODIFICATION:**

- a) No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- b) Notwithstanding subsection a) above, service agreements may be modified by Contractor from time to time, but any such modifications will not degrade the functionality or security features of the SaaS. Service agreements shall be subject to section 11(f) Order of Precedence.

**26. CONFIDENTIALITY OF DATA:**

- a) All Customer Data made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure by use of the same or more effective confidentiality requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's confidentiality requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. Any additional requirements to ensure confidentiality of data shall be set forth in the SOW. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties. Contractor shall sign a security and confidentiality statement. Contractor is responsible for all Contractor personnel assigned to this Contract and will have appropriate agreements in place to enable Contractor to meet its

obligations hereunder.

- b) The parties acknowledge information transmitted by the State to the Contractor and/or Service Provider may inadvertently contain Federal Tax Information (FTI). The State will use all reasonable efforts to prevent the transmittal of FTI to Contractor and/or Service Provider under this Contract. The State further acknowledges that the Contractor and/or Service Provider does not require any “access” to, or “receipt” or “storage” of FTI to perform the Services under the Contract. The Contractor and/or Service Provider further acknowledges that Contractor and/or Service Provider shall not knowingly access or permit access to such FTI, unless directed by the State. Access to FTI is out-of-scope of the Services. To the extent that Contractor’s and/or Service Provider’s access to FTI is “incidental” to Contractor’s provision of Services, it is the parties’ view that such incidental exposure should not legally subject Contractor and/or Service Provider to the Internal Revenue Service (IRS) requirements set forth in IRS Publication 1075, section 11.2. If, however, the IRS ultimately takes a contrary position, and determines that Contractor, Service Provider and/or the State should have nevertheless complied with the requirements of IRS Publication 1075, the parties will immediately commence an evaluation of the feasibility of continued performance under the Contract.

**27. NEWS RELEASES:**

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

**28. DOCUMENTATION:**

The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the equipment, Services, or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.

**29. RIGHTS IN WORK PRODUCT:**

- a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, customized software, and other Documentation or improvements thereto, and including the Contractor’s administrative communications and records relating to this Contract (collectively, the “Work Product”), shall be the Contractor’s exclusive property. The provisions of this subsection “a)” may be revised in a Statement of Work.
- b) Software, other components of SaaS, and materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contractor applicable purchase order (“Pre-Existing Materials”) do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 29 will be construed to interfere with the Contractor’s or its affiliates’ ownership of Pre- Existing Materials.
- c) The State will have Government Purpose Rights to the Work Product as Deliverable or

delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State contractors, California local governments, the U.S. federal government, and the state and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose. This subsection and the rights thereunder may be modified as required for federally funded SaaS pursuant to federal law or regulations, including, but not limited to, 7 CFR 277.18 and 45 CFR 95.617.

- d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State, may be used by either party without obligation of notice or accounting.
- e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

### **30. SOFTWARE LICENSE:**

A Service may require the use of Software Products to facilitate use of the Service. Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a royalty-free, non-exclusive license to use the Software Products in this Contract. The State may use the Software Products only in connection with use of the Service and according to any licensing terms if specified in a Statement of Work or otherwise in the Contract. Acceptance of Software (including third party Software) will be governed by the terms and conditions of this Contract.

### **31. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:**

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

### **32. FUTURE RELEASES:**

Unless otherwise specifically provided in the Statement of Work, if improved versions (e.g., patches, bug fixes, updates or releases) or upgrades of any SaaS versions or Software Product are developed by the Contractor, and are made available to other customers, they will be made available to the State at no additional cost only if such are made available to other customers at no additional cost.

### **33. ENCRYPTION AND AUTHORIZATION KEYS:**

Upon initiation of Service, Contractor will provide all encryption and authorization keys required by the State to operate or access the Software Products or Services.

### **34. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**

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

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

- i. The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- ii. The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that

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

b) Should the Software Products or Services, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall, subject to prior approval, permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Services, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Services by the State



shall be prevented by injunction, the State shall then have the option of terminating this Contract, or applicable portions thereof, without penalty or termination charge and the Contractor shall refund any sums the State has paid the Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - i. The combination or utilization of Deliverables furnished hereunder with Goods or Software not made or furnished by the Contractor; or
  - ii. The combination or utilization of Software or Services not made or furnished by the Contractor, and introduced into the States computing environment; or
  - iii. The modification initiated by the State, or a third party at the State's direction, of any Software or Service furnished hereunder; or
  - iv. The combination or utilization of Software furnished hereunder with non- Contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of Software in violation of any U.S. Intellectual Property laws.

### **35. DISPUTES:**

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the contracting Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have thirty (30) days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written final decision. If a written decision is not rendered within thirty (30) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of Services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the contracting Department Director, or designee. The State's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within

ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

- d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in subsection a) above. The Department Director or designee shall have thirty (30) days to render a final decision. If a final decision is not rendered within thirty (30) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention. The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- e) The dates of decision in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

### **36. STOP WORK:**

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

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

**37. EXAMINATION AND AUDIT:**

The Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation directly pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.

**38. FOLLOW-ON CONTRACTS:**

- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- i. will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction;
  - and
  - ii. will not act as consultant to any person or entity that does receive a Contract described in subsection (I). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- i. development of or assistance in the development of work statements, specifications, solicitations, feasibility studies, or project approval documentation;
  - ii. development or design of test requirements;
  - iii. evaluation of test data;
  - iv. direction of or evaluation of another Contractor;
  - v. provision of formal recommendations regarding the acquisition of Information Technology products or services; or
  - vi. provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.

- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
  - i. to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
  - ii. where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

### **39. PRIORITY HIRING CONSIDERATIONS:**

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

### **40. COVENANT AGAINST GRATUITIES:**

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

### **41. NONDISCRIMINATION CLAUSE:**

- a) During the performance of this Contract, the 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. The Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this

clause to labor organizations with which they have a collective bargaining or other agreement; and

- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

#### **42. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:**

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

#### **43. 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, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tender's 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; and
- 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.

#### **44. DRUG-FREE WORKPLACE CERTIFICATION:**

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

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code section 8355(a);

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

**45. FOUR-DIGIT DATE COMPLIANCE:**

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and 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 of warranty obligations set forth elsewhere herein.

**46. 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. The Contractor further declares under penalty of perjury that they adhere to the Sweat free Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code section 6108; and
- b) The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).

**47. RECYCLED CONTENT REQUIREMENTS:**

The 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 (PCC) section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no post- consumer recycled material, and even if the post-consumer content is unknown.

With respect to printer or duplication cartridges that comply with the requirements of section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of post-consumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).

**48. CHILD SUPPORT COMPLIANCE ACT:**

For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC section 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully
- b) 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
- c) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**49. AMERICANS WITH DISABILITIES ACT AND PUBLIC WEBSITE ACCESSIBILITY**

- a) The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The State is responsible for ensuring that public websites are accessible to both the general public and that internal electronic and Information Technology systems are accessible by state employees, including persons with disabilities. Contractor shall assist the State in meeting its responsibilities.
- b) In accordance with Cal. Gov. Code section 7405(b), the Contractor shall have an ongoing obligation to promptly respond to and resolve any complaint regarding accessibility of its electronic and Information Technology products and Services that is brought to the attention of the Contractor, pursuant to Section 7(e) above.

**50. ELECTRONIC WASTE RECYCLING ACT OF 2003:**

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

**51. USE TAX COLLECTION:**

In accordance with PCC section 10295.1, the Contractor certifies that it complies with the requirements of section 7101 of the Revenue and Taxation Code.

Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC section 10295.1.

**52. EXPATRIATE CORPORATIONS:**

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

**53. DOMESTIC PARTNERS:**

For contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that the Contractor is in compliance with Public Contract Code section 10295.3.

**54. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**

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

**55. LOSS LEADER:**

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



**EXHIBIT F**  
**STATE MODEL CLOUD COMPUTING SERVICES SPECIAL PROVISIONS**  
**(Software as a Service)**

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

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

1. **Definitions**

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

- f) **“Encryption”** - Conversion of plaintext to ciphertext through the use of a Federal Information Processing Standards (FIPS) validated cryptographic algorithm. [FIPS 140-2]
- g) **“Recovery Point Objective (RPO)”** - means the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
- h) **“Recovery Time Objective (RTO)”** - means the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.

## Terms

### **2. SaaS AVAILABILITY:** Unless otherwise stated in the Statement of Work,

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

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

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

### **4. SaaS and DATA SECURITY:**

- a) In addition to the Compliance with Statutes and Regulations provision set forth in the General Provisions – Information Technology, Contractor shall certify to the State:

- 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
  - 2) Compliance with the following:
    - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
    - ii. Current NIST special publications 800-171 Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations. Third party audit results and Contractor's plan to correct any negative findings shall be made available to the State upon request ;
    - iii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Third party audit results and Contractor's plan to correct any negative findings and implementation progress reports shall be made available to the State upon request; and
    - iv. Privacy provisions of the Federal Privacy Act of 1974;
  - 3) Compliance with industry standards and guidelines applicable to the SaaS services being provided. Relevant security provisions may include, but are not limited to: Health Insurance Portability and Accountability Act of 1996, IRS 1075, Health Information Technology for Economic and Clinical (HITECH) Act, Criminal Justice Information Services (CJIS) Security Policy, Social Security Administration (SSA) Electronic Information Exchange Security Requirements, and the Payment Card Industry (PCI) Data Security Standard (DSS) as well as their associated Cloud Computing Guidelines.
  - b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Contract to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data.
  - c) Contractor shall allow the State reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Contract and the State's Data, at no cost to the State.
  - d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
  - e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by the State.
  - f) Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance in writing by:
    - 1) the Agency Information Security Officer, with written notice to the State Chief Information Security Officer, or
    - 2) in the absence of an Agency Information Security Officer, the State Chief Information Security Officer.
- 5. ENCRYPTION:** Confidential, sensitive or personal information shall be encrypted in accordance with California State Administrative Manual 5350.1 and California Statewide Information Management Manual 5305-A.
- 6. DATA LOCATION:** Unless otherwise stated in the Statement of Work and approved in advance in writing by:
  - 1) the Agency Information Security Officer, with written notice to the State Chief Information Security Officer, or

- 2) in the absence of an Agency Information Security Officer, the State Chief Information Security Officer, the physical location of Contractor's data center where the Data is stored shall be within the continental United States.
- 7. RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the State, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.
- 8. TRANSITION PERIOD:**
- a) Unless otherwise stated in the SOW, for ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the State in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
  - b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
  - c) During the Transition Period, SaaS and Data access shall continue to be made available to the State without alteration.
  - d) Contractor agrees to compensate the State for damages or losses the State incurs as a result of Contractor's failure to comply with this section in accordance with the Limitation of Liability provision set forth in the General Provisions - Information Technology.
  - e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
  - f) The State at its option, may purchase additional transition services as agreed upon in the SOW.
- 9. DATA BREACH:** Unless otherwise stated in the Statement of Work,
- a) Upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor's notification shall identify:
    - 1) The nature of the Data Breach;
    - 2) The Data accessed, used or disclosed;
    - 3) The person(s) who accessed, used, disclosed and/or received Data (if known);
    - 4) What Contractor has done or will do to quarantine and mitigate the Data Breach; and
    - 5) What corrective action Contractor has taken or will take to prevent future Data Breaches.

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

**10. DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work,

- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:
  - 1) The scale and quantity of the Data loss;
  - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
  - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
  - 4) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Contract.
- b) Contractor shall restore continuity of SaaS, restore Data in accordance with the RPO and RTO as set forth in the SLA, restore accessibility of Data, and repair SaaS as needed to meet the performance requirements stated in the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.

- c) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.

**11. EXAMINATION AND AUDIT:** In addition to the Examination and Audit provision set forth in the General Provisions - Information Technology, unless otherwise stated in the Statement of Work:

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

**12. DISCOVERY:** Contractor shall promptly notify the State upon receipt of any requests which in any way might reasonably require access to the Data of the State or the State's use of the SaaS. Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the State unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

STATE OF CALIFORNIA - GENERAL SERVICES PROCUREMENT DIVISION  
**PURCHASING AUTHORITY PURCHASE ORDER**  
STD. 66 (REV. 7/2003)

### SUPPLIER INSTRUCTIONS

1. **INVOICES:** Unless otherwise specified, original invoices shall be sent to the "Bill To" address on the face of this document. Invoices shall be submitted in triplicate and shall include:
  - Contract registration number *(if applicable)*
  - Agency order number
  - Item number
  - Services or Product ID number
  - Unit price
  - Extended item price
  - Invoice total amount

State sales tax, installation cost, shipping/freight costs, and/or other non-taxable costs shall be itemized separately and added to each invoice as applicable.
2. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (a) the date of acceptance of goods or performance of services; or (b) receipt of an undisputed invoice — whichever is later.
3. **SHIPPING INSTRUCTIONS:** When the Purchase Order or contract allows prepaid/add transportation charges, submit original receipted expense bills if freight charges are over \$50.00. All shipments shall be F.O.B. Destination Freight Prepaid unless otherwise specified. All orders **MUST** include a copy of the packing slip inside the carton **AND** a copy securely attached to the **OUTSIDE** of the shipping carton.