County of Orange **MEMO**

RECEIVED
06 OCT 27 AM 7:34
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

DATE: October 26, 2006

TO: Bill Campbell, Chairman

FROM: Thomas G. Mauk, County Executive Officer

SUBJECT: Exception to the Rule 21

S46D

The County Executive Office is requesting a supplemental for the October 31, 2006 Board Hearing Meeting:

Board Meeting Date	**October 31, 2006**
Agency	**Health Care Agency**
Subject:	**Animal Care Service Call Center Solutions**
Calendar:	**Supplemental**
Districts:	**All**

Reason for Supplemental: **Unbudgeted Fixed Assets used to improve service at the Orange County Animal Shelter.**

Concur:

Bill Campbell, Chairman
Orange County Board of Supervisors

cc: Rob Richardson
Assistant to the County Executive Officer

Agenda Item

S46D

AGENDA STAFF REPORT

ASR Control

MEETING DATE:	10/31/06
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	All Districts
SUBMITTING AGENCY/DEPARTMENT:	Health Care Agency (Pending)
DEPARTMENT CONTACT PERSON(S):	Bob Rosso, (714) 567-7380 Jennifer Phillips, (714) 935-7101

RECEIVED 06 OCT 27 AM 7:34 CLERK OF THE BOARD COUNTY OF ORANGE BOARD OF SUPERVISORS

SUBJECT: Animal Care Services Call Center Solution

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
Pending Review	Pending Review Approved Agreement to Form D Kuhn	Consent Calendar 3 Votes Board Majority

Budgeted: Yes **Current Year Cost:** $37,897 **Annual Cost:** $3,521

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: GF:100%

Prior Board Action: N/A

RECOMMENDED ACTION(S)

Authorizing the Purchasing Agent or designee to execute Purchase Order PC 042 P0700602632 with SBC for the purchase and installation of call center equipment in support of Health Care Agency, Animal Care Services in an amount not to exceed thirty seven thousand eight hundred ninety seven ($37,897), per Board policy.

SUMMARY:

The Health Care Agency requests approval to issue Purchase Order to SBC for the purchase and installation of call center solution equipment.

BACKGROUND INFORMATION:

The Health Care Agency's Animal Care Services Program provides shelter services to twenty-two (22) contract cities and animal control services to nineteen (19) contract cities. Animal Care Services receives over 30,000 calls per month. Animal Care Services (ACS) has partnered with CEO Telephone Services and is implementing a number of improvements related to ACS phone services, including answering calls live, evaluating the current call center, investigating numerous options related to staffing and technology, re-evaluating space constraints, and analyzing financial constraints and opportunities.

Animal Care Services and CEO Telephone Services identified that the current call center application cannot effectively process the volume of calls, provide real time reporting or offer call routing and queue management by skill sets. To address these deficiencies with Animal Care Services current technology, CEO Telephone Services selected the Nortel Business Call Manager (BCM) 400 as a solution for Animal Care Services. It is critical that the BCM 400 be installed to meet the County Executive Office's direction to improve customer service response times.

All existing County phone systems are Nortel and use of a Nortel product is necessary for compatibility. In addition, CEO Telephone Services staff have expertise with this type of system. The BCM 400 was selected as it is sized correctly for Animal Care Service's application and is the latest call center technology from Nortel. The installation of BCM 400 will upgrade Animal Care Service's Call Center equipment and software to provide optimum call center performance. BCM 400 will provide better call delivery and call handling to ACS staff, improve response to constituents and enhance tracking and reporting capabilities for ACS management. Real-time statistics and detailed reporting will also provide valuable information to help optimize staffing levels and provide superior customer services.

The Health Care Agency requests that your Honorable Board approve Purchase Order PC 042 P0700602632 with SBC as referenced in the Recommended Action.

FINANCIAL IMPACT:

This item is a fixed asset and the appropriation will be added in the first Quarter Adjustment.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

PC 042 P0700602632
CMAS Contract No. 3-05-00-0271F

COUNTY OF ORANGE

Date: 10/25/06

CENTRALIZED PURCHASE ORDER

VENDOR INFORMATION:
PHONE: 714-284-2729
TERMS: -
F.O.B: SHIPPING

ORDER NUMBER: PC 042 P0700602632
MODIFICATION NUMBER: 00

BILLING : SEE LAST PAGE

SHIP TO: 140
HCA/ANIMAL CARE SERVICES
561 CITY DRIVE SOUTH
ORANGE CA 92868

VENDOR: X00976
SBC
ATTN: DENNIS PLASTER
200 CTR ST PROMENADE STE 615

ANAHEIM CA 92805

DELIVER BY: 10/25/06

LEGEND CODE: MA
FILE FOLDER NUMBER: 602632

BILLING INSTRUCTIONS:
1. INVOICE COUNTY OF ORANGE AND SEND INVOICES IN DUPLICATE TO: BILLING ADDRESS AS INDICATED BELOW.
   INVOICES MUST BE IN DUPLICATE REFERENCED TO THE ORDER NUMBER AND ITEMIZED QUANTITIES, DESCRIPTION OF MERCHANDISE, UNIT AND UNIT COST.
2. VENDOR CODE, ORDER NUMBER AND PRICE AGREEMENT NUMBER (IF APPLICABLE) MUST APPEAR ON ALL INVOICES, SHIPPING PAPERS, PACKAGES & INQUIRIES.
3. CASH DISCOUNTS, IF OFFERED, WILL BE TAKEN WITHIN TIME LIMITATION AND WILL BE TAKEN ON THE TOTAL AMOUNT (INCLUDING TAX) UNLESS OTHERWISE STATED.
4. AUTHORIZED FREIGHT CHARGES MUST BE PREPAID AND ADDED TO INVOICE. INCLUDE PROOF OF PAYMENT FOR FREIGHT CHARGES OVER $25.
5. YOU ARE REQUIRED TO INCLUDE YOUR TAXPAYER I.D NUMBER ON ALL INVOICES SUBMITTED FOR PAYMENT. THIS WILL ENSURE COMPLIANCE WITH IRS REQUIREMENTS AND EXPEDITE PAYMENT PROCESSING. OUT OF STATE VENDORS MUST INCLUDE CALIFORNIA SALES TAX PERMIT NUMBER.

THE VENDOR ACKNOWLEDGES THAT HE HAS READ AND AGREED TO ALL TERMS AND CONDITIONS INCLUDING THOSE PRINTED ON THE ATTACHED TERMS AND CONDITIONS PAGE. THE ONLY TERMS AND CONDITIONS THAT WILL BE APPLICABLE TO THE INTERPRETATION OF THIS CONTRACT ARE THOSE ISSUED BY THE COUNTY OF ORANGE. THE VENDOR IS REQUIRED TO PROVIDE A COMPLETED MSDS (MATERIAL SAFETY DATA SHEET) FOR HAZARDOUS SUBSTANCES AS REQUIRED BY LABOR CODE SECTION 6390, GENERAL INDUSTRIAL SAFETY ORDER SECTION 5194 AND CALIFORNIA ADMINISTRATION CODE TITLE 8. MSDS SHEET FOR EACH SPECIFIED ITEM SHALL BE SENT TO PLACES OF SHIPMENT.

TERMS AND CONDITIONS PER CMAS NUMBER 3-05-00-0271F

QUOTE NUMBER: ORANGECO DATED 8/30/06

HCA/ANIMAL CONTROL SERVICES
CONTACT: JASON BROWN @ 714-935-6863

VENDOR CONTACT: DENNIS PLASTER @ 714-284-2223

OR LN	COMMODITY CODE	AC LN		QUANTITY	UNIT	UNIT COST	COMMODITY LN AMOUNT
001	91577	01	S	1.00	LOT	24,278.6000	24,278.60
	TELECOMMUNICATION EQUIPMENT PER ATTACHED QUOTE # ORANGECO						
002	91577	01	S	1.00	LOT	10,778.3400	10,778.34
	INSTALLATION-TELECOMMUNICATION EQUIPMENT PER ATTACHED QUOTE						
003	91577	01		1.00	LOT	123.1900	123.19
	SHIPPING						

ORDER TOTAL: 37,897.04

AUTHORIZED SIGNATURE:

ADDRESS QUESTION(S) REGARDING THIS PURCHASE DOCUMENT TO THE PURCHASING CONTACT: JERRY SEE

PURCHASING

COUNTY OF ORANGE

Date: 10/25/06

CENTRALIZED PURCHASE ORDER

VENDOR: X00976
SBC

ORDER NUMBER: PC 042 P0700602632
MODIFICATION NUMBER: 00

	COMMODITY AMOUNT:	35,180.13
	FREIGHT AMOUNT:	0.00
SALES TAX CODE: MUL	TAX AMOUNT:	2,716.91
	ORDER TOTAL:	37,897.04

AC LN	FUND	AGCY	ORGN	ACTV	OBJ/SUB	B/S ACCT	R/CAT	JOB NO.	ACCT LINE AMOUNT
01	100	042	413	HC04	4000			H4030800	37,897.04

BILL TO : 179 HCA/PURCHASING
511 NORTH SYCAMORE
SANTA ANA, CA 92701-4637

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By Jan J. Martin
Deputy
Date: 10-26-06

Department of General Services
Procurement Division
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

State of California

MULTIPLE AWARD SCHEDULE

Pacific Bell Telephone Company
d.b.a.
SBC DataComm

3-05-00-0271F -	**Video Equipment** – Component
	Data Communications – Equipment
	Consulting – Data Communications
	Service – Network Cabling
	Wire – Cable (Various)
	Service – Equipment Installation
	Service – Equipment Maintenance
	Service – Equipment Repair
	Service – Technical Support

(Above descriptions for marketing purposes only. Review contract for products/services available.)

CONTRACT NUMBER:	**3-05-00-0271F**
CMAS TERM DATES:	10/28/2005 through 04/25/2007
DISTRIBUTION:	STATEWIDE

NOTICE: Products and/or services on this CMAS contract may be available on a mandatory Strategically Sourced (CSSI) Contract. If this is the case, the use of this CMAS contract is restricted unless the State agency has an approved exemption pursuant to MM 05-11, and as further explained in the CSSI Contract User Instructions. Information regarding CSSI contracts can be obtained at the website: www.pd.dgs.ca.gov/stratsourcing. This requirement is not applicable to local government entities.

The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions, products and/or services and pricing are included herein. All purchase orders issued under this contract incorporate the following Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated May 2005.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.

Elaine Hall Effective Date: **10/28/2005**

ELAINE HALL, Program Analyst, California Multiple Award Schedules Unit

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
Pacific Bell Telephone Company d.b.a.
SBC DataComm
CMAS NO. 3-05-00-0271F

AVAILABLE PRODUCTS AND/OR SERVICES

This contract provides for the purchase and warranty of hardware and software, installation, maintenance, software maintenance, repair and personal services including integrated services.

Only products from the manufacturers listed on Attachment C are available under this contract.

The services available under this contract are for the implementation and support of applications developed under this contract. Services to implement or support commercial off the shelf (COTS) products are not available under this contract.

Only the following job categories and rates listed on Attachment D are available under this contract.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from the Merced County Focus Contract #2005081 (SBC DataComm) with a NON-GSA term of 04/26/2005 through 04/25/2007. The term of this CMAS contract is shown in the "CMAS Term Dates" on page 1.

ISSUE PURCHASE ORDER TO:

Agencies with questions regarding products and/or services may contact one of the following contractors listed below.

Agency purchase orders must be mailed to one of the following addresses, or faxed to (925) 973-0858.

Pacific Bell Telephone Company
d.b.a. SBC DataComm
2600 Camino Ramon, Room 4S200P
San Ramon, CA 94583

Attn: Merilynne O'Brien
Phone: (925) 824-9727
E-mail: merilynne.o'brien@sbc.com

Or,

Pacific Bell Telephone Company
d.b.a. SBC DataComm
2600 Camino Ramon, Room 4S100Z
San Ramon, CA 94583

Attn: Joe Celentano
(925) 824-9693

Or,

Pacific Bell Telephone Company
d.b.a. SBC DataComm
16755 Von Karman, Room 100
Irvine, CA 92606

Attn: Jonathan Holland
(949) 838-8062

CALIFORNIA SELLER'S PERMIT

Pacific Bell Telephone Company d.b.a. SBC DataComm's California Seller's Permit No. is 98033154. Agencies can verify that this permit is still valid at the following website: www.boe.ca.gov.

When issuing an order to an authorized reseller on a CMAS contract, it is the agency's responsibility to ensure that the reseller holds a valid California Seller's Permit.

WARRANTY

For warranties, see the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

Contractor personnel shall have the experience, education and expertise as delineated in the CMAS contract.

DELIVERY

30 days after receipt of order, or as negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

PURCHASING AUTHORITY DOLLAR THRESHOLD

No CMAS order may be executed by a State agency that exceeds that agency's CMAS purchasing authority threshold or the CMAS maximum order limit, whichever is less.

MAXIMUM ORDER LIMITS (Local Governments are Exempt)

The order limits for orders placed against CMAS contracts are as follows:

Information Technology Goods & Services: **$500,000**

Non-Information Technology Services: **$250,000**
(DGS-PD prior approval required if over $50,000. See further below.)

Non-Information Technology Goods: **$100,000**

These transactions are subject to the following requirements:

- State agencies must solicit a minimum of 3 contractors including 1 small business and/or DVBE (if available) and document responses. This is not a bid transaction so small business preference, protest language, intents to award, evaluation criteria, advertising, etc. are not applicable.
- If less than 3 offers received, state agencies must document their files with the reasons why the other suppliers solicited did not respond with an offer.
- If only one source is known (competing offers cannot be obtained), the non-competitive bid (NCB) contract process must be followed. See the latest Management Memo (currently MM 03-10 including supplements), or whichever Management Memo is in effect at the time a purchase order is issued, for NCB guidelines. Exceptions to NCB process are also addressed in MM 03-10.
- Evaluation and award may be based on best value, as applicable, and not restricted to lowest cost.
- For CMAS transactions under $5,000 only one offer is required if the state agency can establish and document that the price is fair and reasonable.
- Orders for Information Technology Goods and Services exceeding $250,000 require additional documentation. See the latest Management Memo (currently MM 03-10) for specific information on these additional requirements.
- Exemptions to the CMAS order limits are not allowed.
- Local governments set their own order limits, and are not bound by the above order limits and requirements.

SPLITTING ORDERS

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (SAM 3572).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

There is no minimum dollar value limitation on orders placed under this contract.

ORDERING PROCEDURES

1. Order Form

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing web site: http://www.dgs.ca.gov/osp (select Standard Forms). The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65: http://www.osp.dgs.ca.gov/pdf/std065.pdf

2. Purchase Orders

The agency is required to forward a copy of each purchase order to the Department of General Services (DGS), Procurement Division, Data Management, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811 (IMS# Z-1).

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals. See the CMAS Services Guide at www.dgs.ca.gov/pd (click on CMAS) for guidelines pertaining to all orders for services.

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

3. Service and Delivery after Contract Expiration

The purchase order must be issued before the CMAS contract end term expires. However, delivery of the products or completion of the services may be after the contract end term expires (unless otherwise specifically stated in the contract), but must be as provided for in the contract and as specified in the purchase order.

Also, purchase order amendments cannot be issued to add products or services if the CMAS contract end term has expired.

4. Multiple Contracts on STD. 65 Order Form

Agencies may include multiple CMAS contracts from the same contractor on a single Std. 65 Contract/Delegation Purchase Order. For guidelines, see CMAS Agency Packet, Purchase Order Dollar Limits and Procedures.

5. Amendments to Department's Purchase Orders

Management Memo 03-10 provides the following direction regarding amendments to department purchase orders:

Orders for IT Goods & Services or Non-IT Goods:
Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment.

Orders for Non-IT Services:
Original orders, which do not include options for changes (e.g., quantity or time), may be amended. This only applies to the first amendment, the time shall not exceed one year, or add not more than 30% of the original order value, not to exceed $250,000. The original contract must have permitted amendments. Outside of these conditions, the NCB process must be followed.

Also see the Purchasing Authority Manual, Chapter 8, Topic 7, for more information on amending purchase orders.

CONTRACT PRICES

Contract prices for products and/or services are maximums. The ordering agency is encouraged to negotiate lower prices.

CONTRACTOR OWNERSHIP INFORMATION

Pacific Bell Telephone Company d.b.a. SBC DataComm is a large business enterprise.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, state agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners:
www.pd.dgs.ca.gov
(click on CMAS click on State Agencies)

In response to our commitment to increase participation by small businesses, the Department of General Services waives the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.

See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.

2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:

   a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.

   b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:

      - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
      - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
      - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering

agency towards the small business or DVBE goal; and

- Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.

3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

NEW EQUIPMENT REQUIRED

The State will procure new equipment. All equipment must be new (or warranted as newly manufactured) and the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

Where Federal Energy Management Program (FEMP) standards are available, all state agencies shall purchase only those products that meet the recommended standards. All products displaying the Energy Star label meet the FEMP standards.

PRODUCT INSTALLATION

The contractor is fully responsible for all installation services performed under the CMAS contract. Product installations must be performed by manufacturer authorized personnel and meet manufacturer documented specifications.

INTEGRATED SERVICES

Agencies are prohibited from using CMAS and/or Masters for large-scale information technology system integration project except when specifically approved by Procurement Division-Technology Acquisitions Section.

ELECTRONIC WASTE RECYCLING

The Electronic Waste Recycling Act of 2003 requires retailers to collect a recycling fee from consumers on covered electronic devices starting January 1, 2005. California Public Resources Code, Section 42463(f) defines a "covered electronic device" as a video display device containing a screen greater than four inches measured diagonally. See the code identified above for more information and exceptions to this definition.

The Integrated Waste Management Board is implementing this new legislation, and the Board of Equalization is responsible for collecting these recycling fees from retailers. See the following two websites for more information on this topic:

http://www.ciwmb.ca.gov/Electronics/Act2003/

http://www.boe.ca.gov/sptaxprog/ewaste.htm

The electronic waste recycling fee must be shown as a line item on the agency purchase order before the Contractor can include it on their invoice.

PUBLIC WORKS (INSTALLATION SERVICES ONLY)

A public works contract is defined as an agreement for "the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind" in accordance with the Public Contract Code (PCC) Section 1101. State agencies planning these types of projects need to review the State Contracting Manual (SCM) Sections 10 and 11 and the CMAS Agency Packet, Public Works Projects for applicable guidelines and regulations. Also, the Department of General Services (DGS), Real Estate Services Division (RESD) can be contacted at 916/376-1748 if you have questions about these types of transactions.

Agency CMAS orders may allow for a public works component only when the service is incidental to the overall project requirements. Agencies are to ensure that the applicable laws and codes pertaining to the contractor and sub-contractor licensing, prevailing wage rates, bonding, labor code requirements, etc. are adhered to by the prime contractor as well as any sub-contractor during performance under the CMAS purchase order. The total dollar value of all services included in a purchase order must not exceed the dollar value of the products.

The bond amount for public works has increased to a sum not less than one hundred percent (100%) of the purchase order price.

Note: In accordance with Labor Code Section 1773.2, the ordering agency is responsible for determining the appropriate craft, classification or type of worker needed for any contract for public works. Also, the agency is to specify the applicable prevailing wage rates as determined by the Director of the Department of Industrial Relations (DIR). In lieu of specifying the prevailing wage rates, the agency may include a statement on the order that the prevailing wage rates are on file at the agency's office, and will be made available upon request. The prevailing wage rates are available from the DIR at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774.

Bonds: For guidelines, see CMAS contract, General Terms and Conditions, Public Works Requirements. Also, see CMAS Agency Packet, Administrative Requirements for Bonds and Other Security Documents.

Contractor's License: Public works services can be obtained through CMAS only if incidental to the overall purchase order. If incidental public works services are included in the purchase order, prior to issuing the purchase order, agencies are to contact the State Contractor's License Board at 1-800-321-2752 to verify that Contractor's License shown below is still active and in good standing. The State Contractor's License Board can also be accessed via the Internet at: http://www.cslb.ca.gov.

Pacific Bell Telephone Company d.b.a. SBC DataComm's California Contractor's License number is 760249. This is a Class C-7 and C-10 license that is good through 03/31/2007.

Cable and Wire: Cable and wire products that are purchased under this contract must be for information technology projects only (computers and telecommunications) and cannot be used for general purpose installations.

Purchase orders for cable and wire installation services only are prohibited.

Agency questions regarding the purchase and/or installation of cable and wire for computers and/or telecommunications may be directed to DGS Telecommunications Division, Facilities Engineering Unit at (916) 657-6131.

Cable and wire installations under this contract must be installed and tested to EIA/TIA Standards.

CONSULTING OR PERSONAL SERVICES

To ensure sufficient expertise for all consulting or personal services contracts, prior to issuing an order, the agency is required to review the resumes of all personnel the contractor intends to use to fulfill the order. Each agency is responsible for verifying that contractor personnel meet any education or experience requirements listed in the CMAS contract.

Each order should contain, as a minimum, a description of the task, a statement of the contractor's responsibilities, completion criteria, a list of deliverable items (if any), the estimated starting date, the scheduled completion date, and a fixed cost for each task.

See the CMAS Services Guide at www.dgs.ca.gov/pd (click on CMAS) for guidelines pertaining to all orders for services).

The aggregate of the fixed costs for all tasks constitutes the fixed price ceiling for all tasks described.

1. Bond Requirements

For guidelines, see CMAS contract, General Terms and Conditions, CMAS Progress Payments/Performance Bonds. Also, see Agency Packet, Administrative Requirements for Bonds and Other Security Documents.

2. Outsourcing Services

Careful analysis must be given by state agencies to using contracted personnel rather than using civil service positions within state government. Outsourcing services is permissible under the following conditions.

Government Code 19130(c) requires that all persons who provide services to the State under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment.

Management Memo (MM) 95-18 provides the guidance necessary to make the required determination between employee status and independent contractor status and requires a certification about employee status and independent contractor status for each individual under contract.

Issuing a CMAS purchase order for services is permissible when any of the following conditions set forth in Government Code Section 19130(b) can be met:

- Exempt under Constitution
- New state function and legislative authority
- Service not available; highly specialized or
- Technical
- Incidental to the purchase or lease
- Conflict of interest; need unbiased findings
- Emergency appointment
- Private counsel, with Attorney General (AG) approval and Governor's Office, if applicable
- Contractor will provide deliverables that are not feasible for the State to provide
- Training when civil service is not available
- Urgent, temporary, or occasional services when civil service delay would frustrate the purpose (see Option 2 below)

When justified as outlined above, personal services must fall under one of the two following options:

Option 1. CMAS orders for personal services such as project management, independent verification and validation, systems analysis and design, and miscellaneous services are not limited to the number of hours or months per year that a consultant can

work if the services contracted for are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system (Government Code 19130.b (3)).

Option 2. CMAS personal services orders for programmers, systems analysts, and technical specialists which are of an urgent, temporary, or occasional nature, such that hiring additional civil service positions is not feasible, are limited to nine months (1548 hours) per consultant within a twelve consecutive month period (Government Code 19130.b (10)/California State Constitution, Article VII, Section 5).

This provision is per agency and is inclusive of orders issued on your behalf by another agency. Contractors must wait three (3) months from CMAS order termination/expiration before submitting the candidate's resume for work at the same agency/department.

For both options above, the contractor may conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment (Government Code 19130.b (9)).

For each order, the agency must prepare and retain in their file a written justification that includes specific and detailed factual information that demonstrates that the contract meets one or more of the conditions set forth in Government Code 19130(b).

3. State Personnel Board Requirements

State Personnel Board (SPB) approval is required for a purchase order based on cost savings to the State as justification for not using civil service personnel.

4. Statement of Work

A Statement of Work (SOW) must be prepared as applicable for each purchase order. Agencies are strongly encouraged to use the list of questions in the back of Attachment J of the CMAS Agency Information Packet as a checklist for developing Statement of Work (SOW) requirements that accompany the purchase order.

5. Follow-on Contracts are Prohibited

No person, firm, or subsidiary thereof who has been awarded a purchase order for consulting services, or a purchase order that includes a consulting component, may be awarded a purchase order for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the purchase order (Public Contract Code 10365.5).

Therefore, any consultant who develops a program study or provides formal recommendations is precluded from providing any work recommended in the program study or the formal recommendation.

NETWORK DESIGN SERVICES

Notwithstanding the contract provisions, the only network design services available through CMAS are those that result in a hardware and/or software solution.

1. Telephone or Data Line Design Services

Any type of network design service for telephone or data line design service is not available through CMAS because they are mandatory under the Department of General Services (DGS), Telecommunications Division, Contract CNT-001 (see Agency Packet, Telecommunications Division Contract CNT-001). This provision applies to state agencies only.

2. Telecommunications Transport Systems and Related Infrastructure Components

All network design services for telecommunications transport systems and related infrastructure components shall be performed by a BICSI certified Registered Communications Distribution Designer (RCDD). Evidence of RCDD certification may be required by the ordering agency.

PRODUCTIVE USE REQUIREMENTS

Each equipment or software component must be in current operation for a paying customer and the paying customer must be external to the contractor's organization (not owned by the contractor and not owning the contractor).

To substantiate compliance with the Productive Use Requirements, the contractor must provide upon request the name and address of a customer installation and the name and telephone number of a contact person.

The elapsed time such equipment or software must have been in operation is based upon the importance of the equipment or software for system operation and its cost. The following designates product categories and the required period of time for equipment or software operation prior to approval of the replacement item on CMAS.

Category 1 - Critical Software: Critical software is software that is required to control the overall operation of a computer system or peripheral equipment. Included in this category are operating systems, data base management systems, language interpreters, assemblers and compilers, communications software, and other essential system software.

Cost	Prior Operation
More than $100,000	8 months
$10,000 up to $100,000	4 months
Less than $10,000	1 month

Category 2 - All Information Technology Equipment and Non-Critical Software: Information technology equipment is defined in SAM Section 4819.2.

Cost	Prior Operation
More than $100,000	6 months
$10,000 up to $100,000	4 months
Less than $10,000	1 month

SERVICES EXCLUDED ON THE CMAS PROGRAM

The following services are not available on the CMAS Program:

1. **Architectural, Construction, Engineering and Environmental Services**

Services are not allowed on CMAS that are required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental services as defined in Government Code 4525. If you have questions about these types of transactions, the Department of General Services (DGS), Real Estate Services Division (RESD) can be contacted at 916/376-1748.

2. **Legal Services**

Contracting for legal services by state agencies is controlled by statutes (GC 11040) that require Attorney General approval prior to entering into contracts with outside counsel. Additionally, Article VII of the California Constitution requires that state legal work be performed by state employees, absent limited exceptions (Government Code 19130). There are also policy-based approval requirements for all Executive Branch agencies that control the use of private counsel.

3. **Other Excluded Services**

Also, services involving financial audits, facility planning, registered nursing, and security guards are not available on the CMAS Program.

OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

NOT SPECIFICALLY PRICED (NSP) ITEMS

Contractors must be authorized providers of the hardware, software and/or services they offer under the Not Specifically Priced (NSP) Items provision.

Agency and contractor use of the NSP provision is subject to the following requirements:

1. Purchase orders containing only NSP items are prohibited.

2. A purchase order containing NSP items may be issued only if it results in the lowest overall alternative to the State.

3. NSP items shall be clearly identified in the order. Any product or service already specifically priced and included in the contract may not be identified as an NSP item.

4. Maximum Order Limitation: For orders $250,000, or less, the total dollar value of all NSP items included in a purchase order shall not exceed $5,000. For orders exceeding $250,000, and at the option of the contractor, the total dollar value of all NSP items in a purchase order shall not exceed 5% of the total cost of the order, or $25,000 whichever is lower.

5. An NSP item included in an order issued against a contract is subject to all of the terms and conditions set forth in the contract.

6. Trade-ins, upgrades, involving the swapping of boards, are permissible, where the contract makes specific provisions for this action. In those instances where it is permitted, the purchase order must include the replacement item and a notation that the purchase involves the swapping of a board.

The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under this contract:

1. Items not intended for use in directly supporting the priced items included in the same order. An NSP item must be subordinate to the specifically priced item that it is supporting. For example, a cable, which is not otherwise specifically priced in the contract, is subordinate to a specifically priced printer or facsimile machine, and is eligible to be an NSP item subject to that cable meeting the remaining NSP requirements. However, a printer or facsimile machine, which is not otherwise specifically priced in the contract, is not subordinate to a specifically priced cable, and is not eligible to be an NSP item.

2. Supply type items, except for the minimum amount necessary to provide initial support to the priced items included in the same order.

3. Items that do not meet the Productive Use Requirements for information technology products. (SAM Section 5203)

4. Any other item or class of items specifically excluded from the scope of this contract.

5. Public Works components NOT incidental to the overall project requirements.

6. Products or services the contractor is NOT factory authorized or otherwise certified or trained to provide.

7. Follow-on consultant services that were previously recommended or suggested by the same contractor.

The contractor is required to reject purchase orders containing NSP items that do not conform to the above requirements. The contractor will promptly notify the agency issuing the non-conforming order of its non-acceptance and the reasons for its non-acceptance.

STATE AND LOCAL GOVERNMENTS CAN USE CMAS

State and local government agency use of CMAS contracts is optional. A local government is any city, county, city and county, district or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges, that is empowered to expend public funds. While the state makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

UPDATES AND/OR CHANGES

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.
- A CMAS amendment is required for changes to contracts that require Prison Industry Authority (PIA) approval.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the Federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The CMAS Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's Federal GSA (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. Notwithstanding this, there is no guarantee that "every" possible requirement that pertains to all the different and unique state processes has been included.

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to the CMAS Agency Packet for Statewide Procurement Requirements, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements of SAM Section 5203
- SAM Section 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies must adhere to the guidelines in SAM Sections 2120/2121 for servicing office equipment.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over $5,000 within 10 days of award, including supplements that exceed $5,000.
- Pursuant to Public Contract Code Section 10359 state agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, state and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal $600 or more to independent sole proprietor contractors. See the contractor's Std. Form 204, Payee Data Record, in the CMAS contract to determine sole proprietorship. All inquiries regarding this subject should be forwarded to EDD: Technical questions: 916/651-6945 or Information and forms: 916/657-0529.
- Annual small business and disabled veteran reports.
- Post evaluation reports. Public Contract Code 10369 requires state agencies to prepare post evaluations on form STD 4 for all completed consulting services contracts of more than $5,000. Copies of negative evaluations must be sent to the DGS Office of Legal Services. The Bureau of State Audits requires state agencies annually to certify compliance with these requirements.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective July 1, 2002, in accordance with Public Contract Code 10116, state agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this contract are net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each state accounting office must have a copy of the attached Payee Data Record (Std. 204) in order to process payment of invoices. Agencies should forward a copy of the Std. 204 to their accounting office(s). Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative Fee

The Department of General Services (DGS) will bill each state and local agency directly an administrative fee for use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This fee is waived for purchase orders to California certified small businesses.

See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11256 – 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

Pacific Bell Telephone Company d.b.a. PBC DataComm accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all CMAS orders to suppliers not California certified as a small business.

7. Lease/Purchase Analysis

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). Approval by the Department of General Services is not required.

8. Leasing

Except for Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term ($1 residual value is acceptable), Federal GSA Lease provisions are NOT available through CMAS because the rates and contract terms and conditions are not acceptable or applicable to the State.

SEAT Management financing options are NOT available through this contract.

As an alternative, agencies may consider financing through the State's financial marketplace GS $Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS $Mart™ Internet address is www.dgs.ca.gov/pd then click on GS $Mart™. Buyers without Internet access may contact the GS $Mart™ Administrator, Pat Mullen by phone at 916/375-4617 or via e-mail at pat.mullen@dgs.ca.gov for further information.

9. Maintenance Tax

The Board of Equalization has ruled that in accordance with Section 1655 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, that whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For contracts that provide for only maintenance services (i.e. the furnishing of labor and parts necessary to maintain equipment), the charges for the provision of maintenance services are not taxable.

2. For contracts that provide for both maintenance services and consumable supply items (i.e. toner, developer, and staples, for example), the provision of the consumable supplies is considered a taxable sale of tangible personal property. Therefore, state agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies utilized during the performance period of the maintenance contract.

   The contractor will be required to itemize the consumables being taxed for state accounting purposes.

CONTRACTOR QUARTERLY REPORTS

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, CMAS Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention: Quarterly Report Processing. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Contractors with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete and returned to the contractor.

To facilitate collection of administrative fees, copies of local government agency purchase orders must accompany the CMAS quarterly report. This new requirement is effective beginning the second quarter of 2005, for reports due in the CMAS office within two weeks after the end of June 2005.

New contracts for contractors with existing contracts, and extensions or renewals of existing contracts, will be approved ONLY if the contractor has submitted to the CMAS Unit all quarterly reports due. Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

The report must include the agency name, purchase order number, purchase order date, agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.

A sample quarterly report indicating required format and information is attached for your reference (Attachment A).

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- Payee Data Record (Std. 204).
- California CMAS Terms and Conditions.
- Federal GSA or non-Federal GSA Terms and Conditions (unless otherwise stipulated in the CMAS contract).
- Federal GSA or non-Federal GSA products, services, and price list (unless otherwise stipulated in the CMAS contract).
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at, or below, contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

See CMAS Agency Packet, Agency Responsibilities and Agency Compliance.

CONFLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues.

See CMAS Agency Packet, Conflict of Interest for guidelines.

FEDERAL DEBARMENT

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

CONTRACTOR TRAVEL

REIMBURSEMENT FOR CONTRACTOR TRAVEL IS NOT AVAILABLE UNDER THIS CMAS CONTRACT.

LIQUIDATED DAMAGES FOR LATE DELIVERY

The value of the liquidated damages must be included in the purchase order to be applicable, mutually agreed upon by agency and contractor, and cannot be a penalty.

ACCEPTANCE TESTING CRITERIA

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Destination.

AMERICANS WITH DISABILITY ACT (ADA)

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and state laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment B for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

Phone # 916/375-4363 Calnet # 8/480-4363
Fax # 916/375-4663

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
Pacific Bell Telephone Company d.b.a.
SBC DataComm
CMAS NO. 3-05-00-0271F

ATTACHMENT A

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

- A report is required even when there is no activity for the quarter.
- Copies of local government agency purchase orders must accompany the CMAS quarterly report.
- Quarterly Reports are due two weeks after the end of the quarter

1. Calendar Quarter Number: (Quarter # and Year)
2. CMAS Contract Number: XX-XX-XX-XXXXX (including alpha suffix if applicable)
3. Contractor: Company Name and Address
4. Contractor Contact: Name and Phone Number

5. Agency Name	6. Purchase Order Number	7. Purchase Order Date	8. Agency Billing Code	9. Total Dollars per Purchase Order	10. Agency Contact	11. Agency Address	12. Phone Number

FORMAT

13. Total dollars for quarter: $_____

The Quarterly Report must contain all of the above data elements, but may be in a landscape report format.

1. Identify the calendar quarter number and year for the report you are submitting.
2. Identify your company's CMAS contract number. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Multiple contracts on Std. 65 State Purchase Order form should be itemized by contract number. For each individual contract (as differentiated by alpha suffix), identify and group together the contract number with line items and subtotal per contract number (do not include tax in the subtotal).
3. Identify your company name and mailing address.
4. Identify the company contact and phone number for the CMAS contract or the person preparing and submitting the report.
5. Identify the State Agency or local government that issued the CMAS order.
6. Identify the purchase order number (and supplement number if applicable) on the order form. This is not your invoice number. This is the number the agency or local government assigns to the order.
7. Identify the date the purchase order was issued. This is not the date you received, accepted, or invoiced the order.
8. Identify the State Agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Local governments will not reference a billing code. You may leave this blank for local government orders.
9. Identify the total dollars of each purchase order before tax. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount regardless of when you invoice order, perform services, deliver product, or receive payment. For amended orders, enter the incremental increase/decrease only.
10. Identify the "Bill To" agency or local government CONTACT on the purchase order.
11. Identify the "Bill To" agency or local government ADDRESS on the purchase order.
12. Identify the agency or local government phone number on the purchase order.
13. Identify the total dollars pre-tax for all orders placed in that calendar quarter.

ATTACHMENT B

ADA NOTICE

Procurement Division (State Department of General Services)
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office:	(916) 376-1891
Fullerton Office:	(714) 773-2093

The California Relay Service Telephone Numbers are:

Voice:	1-800-735-2922 or 1-888-877-5379
TTY:	1-800-735-2929 or 1-888-877-5378
Speech-to-Speech:	1-800-854-7784

ATTACHMENT C

MANUFACTURERS AVAILABLE UNDER THIS CONTRACT

Pacific Bell Telephone Company d.b.a. SBC DataComm is authorized to provide hardware and software, installation, maintenance, software maintenance and repair for the following manufacturers:

3COM
Adtra
Akara
Carrier Access Corp.
CheckPoint Software Technology
Cisco Systems
Clear One
Extreme Networks
Kentrox
Marconi
NetBoltz
Nortel
Netscreen
Paradyne
Polycom
SBCHIPCS
SBC PremierSERV
Sonic Wall
Spectralink
Tandberg
Telco Systems
Terabeam
VTEL
Verilink
Visual Networks
XTend

ATTACHMENT D

THE FOLLOWING JOB CATEGORIES ARE AVAILABLE UNDER THIS CONTRACT

Technical Manager: (May also be known as "Field Engineer," "Site Engineer," "Field Manager") Experience managing teams and conducting projects. Specialized knowledge of business best practices and the management of complex business change. Develops, maintains and monitors sub-tasks work plans using proprietary estimating, work planning and tracking tools and methods. Assign work tasks to team members. Performs first-line quality assurance over interim work products and deliverables. Performs first-line issue resolution. Applies knowledge of industry best practices, business process re-engineering or change management methods. Provides subject matter knowledge.

Education: Bachelor's or Masters Degree.

Experience: Five years of experience working in computer science or engineering projects may be substituted for bachelor's degree.

Cable Splicer: Splices, inspects, maintains, overhauls, repairs, and installs splice cases for telephone, coaxial, fiber optic, and outside plant cable. Locates and diagnoses signal transmission defects using various test equipment and visual inspection. Uses cable splicing and lineman's tools and related test equipment, ground power equipment, and pressure equipment. Communicates effectively with technical and management personnel.

Education: High School graduate. A certificate from an accredited institution for training that is directly related to the task or equipment to be used may be substituted for a high school diploma.

Experience: Requires at least four years of experience in the last eight calendar years in installing, modifying, and troubleshooting copper and fiber optic cable.

ATTACHMENT D (Continued)

THE FOLLOWING JOB CATEGORIES ARE AVAILABLE UNDER THIS CONTRACT

Data/Configuration Management Specialists: (May also be known as "Staging Engineer," and/or "Pre Operations Manager/Configurations Management Specialists") Responsible for configuration management support. Describes provisions for configuration identification, change control, configuration status accounting, and configuration audits. Responsible for configuration planning. Identifies and maintains the original configuration of requirements documentation, design documentation, software, and related documentation. Responsible for configuration change control. Regulates the change control process so that only approved and validated changes are incorporated into configuration control documents and related software. Responsible for configuration status accounting. Tracks all problems and changes in configuration control documents and software and reports changes and current configuration. Responsible for configuration audits. Supports audits to verify that requirements of all baselines have been met by the as-build software. Supports quality assurance processes audits.

Education: Bachelor's degree from an accredited college or university.

Experience: Five years experience of increasing complexity with data management or configuration management in the last eight calendar years in the field of software development or computer communications engineering. An additional five years of experience working in related computer science or engineering projects may be substituted for the bachelor's degree.

Data Communications Manager: (May also be known as "Installation Engineer" "Data Manager," "Communications Manager," "Voice Installation Engineer," "Data Installation Engineer," and/or "Maintenance Engineer") Ensures that adequate and appropriate planning is provided for remote hardware and communications facilities to develop and implement methodologies for analysis, installation and support of distributed processing client/server systems. Provided coordination in the analysis, acquisition and installation of hardware, software, and facilities. Manages the training and efforts of a staff engaged in systems and network planning, analysis, and monitoring activities.

Education: High school.

Experience: Requires 10 years experience in software/hardware LAN/WAN network design and analysis.

ATTACHMENT D (Continued)

THE FOLLOWING JOB CATEGORIES ARE AVAILABLE UNDER THIS CONTRACT

Technical Director: (May also be known as "Senior Installation Engineer," Senior Data Manager," "Senior Communications Manager") Senior individual responsible for task management. Demonstrated ability to perform senior level tasks in a specialized discipline or across multiple technical areas. Provides technical or business leadership and implementation support related to professional engineering projects.

Education: Bachelor's or Master's Degree. An advanced degree is equivalent to three years of experience.

Experience: Twelve or more years of applicable experience, with at least two years spent managing engineering projects.

Senior Technical Manager: (May also be known as "Implementation Manager," "Project Manager," and/or "Project Consultant") Responsible for the overall management of specific large or complex task orders or projects. Ensures the timely and successful performance of the task. Ensures technical solutions and schedules are implemented and formulates work standards and goals to the organization. Responsible for the overall contract performance. Specialized knowledge of business best practices and the management of complex business change.

Education: Bachelor's or Master's Degree. An advanced degree is equivalent to three years of experience.

Experience: 10 to 12 years of applicable experience, with at least three years spent managing teams.

Partner/Principal: (May also be known as "Senior Implementation Manager," "Senior Project Manager," "Senior Project Consultant," "Senior Design Engineer" and/or "Senior Consulting Engineer") Senior Manager with overall responsibility for the project. Substantial experience in managing the business issues associated with client requirements. Manages contractual relationship with agencies and departments using implementation services. Negotiates and makes decisions for Contractor. Applies resources to the project. Defines project approach, methods and staffing. Conducts quality assurance over key project deliverables. Resolves issues with staff, tools and methods. Participates in project status and steering committee meetings to resolve issues through application of resources or experience gained on other projects.

Education: Bachelor's or Master's Degree. An advanced degree is equivalent to three years of experience.

Experience: Fifteen or more years of applicable experience in area of expertise.

ATTACHMENT D (Continued)

THE FOLLOWING JOB CATEGORIES ARE AVAILABLE UNDER THIS CONTRACT

Functional Specialist: (May also be known as "Design Engineer," "Project Engineer," "Consulting Engineer," and/or "Design Specialists Engineer") Specialized experience in the applications of the specified technical discipline or business practice. Evaluates proposed solutions to determine technical and functional feasibility and adequacy. Provides specialized knowledge and insight relevant to the project. Provides functional area analysis and support for system development. Advises the project team on specialized areas of knowledge. Provides technical or functional/business guidance and implementation support in multiple areas, e.g. industry best practices. Develops business models. Advises on products or services capabilities and recommends methods for best utilization of features.

Education: Bachelor's or Master's Degree.

Experience: An advanced degree is equivalent to three years of experience.

Applications Systems Analyst/Programmer: Formulates and defines system scope and objectives. Prepares detailed specifications for programs. Designs, codes, tests, debugs and documents programs. Works in all phases of applications, systems analysis, and programming activities. Provides guidance and training to less experienced analysts/programmers.

Education: Bachelor's degree from an accredited college or university. Experience: Five years of increasingly complex and progressive experience in the last eight calendar years in performing system analysis, development, and implementation for business, mathematical, engineer or scientific settings using a variety of information technology resources.

Experience: An additional five years of experience in related areas may be substituted for a bachelor's degree.

Cable Installer Voice Products: (May also be known as "Carrier Coordination, Voice Products") Installs or oversees installation of telephone, coaxial, and fiber optic cables, including vertical and horizontal cable pairs to the desktop. Locates and diagnoses signal transmission defects using various test equipment and visual inspection. Uses tools and related test equipment, ground power equipment, and pressure equipment. Prepares necessary reports. Communicates effectively with technical and management personnel.

ATTACHMENT D (Continued)

THE FOLLOWING JOB CATEGORIES ARE AVAILABLE UNDER THIS CONTRACT

Education: High school graduate. A certificate from an accredited institution for training that is directly related to the task or equipment to be used may be substituted for a high school diploma.

Experience: At least four years of experience in installing, modifying, and troubleshooting copper and fiber optic cable.

Cable Installer Structured Cable: Installs or oversees installation of telephone, coaxial, and fiber optic cables, including vertical and horizontal cable pairs to the desktop. Locates and diagnoses signal transmission defects using various test equipment and visual inspection. Uses tools and related test equipment, ground power equipment, and pressure equipment. Prepares necessary reports. Communicates effectively with technical and management personnel.

Education: High school graduate. A certificate from an accredited institution for training that is directly related to the task or equipment to be used may be substituted for a high school diploma.

Experience: At least four years of experience in installing, modifying, and troubleshooting copper and fiber optic cable. Experience: At least four years of experience in installing, modifying, and troubleshooting copper and fiber optic cable.

Cable Installer–Outside Plant: Installs or oversees installation of telephone, coaxial, and fiber optic cables, including vertical and horizontal cable pairs to the desktop. Locates and diagnoses signal transmission defects using various test equipment and visual inspection. Uses tools and related test equipment, ground power equipment, and pressure equipment. Prepares necessary reports. Communicates effectively with technical and management personnel.

Education: High school graduate. A certificate from an accredited institution for training that is directly related to the task or equipment to be used may be substituted for a high school diploma. Experience: At least four years of experience in installing, modifying, and troubleshooting copper and fiber optic cable.

Experience: At least four years of experience in installing, modifying, and troubleshooting copper and fiber optic cable.

ATTACHMENT D (Continued)

JOB CATEGORY PRICE LIST

JOB CATEGORIES	HOURLY RATE
Technical Manager	$ 196.00
Cable Splicer	84.35
Data/Configuration Management Specialists	121.84
Data Communications Manager	178.50
Technical Director	230.25
Senior Technical Manger	212.00
Partner/Principal	346.00
Functional Specialist	243.00
Applications Systems Analyst/Programmer	118.00
Cable Installer Voice Products	84.35
Cable Installer Structured Cable	84.35
Cable Installer-Outside Plant	84.35

Note: Prices listed in each job category are intended to be maximum rates.

CMAS CONTRACTOR PACKET

EXHIBIT Q – PAYEE DATA RECORD

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9)

STD. 204 (Rev. 8-2003)

1

INSTRUCTIONS: Complete all information on this form. Sign, date, and return to the State agency (department/Office) address shown at the bottom of this page. Prompt return of this fully completed form will prevent delays when processing payments. Information provided in this form will be used by State agencies to prepare Information Returns (1099). See reverse side for more information and Privacy Statement.

NOTE: Governmental entities, federal, State, and local (including school districts), are not required to submit this form.

2

PAYEE'S LEGAL BUSINESS NAME (Type or Print): Pacific Bell Telephone Company d.b.a. SBC Data Comm

SOLE PROPRIETOR – ENTER NAME AS SHOWN ON SSN (Last, First, M.I.):

E-MAIL ADDRESS:

MAILING ADDRESS: 2600 Camino Ramon

BUSINESS ADDRESS: Same

CITY, STATE, ZIP CODE: San Ramon, Ca. 94583

CITY, STATE, ZIP CODE: Same

3

PAYEE ENTITY TYPE

CHECK ONE BOX ONLY

ENTER FEDERAL EMPLOYER IDENTIFICATION (FEIN):

☐ PARTNERSHIP

☐ ESTATE OR TRUST

CORPORATION:
- ☐ MEDICAL (e.g., dentistry, psychotherapy, chiropractic, etc.)
- ☐ LEGAL (e.g., attorney services)
- ☐ EXEMPT (nonprofit)
- ☐ ALL OTHERS

☐ INDIVIDUAL OR SOLE PROPRIETOR ENTER SOCIAL SECURITY NUMBER: ___-__-____

(SSN required by authority of California Revenue and Tax Code Section 18646)

NOTE: Payment will not be processed without an accompanying taxpayer I.D. number.

4

PAYEE RESIDENCY STATUS

☒ California resident – Qualified to do business in California or maintains a permanent place of business in California

☐ California nonresident (see reverse side) – Payments to nonresidents for services may be subject to State income tax withholding
- ☐ No services performed in California.
- ☐ Copy of Franchise Tax Board waiver of State withholding attached.

5

I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the State agency below.

AUTHORIZED PAYEE REPRESENTATIVE'S NAME (Type or Print): Merilynne C. O'Brien

TITLE: [illegible]

SIGNATURE: [illegible]

DATE: [illegible]

TELEPHONE: [illegible]

6

Please return completed form to:

Department/Office: Department of General Services, Procurement Division

Unit/Section: CMAS Section

Mailing Address:

City/State/Zip:

Telephone: Fax:

E-mail Address:

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - INFORMATION TECHNOLOGY

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
   a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
   b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
   c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
   d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
   e) **"Buyer"** means the State's authorized contracting official.
   f) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
   g) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
   h) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
   i) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
   j) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
   k) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.
   l) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
   m) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
   n) **"Documentation"** means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.
   o) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).
   p) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
   q) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
   r) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
   s) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
   t) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
   u) **"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 interactions between people and Machines.
   v) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
   w) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
   x) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
   y) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
   z) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
   aa) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
   bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment

and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.

cc) "Operational Use Time" means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.

dd) "Performance Testing Period" means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.

ee) "Period of Maintenance Coverage" means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.

ff) "Preventive Maintenance" means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.

gg) "Principal Period of Maintenance" means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.

hh) "Programming Aids" means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).

ii) "Program Product" means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.

jj) "Remedial Maintenance" means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.

kk) "Site License" means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.

ll) "Software" means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.

mm) "Software Failure" means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.

nn) "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.

oo) "System" means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.

pp) "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:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.

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 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) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
   b) If this Contract is in excess of $500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
   c) To the extent that this Contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.

8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

9. **CMAS – ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to

payment, provided that Contractor remains responsible for its obligations hereunder.

Should the State desire financing of the assets provided hereunder through GS $Mart, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.

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. 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. **CMAS – ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
    a) these General Provisions – Information Technology;
    b) contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
    c) information technology special provisions;
    d) federal GSA (or other multiple award) terms and conditions;
    e) statement of work, including any specifications incorporated by reference herein; and
    f) all other attachments incorporated in the contract by reference.

12. **PACKING AND SHIPMENT:**
    a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
        i) show the number of the container and the total number of containers in the shipment; and
        ii) the number of the container in which the packing sheet has been enclosed.
    b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
    c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.
    a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
    b) If "prepay and add" is selected, supporting freight bills are required when over $50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
    c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and-damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

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

15. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

16. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:
    a) 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 that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
    b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
    c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
    d) All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
    e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not

substantially conform to their specifications. If the State does not provide such notice of rejection within sixty (60) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

17. **SAMPLES:**
    a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products offered and/or specified in the Contract.
    b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

18. **CMAS – WARRANTY:** The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS Contract. When there is a conflict between the language, the following warranty language overrides.

    a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon acceptance of the Deliverable or service in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and 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 (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
    b) Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction.
    c) Unless otherwise specified in the Statement of Work:
        (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
        (ii) 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 Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
        (iii) Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
    d) 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.
    e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
        (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
        (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
    f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19. **SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. 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.

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

21. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
    a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this

Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.

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

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the 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, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.

b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
   (i) Stop work as specified in the Notice of Termination.
   (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
   (iii) Terminate all subcontracts to the extent they relate to the work terminated.
   (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;

c) 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, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
   (i) The Contract price for Deliverables or services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges; and
   (ii) The total of:
      A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
      B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
      C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.

d) 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.

23. TERMINATION FOR DEFAULT:

a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
   i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
   ii) Make progress, so that the lack of progress endangers performance of this Contract; or
   iii) Perform any of the other provisions of this Contract.

b) The State's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.

c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.

d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
   (i) completed Deliverables,
   (ii) partially completed Deliverables, and,
   (iii) subject to—provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

e) The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

f) If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.

g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

24. **FORCE MAJEURE:**
Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:
a) Acts of God or of the public enemy, and
b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted Deliverables or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

25. **RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.

b) In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.

c) 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 loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor.
d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

26. **LIMITATION OF LIABILITY:**
a) Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
b) The foregoing limitation of liability shall not apply (i) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

27. **CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
b) Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

28. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation 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 Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

29. **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.

30. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. **TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.

32. **NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

33. **CONTRACT MODIFICATION:** 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.

34. **CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under 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, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

35. **NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

36. **DOCUMENTATION**
    a) The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment 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.
    b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

37. **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, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
    b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with 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.
    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.

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

39. **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 computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

       Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 39a) will be conditional upon the following:
       i) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
       ii) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
    b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
    c) Should the Deliverables or Software, or the operation thereof, become, or in 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 permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
    d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
       (i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,
       (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
       (iii) The modification by the State of the Equipment furnished hereunder or of the Software; or
       (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
    e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

40. **EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. 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. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.

41. **DISPUTES:**
    a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the 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, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract

adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for Information Technology Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.

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. Contractor's failure to diligently proceed in accordance with the State's instructions 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 Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

42. **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 work called for by this Contract for a period up to 90 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 90 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 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

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.

43. **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 sub-section (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, or feasibility studies;

(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.

44. **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.

45. **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 damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by 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 by law or in equity.

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

47. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against 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.

48. **ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
    a) In submitting an offer to the State, the supplier offers and agrees that if the offer 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 tenders final payment to the supplier.
    b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.
    c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
        (i) the assignee has not been injured thereby, or
        (ii) the assignee declines to file a court action for the cause of action.

49. **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.

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

51. **SWEATFREE CODE OF CONDUCT:**
    a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor,

indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

52. **RECYCLING:** Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, Goods, supplies offered, or products used in the performance of this Contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

53. **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 comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
   b) 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.

54. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

55. **UNION ACTIVITIES:** For all contracts, except fixed price contracts of $50,000 or less, the Contractor acknowledges that: by submitting a signed offer, Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:
   a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
   b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
   c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
   d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

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

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

58. **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.

59. **DOMESTIC PARTNERS:** Commencing on July 1, 2004, Contractor certifies that it is in compliance with the applicable provisions of PCC Section 10295.3 with regard to benefits for domestic partners.

ADDITIONAL CMAS TERMS AND CONDITIONS

60. **CMAS – CONTRACTOR'S LICENSE REQUIREMENTS:** Contracts that include installation or the wording "Furnish and Install" require at the time of Contract award that Contractors possess a valid California State Contractor's License. If sub-contractors are used, they must also posses a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is $500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for Contract revocation.

61. **CMAS – PUBLIC WORKS REQUIREMENTS (LABOR/INSTALLATION):**
   a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of $5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the Contract price. Forms shall be provided to the Contractor.
   b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.
   c) The Contractor hereby certifies by signing this Contract that:

i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein.

ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of the purchase order.

d) Laws to be Observed

i) Labor

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than fifty ($50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five ($25) for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in violation of California Labor Code Sections 1810-1815, inclusive.

ii) Worker's Compensation Insurance

The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.

iii) Travel and Subsistence Payments

Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

iv) Apprentices

Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each Contractor and/or subcontractor must, prior to commencement of the public works Contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.

v) Payroll

The Contractor shall keep an accurate payroll record showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in section 1776 of the California Labor Code.

62. **CMAS – TERMINATION OF CMAS CONTRACT:**

a) The State may terminate this CMAS Contract at any time upon 30 days prior written notice.

b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered terminated on the same date.

c) Upon termination or other expiration of this Contract, each party will assist the other party in orderly termination of the Contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.

d) Prior to the expiration of this Contract, this Contract may be terminated for the convenience of both parties by mutual consent.

e) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

63. **CMAS – CONTRACT AMOUNT:** There is no guarantee of minimum purchase of Contractor's products or services by the State.

64. **CMAS – DEBARMENT CERTIFICATION (FEDERALLY FUNDED SERVICE CONTRACTS OVER $10,000):** When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

65. **CMAS – PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT:** All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:

a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.

b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.

c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.

66. **CMAS – CONFLICT OF INTEREST:**

a) Current State Employees (Public Contract Code Section 10410):

i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and

which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.

ii) No officer or employee shall contract on his or her own behalf as an independent Contractor with any State agency to provide goods or services.

b) Former State Employees (Public Contract Code Section 10411):

i) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency.

ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed Contract within the twelve-month period prior to his or her leaving State service.

67. **CMAS – SUBCONTRACTING REQUIREMENTS:** Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract/purchase order, and which is expected to receive more that ten (10) percent of value of the Contract/purchase order, must also meet all contractual, administrative, and technical requirements of the Contract/purchase order, as applicable.

68. **CMAS -- RENTAL AGREEMENTS:**

The State does not agree to:

- Indemnify a Contractor;
- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the State; or
- Agree to obtain insurance to protect the Contractor.

The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.

If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the Contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment (SAM 8736).

69. **CMAS – LEASE (Lease $Mart ™):** If an agency desires to lease through Lease $Mart ™, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.

70. **CMAS – PROGRESS PAYMENTS/PERFORMANCE BONDS:** In accordance with PCC 12112: Any contract for information technology goods or services to be manufactured or performed by the Contractor especially for the State and not suitable for sale to others in the ordinary course of the Contractor's business may provide, on the terms and conditions that the department deems necessary to protect the State's interests, for progress payments for work performed and costs incurred at the Contractor's shop or plant, provided that not less than 10 percent of the Contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the Contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the Contract securing the faithful performance of the Contract by the Contractor.

71. **CMAS – QUARTERLY REPORTS:** Contractors are required to submit quarterly business activity reports, as specified in this Contract, even when there is no activity. A separate report is required for each contract, as differentiated by alpha suffix.

TO BE USED WITH THE GENERAL PROVISIONS – IT. DEVELOP AND INCLUDE A STATEMENT OF WORK

1 Liquidated Damages

a. General

In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

b. Timing of Delivery

i. Contractor will be liable for any liquidated damages for late performance (including late delivery) specified in the Statement of Work if Contractor fails to provide any subject service or deliver any subject Deliverable, ready for use in substantial conformance with its specifications, on or before the Delivery Dates in the Statement of Work. Unless otherwise specified in the Statement of Work: (1) such liquidated damages will stand in lieu of all other damages for such late performance or nonperformance; and (2) if the Contractor fails to provide a Software Deliverable listed in the Statement of Work by the specified Delivery Date, but provides suitable substitution of Software acceptable to the State, liquidated damages shall not apply to the listed Software Deliverable.

ii. The State will pay additional monetary compensation for early performance to the extent specifically called for in the Statement of Work.

2 Title to Equipment

Unless otherwise specified in the Statement of Work, title to the Equipment shall remain in the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.

3 Price Decline (Applicable to Third Party Contractors)

Prices quoted shall be the maximum for the Contract period subject to any price escalation provisions reflected in the Statement of Work. However, should a price decline be announced by the manufacturer after Contract award, but prior to a third party contractor taking title to the Equipment, and should the third party contractor be the recipient of this manufacturer's price decline, it shall be passed on in total to the State by the third party contractor. Any interest, finance, or other charges based on the Contract price will be recomputed using the original offer rates and the differences will also be passed to the State in total.

4 Price Decline (Applicable to Manufacturers)

Prices quoted shall be the maximum for the Contract period subject to any price escalation provisions reflected in the Statement of Work. However, should a price decline be announced by the manufacturer after Contract award, but prior to the State taking title to the Equipment, it shall be passed on in total to the State by the manufacturer. Any interest, finance, or other charges based on the Contract price will be recomputed using the original offer rates and the differences will also be passed to the State in total.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
MAINTENANCE SPECIAL PROVISIONS

TO BE USED WITH THE GENERAL PROVISIONS – IT. DEVELOP AND INCLUDE A STATEMENT OF WORK.

The following terms and conditions are superseded and replaced by any alternate or inconsistent terms and conditions in the Statement of Work.

1 Maintenance of Equipment

The Contractor is responsible under this contract to maintain the Equipment identified in the Statement of Work. The Contractor shall keep the Equipment in good operating condition and shall always be responsive to the maintenance requirements of the State. Equipment maintenance shall be provided in accordance with this Contract, with the maintenance charges, Period of Maintenance Coverage, locations, etc. listed in the Statement of Work.

2 Exclusions

a. Maintenance service does not include:

1) Electrical work external to the Machines or maintenance of accessories, alterations, Attachments, or other devices not listed in the Statement of Work.

2) Repair of damage or increase in service time caused by: accident; disaster, which shall include, but not be limited to, fire, flood, water, wind, and lightning; transportation; neglect, misuse, fault or negligence of the State; and alterations, which shall include, but not be limited to, any deviation from Contractor's physical, mechanical, or electrical Machine design, and Attachments.

3) Repair of damage or increase in service time resulting from failure to provide a suitable installation environment with all facilities prescribed by the appropriate Contractor Installation Manual–Physical Planning (including, but not limited to, failure of, or failure to provide adequate electrical power, air conditioning or humidity control).

4) Repair of damage or increase in service time attributable to the use of the Machines for other than the data processing purpose for which it was acquired.

5) Furnishing platens, supplies or accessories; painting or refinishing the Machines or furnishing material therefore; inspecting Machines altered by other than Contractor; making specification changes or performing services connected with the relocation of Machines; or adding or removing accessories, Attachments or other devices.

6) Such service which is impractical for Contractor to render because of alterations or connection by mechanical or electrical means to another Machine.

7) Repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused by the use of supplies or materials not meeting Contractor's specifications for such supplies or materials.

8) Repair of damage or increase in service time caused by conversion from one Contractor model to another or the installation or removal of a Contractor feature whenever any of the foregoing was performed by other than the Contractor.

9) Repair or maintenance by Contractor that is required to restore Equipment to proper operating condition after any person other than Contractor's employee had performed maintenance or otherwise repaired an item of Equipment.

b. The Contractor may be required to perform repair or maintenance on excluded items in paragraph a, above. An additional charge for such repair or maintenance shall be at the established contract rates in the Statement of Work, or if not stated, be at Contractor's applicable time and material rates and terms then in effect. The procedures for authorization of such maintenance may be the same as those for Remedial Maintenance outside of the Principle Period of Maintenance.

3 Responsibilities of the Contractor

a. This maintenance service includes the following and may be further described in the Statement of Work:

1) Scheduled preventive maintenance based upon the specific needs of the individual Machines as determined by manufacturer.

2) Unscheduled, on-call Remedial Maintenance. Such maintenance will include lubrication, adjustments, and replacement of maintenance parts deemed necessary by the Contractor.

b. Maintenance parts will be furnished by Contractor and will be new or equivalent to new in performance when used in these Machines. Replaced maintenance parts become the property of the Contractor.

c. Preventive maintenance shall be performed on a schedule which is mutually acceptable to the State and the Contractor, which is consistent with the State's operating requirements, and which is based upon the specific needs of the Equipment as determined by the manufacturer. Such schedules shall be in writing and shall specify the frequency and duration of preventive maintenance for the Equipment in the Statement of Work.

d. Remedial Maintenance shall be commenced promptly after notification by an authorized State representative that Equipment and/or software is inoperative.

4 Responsibilities of the State

a. The State shall provide an appropriate operating environment, including temperature, humidity, and electrical power, in accordance with the environmental requirements contained in the Contractor's published specifications for the Equipment listed on the Statement of Work.

b. Unless mutually agreed to by the Contractor and the State, State personnel will not perform maintenance or attempt repairs to the Equipment while such Equipment is governed by the terms of this Contract.

c. Subject to the State's security regulations, the Contractor shall have full and free access to the Machines to provide service thereon.

5 Maintenance Coverage

a. Period of Maintenance Coverage:

1) The State may select a period or periods of maintenance coverage, as stated in the Statement of Work, in accordance with the following:

(a) A minimum monthly maintenance charge entitles the State to maintenance coverage during the Principal Period of Maintenance.

(b) The State may select in lieu of the hours available for the minimum monthly maintenance charge, one or more of the optional periods of maintenance coverage for an additional charge as shown in the Statement of Work

2) The hours of maintenance coverage for a Machine on Monday through Friday shall be the same each day; and the hours on Saturday and Sunday shall be the same hours on all Saturdays or Sundays. All Machines covered under this Contract must have a simultaneous span of time within the selected periods of maintenance coverage, at least equal to the shortest period offered for any Machine in the system.

3) The State may change its selected Period of Maintenance Coverage by giving Contractor fifteen (15) days prior written notice.

b. Preventive Maintenance (scheduled)

Preventive maintenance can either be performed within or outside of the Principal Period of Maintenance (PPM). An additional charge may be made for Preventive Maintenance to be performed outside of the PPM, as set forth in the Statement of Work. No additional charge shall be made for Preventive Maintenance that is to be performed within the PPM.

c. Remedial Maintenance (unscheduled)

1) Remedial Maintenance shall be performed after notification by authorized State personnel that the Equipment is malfunctioning.

2) The Contractor shall provide the State with a designated point of contact and will initiate the Remedial Maintenance.

3) There shall be no additional maintenance charges for:

(a) Remedial Maintenance during the Period of Maintenance Coverage unless the Remedial Maintenance is due to the fault or negligence of the State.

(b) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has been commenced.

(c) Remedial Maintenance required because the scheduled preventive maintenance preceding the malfunction had not been performed, unless the State had failed to provide access to the Equipment.

(d) For time of delay beyond the PPM, Contractor shall continue to perform maintenance for the same amount of time outside the covered period without additional charge to the State.

(e) The first hour of work performed when Remedial Maintenance service is requested during the covered period of maintenance and the actual work is begun outside such period.

6 Maintenance Charges

a. The monthly maintenance charges described include all maintenance costs, and the State will pay no additional charges unless specifically set forth in this Contract. Maintenance rates shall be firm for the contract period subject to any maximum annual maintenance escalation as set forth in the Statement of Work.

b. Maintenance charges for fractions of a calendar month shall be computed at the rate of 1/30 of the applicable Total Monthly Maintenance Charge, for each day maintenance was provided.

c. There will be no charge for travel expense associated with maintenance service or programming service under this Contract except that actual travel expenses will be charged in those instances where the site at which the Machine is located is not normally accessible by private automobile or scheduled public transportation.

d. All maintenance and other service activities (including but not limited to activities relating to pre-installation planning, inspections, relocation of Machines, engineering changes and altered programming) which may be made available by Contractor to the State at no additional charge or at Contractor's then applicable time and material charges, in connection with any Machines or programming supplied under this Contract, shall be subject to the terms and conditions of this Contract, unless such activities are provided under another written agreement signed by the State and the Contractor.

7 Maintenance Credit for Inoperative Machines

The Contractor shall grant a proportionate maintenance credit on a Machine shown in the Statement of Work when the Machine is inoperative for consecutive scheduled work periods totaling 24 hours from the time the State notifies the Contractor the Machine was inoperative, provided (1) the Machine became inoperative through no fault of the State, and (2) the breakdown was attributable to Equipment Failure. The credits to be granted by the Contractor to the State shall be as reflected in the Statement of Work.

8 Engineering Changes

Engineering changes, determined applicable by Contractor, will be controlled and installed by Contractor on Equipment covered by this contract. The State may elect to have only mandatory changes, as determined by Contractor, installed on Machines so designated. A written notice of this election must be provided to the Contractor for confirmation. There shall be no charge for engineering changes made. Any Contractor-initiated change shall be installed at a time mutually agreeable to the State and the Contractor. Contractor reserves the right to charge, at its then current time and material rates, for additional service time and materials required due to noninstallation of applicable engineering changes after Contractor has made a reasonable effort to secure time to install such changes.

9 Relocation of Equipment

a. In the event the Equipment being maintained under the terms and conditions of this contract is moved to another location within the State of California, the Contractor shall continue to maintain the Equipment at the new location.

b. The charges of the Contractor to dismantle and pack the Equipment and installation at the new location shall be at the rates set forth in the Statement of Work. The State agrees to pay all costs incidental to any move, including costs for packing, crating, rigging, transportation, unpacking, uncrating, insurance, installation, and State and local sales tax, if any.

c. If Contractor is responsible for the move, no re-certification charges to confirm continued maintenance eligibility will be applicable. If the move is conducted by other than Contractor, State agrees to pay re-certification charges to Contractor at rates set forth in the Statement of Work.

10 Termination

Notwithstanding the Termination for Convenience provisions contained in the General Provisions, upon thirty (30) days' written notification to the Contractor, State may terminate, at no cost to the State, maintenance for all or any portion of the Equipment identified in the Statement of Work.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
SOFTWARE SPECIAL PROVISIONS

TO BE USED WITH THE GENERAL PROVISIONS – IT.
DEVELOP AND INCLUDE A STATEMENT OF WORK.

1 License Grant

a. Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to use the Software Products listed in Statement of Work of this Contract (hereinafter referred to as "Software Products").

b. State may use the Software Products in the conduct of its own business, and any division thereof.

c. The license granted above authorizes the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation. .

d. By prior written notice, the State may redesignate the CPU in which the Software Products are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.

2 Encryption/CPU ID Authorization Codes

a. When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the Contractor will provide all codes to the State with delivery of the Software.

b. In case of an inoperative CPU as defined in paragraph 1c. above, Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.

c. When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.

3 Fees and Charges

Upon acceptance of Software by State, in accordance with Paragraphs 5 herein and the Statement of Work, State will pay the license fee or recurring charge for the Software Products as set forth in Statement of Work. Charges will commence on the Acceptance Date as established in the Statement of Work. The Contractor shall render invoices for recurring charges or single charges in the month following the month in which the charges accrue.

4 Maintenance

The following terms and conditions are superseded and replaced by any alternate or inconsistent terms and conditions in the Statement of Work.

a. The correction of any residual errors in any Software Product that may be discovered by Contractor or by the State will be considered maintenance. Such maintenance will be performed by Contractor without additional charge for the duration of this contract. Suspected errors discovered by the State in the Software Products will be handled by the following procedures:

   1) A listing of the output and a copy of the identical input data in machine-readable form will be submitted to Contractor along with a completed copy of the appropriate Contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error condition was noted.

   2) Errors in the Software Product as verified by Contractor will be corrected by providing a new copy of said Software Product (or of the affected portions) in machine-readable form.

   3) The Contractor shall attempt to correct Software Product errors within a reasonable time.

b. Contractor will be available to assist the State in isolating and correcting error conditions caused by the State's particular Hardware or Operating System at rates in accordance with the Statement of Work.

c. If Contractor is called upon by State to correct an error caused by State's negligence, modification by State, State supplied data, Machine or operator failure, or due to any other cause not inherent in the original Software Products, Contractor reserves the right to charge State for such service on a time and material basis, or rates in accordance with the Statement of Work.

5 Acceptance of Software

a. **Commercial Software.** Acceptance of Commercial Software will be governed by the terms and conditions of the license agreement governing such Software.

b. **Custom Software.** "Custom Software" is Software that does not meet the definition of Commercial Software. Unless otherwise provided in the Statement of Work, acceptance procedures for Custom Software will be as set forth in this subsection (b). The State shall be deemed to have accepted each Custom Software Product (i) upon its issuance of written notice of such acceptance or (ii) sixty (60) days after the Installation Date, unless at or before that time the State gives Contractor written notice of rejection (collectively, "Acceptance"). No payment for Custom Software will be due before Acceptance thereof, except to the extent required by progress payment terms in the Statement of Work. Any notice of rejection will explain how the Custom Software Product fails to substantially conform to the functional and performance specifications of this Contract. Contractor will, upon receipt of such notice, investigate the reported deficiency and exercise reasonable best efforts to remedy it promptly. The State, in its sole discretion, will have the option to re-perform the acceptance test. If the Contractor is unable to remedy the deficiency within sixty (60) days of notice of rejection, the State shall have the option of accepting substitute Software, terminating for default the portion of the Contract that relates to such Custom Software, or terminating this Contract in its entirety for default.

6 Right To Copy or Modify

a. Any Software Product provided by Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any one time without prior written consent from Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.

b. The State agrees to keep any such copies and the original at a mutually designated State location, except that the State may transport or transmit a copy of the original of any Software Product to another State location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected.

c. The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material; provided that nothing in this Subsection (c) will be construed to contradict the terms of any separate applicable third party license agreement. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this Contract.

7 Future Releases

Unless otherwise specifically provided in this Contract, the Statement of Work, or an applicable purchase order, if improved versions of any Software Product are developed by Contractor, and are made available to other licensees, they will be made available to the State at the State's option at a price no greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
INFORMATION TECHNOLOGY
PERSONAL SERVICES SPECIAL PROVISIONS

TO BE USED WITH THE GENERAL PROVISIONS – IT.
DEVELOP AND INCLUDE A STATEMENT OF WORK.

1 Contract Type

a. Unless otherwise specified, the Statement of Work shall define and authorize work on a Fixed Price basis, with a guarantee of task completion.

b. To the extent that additional work not foreseen at the time this Contract is executed must be accomplished, Work Authorizations, as described in the Statement of Work, will be the means for defining and authorizing such work on a Labor Hour basis.

2 Personnel

a. Contractor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State.

b. The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Contract. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel, the parties agree to proceed with any equitable adjustment in schedule or other terms that may be affected thereby.

c. The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.

d. In recognition of the fact that Contractor personnel providing services under this Contract may perform similar services from time to time for others, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, providing that such use does not conflict with the performance of services under this Contract.

3 Responsibilities of the State

a. The State shall provide normal office working facilities and Equipment reasonably necessary for Contractor performance under this Contract. Any special requirements (e.g., reprographic services, computer time, key data entry, etc.) shall be identified in the Statement of Work.

b. The State is responsible for providing required information, data, Documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the Statement of Work.

c. The Contractor will not be responsible for any delay, cost increase, or other consequence to the extent that it is caused by the State's failure to fulfill responsibilities set forth herein. In the event of any claim for equitable adjustment to price, schedule, or both, the parties will negotiate in good faith regarding execution of a Contract amendment. Should the Contractor determine that a delay exists or is probable due to a failure of the State, the Contractor will promptly notify the State in writing.

4 Invoicing and Payment for Services

a. During the execution of each Milestone (as set forth in the Statement of Work) which involves the delivery to the State of identified Deliverables, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the Milestones, determined on the basis of the lesser of either:

   1) The number of Deliverables provided to the State divided by the total number of Deliverables required to be delivered to the State, less a ten percent (10%) withhold, less any amounts previously invoiced; or

   2) The number of work-hours expended by the Contractor in the performance of the task divided by the number of work hours scheduled for the task, less a ten percent (10%) withhold, less any amounts previously invoiced; provided that the Statement of Work may specify a withhold of more than ten percent (10%).

b. For those Milestones which do not involve delivery to the State of identified Deliverables, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Milestone, less a ten percent (10%) withhold, less any amount previously invoiced. Actual progress payment amounts for such Milestones must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.

c. Upon completion of a Milestone in accordance with the acceptance criteria set forth herein, the full charge for such Milestone, less amounts previously invoiced to the State, may be submitted for payment. Nothing herein will be construed to waive or contradict any requirement of California Public Contract Code Section 12112 or any similar or successor provision.

d. In the event that work not specified in the Statement of Work is performed with the State's written consent, invoices for services as reflected on Work Authorizations will be submitted to the State for payment. In no event shall the total amount paid for such work exceed ten percent (10%) of the value of personal services anticipated by this Contract.

e. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.

f. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the ceiling amount of the Contract, with the balance to be invoiced upon completion of the Contract, in accordance with the acceptance criteria set forth herein.

g. In the event of a conflict between the terms of this Section 5 and those of the Section of this Contract entitled "Acceptance of Software," the latter will govern.

5 Contractor Evaluation

In accordance with the California Government Code, Contractor performance evaluation will be completed within the guidelines of the State Contracting Manual, Section 9.08. The State contracting agency, upon Contract completion, will complete and forward the Contractor evaluation to the Department of General Services.