

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY
PURCHASING AUTHORITY PURCHASE ORDER
 STD. 65 (REV. 7/2003) CHSA - ELECTRONIC COPY (OSI REV. 8/2007)

CONTRACT REGISTRATION NUMBER	AGENCY ORDER NUMBER 7532136	AMENDMENT NUMBER
SUPPLIER: The numbers identified above MUST be shown on Invoice & Packing Slip.	DATE 12/23/2016	PAGE OF PAGE 1 37

S HEALTH AND HUMAN SERVICES AGENCY	B HEALTH AND HUMAN SERVICES AGENCY	AGENCY BILLING CODE 006551
H CWS NS OFFICE OF SYSTEMS INTEGRATION	I OFFICE OF SYSTEMS INTEGRATION	PURCHASING AUTHORITY NUMBER HSA-4000
L 2870 GATEWAY OAKS	L ATTN: ACCOUNTING OFFICE	LEVERAGED PROCUREMENT AGREEMENT NO. 3-16-70-3312A
P SACRAMENTO, CA 95833	L 2495 NATOMAS PARK DRIVE, SUITE 640	
ATTN: Robyn Sasaki / 7532136	SACRAMENTO, CA 95833	
T PHONE: (916) 891-3203	T PHONE: (916) 263-0730, FAX: (916) 263-3245	
O EMAIL: Robyn.Sasaki@osi.ca.gov	O EMAIL: ANDY.TRAN@OSI.CA.GOV	

TO **EngagePoint, Inc.**
 SUPPLIER **6700 North Andrews Avenue, Suite 210**
 ADDRESS **Fort Lauderdale, FL 33309**

(Type or Print Legibly)

INFORMATION TECHNOLOGY PROJECT IDENTIFICATION NUMBER	
AGENCY OR BUYER INFORMATION	AGENCY TRACKING/REQUISITION NUMBER (Optional) 32136
AGENCY NAME OSI	CONTACT NAME MIGUEL JAUREGUI
CONTACT E-MAIL ADDRESS MIGUEL.JAUREGUI@OSI.CA.GOV	
CONTACT PHONE NUMBER (916) 263-4263	CONTACT FAX NUMBER (916) 263-0727

SUPPLIER CONTACT NAME Pradeep Goel	SUPPLIER PHONE NUMBER (301) 388-7900	SUPPLIER FAX NUMBER NA	SUPPLIER E-MAIL ADDRESS Pradeep.Goel@EngagePoint.com
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PAYMENT TERMS NET 45	CERTIFICATION NUMBER	<input type="checkbox"/> CERTIFIED SMALL BUSINESS	<input type="checkbox"/> CERTIFIED MICROBUSINESS	EXPIRATION DATE	<input type="checkbox"/> CERTIFIED DVBE	EXPIRATION DATE
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REQUIRED DELIVERY DATE 1/17/17-6/30/18	SHIPPING INSTRUCTIONS <input checked="" type="checkbox"/>	F.O.B. Destination FRT. PPD <input type="checkbox"/>	F.O.B. Destination FRT. PPD/ADD <input type="checkbox"/>	F.O.B. ORIGIN <input type="checkbox"/>	CITY OF ORIGIN	STATE	ZIP CODE
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ITEM #	QTY	UNIT	COMMODITY CODE or PRODUCT CODE or SERVICES ID NUMBER	RECYCLED PRODUCT	PRODUCT OR SERVICES DESCRIPTION	UNIT PRICE	EXTENSION TOTAL
1					Scrum Master consulting services for the California Health and Human Services Agency Child Welfare New System project shall be conducted in accordance with the attached: CWS-NS Project General Provisions Exhibit A - Statement of Work Exhibit B - Budget Detail - Rate Sheet Exhibit D - Add, Delete, or Substitute Contractor Staff Form Exhibit E - OSI Special Provisions Exhibit F - Cloud Computing Services Special Provisions Request for Offer #32136 and EngagePoint, Inc.'s offer are incorporated by reference.		
2					FY 16-17 006551 / 5340420201 / 531-001-9745 = \$200,000.00 FY 17-18 006551 / 5340420201 / 531-001-9745 = \$63,108.50		
3					TERM: 01/17/17 - 06/30/18 OPTIONAL YEAR: 07/1/18 - 06/30/19		

A-1 <input type="checkbox"/> General Provisions are incorporated herein by reference to: <input type="checkbox"/> Form GSPD 401/Non IT Commodities (revision date <u>9/5/14</u>) OR <input type="checkbox"/> Form GSPD-401IT (revision date <u>9/5/14</u>) <input type="checkbox"/> ATTACHED OR <input type="checkbox"/> Published at website: www.dgs.ca.gov/pd	TAXABLE SUBTOTAL
TERMS AND A-2 <input checked="" type="checkbox"/> This order is issued under a Department of General Services (DGS) Leveraged Procurement Agreement (LPA). Terms and conditions set forth in that agreement (LPA number referenced in the block titled Leveraged Procurement Agreement No.) are incorporated herein by reference as if set forth in full text.	TAX RATE SALES TAX 8.50%

B <input checked="" type="checkbox"/> Agency Special Provisions are attached and titled Attachment E and Attachment F.	* NOTE: If there are variable charges for Installation, Shipping or Freight, or Other Non-Taxable Services, detail per line item and enter total here.	* INSTALLATION
C <input checked="" type="checkbox"/> Any other attachments, such as specifications, Statement of Work, or Information Technology Model Language Modules, are identified in the product or services description area or on continuation pages.		* SHIPPING/FREIGHT
PROCUREMENT METHOD <input type="checkbox"/> COMPETITIVE: Solicitation Number (if applicable)		* OTHER \$263,108.50

<input checked="" type="checkbox"/> LEVERAGED <input type="checkbox"/> DVBE/SMALL BUSINESS (C 14838.5(A)) <input type="checkbox"/> NON-COMPETITIVELY BID <input type="checkbox"/> EXEMPT	VERIFIED NO STATE SURPLUS AVAILABLE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> PAID BY CAL-CARD <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	GRAND TOTAL \$263,108.50
PROGRAM / CATEGORY (Code and Title) 0290	FUND TITLE CHHS Automation Fund	OBJECT OF EXPENDITURE (CODE AND TITLE) ACCOUNT CODE: 5340420201
ITEM 531-001-9745	CHAPTER 23	STATUTE 2016
	FISCAL YEAR 16/17	

CERTIFICATION AND APPROVAL OF EXECUTIVE OFFICER
 I HEREBY CERTIFY, on personal knowledge, that this order for purchasing the items specified above is issued in accordance with the procedure prescribed by law governing the purchase of such items for the State of California; and that all such legal requirements have been fully complied with.

AUTHORIZING NAME (Print or Type) JOHN BOULE	TITLE DIRECTOR	ADJUSTMENT INCREASING ENCUMBRANCES	ADJUSTMENT DECREASING ENCUMBRANCES
AUTHORIZING SIGNATURE 	DATE 1/18/17	CERTIFIED CORRECT (SIGNATURE) 	DATE 1/18/17
OFFICE OF SYSTEMS INTEGRATION, DIRECTOR N/A	DATE	HEALTH AND HUMAN SERVICES AGENCY, SECRETARY N/A	DATE

SUPPLIER INSTRUCTIONS

1. INVOICES: Unless otherwise specified, original invoices shall be sent to the "Bill To" address on the face of this document. Invoices shall be submitted in triplicate and shall include:

- Agency Order Number,
- Item number,
- Services or Product ID number,
- Unit price,
- Extended item price, and
- Invoice total amount

State sales tax, installation cost, shipping/freight costs, and/or other non-taxable costs shall be itemized separately and added to each invoice as applicable.

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

3. SHIPPING INSTRUCTIONS: When the Purchase Order or contract allows prepaid/add transportation charges, submit original receipted expense bill if freight charges are over \$50.00. All shipments shall be F.O.B. Destination Freight Prepaid unless otherwise specified. All orders **MUST** include a copy of the packing slip inside the carton **AND** a copy security attached to the **OUTSIDE** of the shipping carton.

CWS-NS GENERAL PROVISIONS – INFORMATION TECHNOLOGY

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.
- 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 company, 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 Hardware"** means Hardware 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) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - h) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - i) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
 - j) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - k) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
 - l) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
 - m) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
 - n) **"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.
 - o) **"Documentation"** means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
 - p) **"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).
 - q) **"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.
 - r) **"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.
 - s) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
 - t) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
 - u) **"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.
 - v) **"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.
 - w) **"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.
 - x) **"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.
 - y) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
 - z) **"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.
 - aa) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
 - bb) **"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.
 - cc) **"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.

- dd) **"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.
- 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) **"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.
- ll) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- nn) **"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.
- oo) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
- 2. CONTRACT FORMATION:**
- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
- 3. COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
- 4. SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
- 5. INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
- 6. APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- 7. COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this Contract falls within the scope of Government Code Section 11135, the 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, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- 9. ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, the State will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder.
- 10. WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
- 11. ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
- a) These General Provisions – Information Technology (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
 - b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
 - c) Other Special Provisions;
 - d) Statement of Work, including any specifications incorporated by reference herein;
 - e) Cost worksheets; 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 the 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) The 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, the 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:** The 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 the 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 the 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. The 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) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables 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. The Contractor will keep records evidencing inspections and their result, and will

make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of the Contractor's quality assurance System or other similar business practices related to performance of the Contract.

- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) Subject to subsection 16 (a) above, 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. 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.
- f) Unless otherwise specified in the Statement of Work, title to Equipment shall remain with 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.

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 bid 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 the Contractor's expense.

18. WARRANTY:

- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon Acceptance of all Deliverables or services required upon completion of this Contract and end one (1) year thereafter. The 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, the Contractor will warrant that it's 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, the 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) **[DELETED]**
- c) Unless otherwise specified in the Statement of Work:

- (i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
- (ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by the Contractor, or (C) misuse by the State.
- (iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the 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 the 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 the Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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

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

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 or the federal government. If funds to effect such continued payment are not appropriated, the 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) In addition to subsection a), payment pursuant to this Contract, whether in whole or in part, is subject to and contingent upon the continuing availability of federal and State funds for the purposes hereof. If such funds, or any part thereof, become unavailable, other than for non-appropriation, as reasonably determined by the State, or if the funds the State relied upon to establish or continue this Contract are withdrawn, reduced, or limited in any way, or if additional or modified conditions are placed on such funding, the State in addition to its other remedies may proceed with any of the following alone or in conjunction:
- (i) issue a Stop Work order for this Contract or the portion affected thereby;
 - (ii) issue a Work Authorization to the extent the State determines is necessary; or
 - (iii) five (5) days after providing notice, terminate this Contract, in whole or in part, under subsection a) above and make payment to Contractor as provided in subsection a) above as a Termination for Non-Appropriation of Funds.
- c) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
- d) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO THE 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) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
- d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
- e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, 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 or retained 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.
- f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

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 only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than five (5) days, unless the Statement of Work calls for a different 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 and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and 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 decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- h) 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.

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 the 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) **[DELETED]**
- 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 the Contractor or to make a claim against the Contractor therefore.

26. LIMITATION OF LIABILITY:

- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this 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 the Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations" (ii) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the Contractor's negligence or willful

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

- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services 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 or certified as new and warranted as new by the manufacturer; 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 without obligation of confidentiality, 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, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
- 36. DOCUMENTATION:**
- The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State to provide for optimal user experience in its use of the Equipment or Software provided hereunder. The Contractor shall provide such Documentation throughout the term of the Contract on an ongoing and iterative basis. 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.
 - If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on the Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation.
- 37. RIGHTS IN WORK PRODUCT:**
- 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 the Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be the property of the State, with the intention of providing an open-source license chosen by the State. The provisions of this sub-section a) may be revised in a Statement of Work.
- Software and other materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") that are not a functional part of any Deliverable do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with the Contractor's or its affiliates' ownership of Pre-Existing Materials.
 - Notwithstanding anything to the contrary in this Contract, the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, any software, modifications, and documentation provided by the Contractor hereunder.
 - 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.
 - 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. SOFTWARE LICENSE:** The Contractor shall use open source software wherever possible for all Software required for the development or use of Deliverables. The Contractor shall obtain written approval from the State Project Director or designee for all Software proposed by the Contractor prior to its use for performance under this Contract. Contract award to Contractor shall constitute initial approval of any Software proposed; provided, however, that the Contractor shall obtain final written approval, through the Change Request process, from the State Project Director or designee of any change to proposed Software after Contract award, prior to its use for performance under this Contract.
- The Contractor shall provide license information for all Software utilized by Contractor for performance under this Contract. The Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a prepaid, perpetual, irrevocable, royalty-free, non-exclusive, license to use all Software to be provided by the Contractor to the State pursuant to this Contract. The Contractor shall execute a written agreement naming the State as licensee memorializing the terms of this license in a form acceptable to the State.
- If any technical specification or documentation of the above-described Software provides implementation guidance, the Contractor shall comply with that guidance. If implementation guidance is not available, for any open source software, the Contractor shall attach or include the license within the work itself (e.g. code comments at the beginning of a file or contained in a license file within a software repository).
- The Contractor shall develop all Custom Software written pursuant to this Contract in the open from the first Calendar Day of Development.
- The State may use the Software in the conduct of its own business, and any division thereof
 - [DELETED]
 - [DELETED]
 - Approval of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.

39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

- a) The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for the State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to 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 in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

40. [DELETED]

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

42. [DELETED]**43. 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). 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 will be conditional upon the following:

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

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

- b) Should the Deliverables, 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 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 by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid the Contractor less any reasonable amount for use or damage.
- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - (i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
 - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
 - (iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or
 - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

44. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the management-level designee of the State. If the management-level designee of the State fails to render a final decision within fifteen (15) days after receipt of the Contractor's request for a final decision, it shall be deemed a final decision adverse to the Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction, or with the Victims Compensation Government Claims Board, 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.
- d) **[DELETED]**

- e) The date of decision in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

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

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

47. TIME IS OF THE ESSENCE:

Time is of the essence in this Contract.

[Original 47. DELETED]

- 48. 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.

49. [DELETED]**50. NONDISCRIMINATION CLAUSE:**

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

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

- 52. ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.

- 53. 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:
- the dangers of drug abuse in the workplace;
 - the person's or organization's policy of maintaining a drug-free workplace;
 - any available counseling, rehabilitation and employee assistance programs; and,
 - 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:
- will receive a copy of the company's drug-free policy statement; and,
 - will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 54. [DELETED]**
- 55. SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that they adhere to the 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) The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).
- 56. RECYCLED CONTENT REQUIREMENTS:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material (as defined in the Public Contract Code (PCC) Section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).
- 57. 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.
- 58. AMERICANS WITH DISABILITIES ACT:** The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- 59. ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
- 60. [DELETED]**
- 61. 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.
- 62. DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code Section 10295.3.
- 63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**
- a) If for this Contract the Contractor made a commitment to achieve small business participation, then the Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b) If for this Contract the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
- 64. LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).)

EXHIBIT A – STATEMENT OF WORK
Child Welfare Digital Services
Scrum Master Services

EngagePoint, Inc.
IT CMAS Number 3-16-70-3312A

1. PURPOSE – GENERAL

This Statement of Work (SOW) reflects the services to be provided by EngagePoint, Inc., hereinafter referred to as the "Contractor," for the California Health and Human Services Agency, Office of Systems Integration, hereinafter referred to as the "OSI" or the "State." This SOW is governed by and incorporates by reference the terms and conditions of the California Multiple Award Schedule (CMAS) number 3-16-70-2049C.

The Contractor is to provide one (1) qualified staff person for full-time in providing Scrum Master services to the Child Welfare Digital Services (CWDS) organization to oversee and manage the enhancements and modifications to the legacy California Department of Social Services' (CDSS) Community Care Licensing Division (CCLD) systems in support of the CWDS Child Welfare Services – New System (CWS-NS) Project.

2. TERM

- A. The term of this Agreement shall commence on January 17, 2017 or the date the Agreement is executed (Effective Date), whichever is later, and continue through June 30, 2018 (Core Term).
- B. The State reserves the option to extend the term of this Agreement at its sole discretion for an additional one (1) year period at the originally agreed-upon hourly rates specified in this Agreement.
- C. If the Contractor has not completed performance of the services set forth in this Agreement within the Core Term and unspent funds remain in the Agreement, the State reserves the option to extend the term of this Agreement, as necessary, and in compliance with the term requirements of the IT-CMAS, to receive complete performance by the Contractor for up to one (1) year at the originally agreed-upon hourly rates and at no addition to the total Agreement cost.
- D. The Contractor shall not be authorized to deliver goods or commence performance of services described in this Agreement prior to the Effective Date. Any delivery of goods or performance of services by the Contractor that is commenced prior to the Effective Date shall be considered gratuitous on the part of the Contractor.

3. WORK LOCATION

The Contractor is required to perform all services under this Agreement onsite at the CDSS offices or, with state's prior approval, remotely at another location. The CDSS offices are located in Sacramento, CA.

4. COST

The total cost of this Agreement is \$438,514.17, which includes the Core Term in the amount of \$263,108.50 and the Option Term in the amount of \$175,405.97. Cost details are located in Exhibit B Budget Detail – Rate Sheet. The costs associated with each Fiscal Year are approximate and may be redirected between fiscal years by the state without the requirement of an Agreement amendment.

5. SCOPE OF SERVICES

The Contractor shall provide scrum master services, as described below, for the purposes of managing a team of developers that will be making enhancements to CCLD systems (e.g., LIS, FAS, LAARS, LCTS) in support of the Certification, Approval, and Licensing Services (CALs) digital service.

A. Primary Tasks

- Task - 1. Task Management
- Task - 2. Scrum Activities
- Task - 3. Unanticipated Tasks

B. Detailed Tasks

Task No.	Task Description
Task 1 – Task Management	
1.1	Task Accomplishment Plan (TAP) Prepare and deliver a comprehensive TAP. A TAP is a spending plan that describes the planned monthly expenditures for the life of the Agreement and is the first deliverable of the Agreement.
1.2	TAP Updates The TAP must be revised and resubmitted for approval each time there is a change to the cost or spending plan.
1.3	Monthly Status Report (MSR) Prepare and submit written MSRs. The MSR includes, but is not limited to, the following: <ul style="list-style-type: none"> • Schedule updates on in-progress tasks accomplished during the reporting period. • In-progress tasks. • Tasks to be accomplished in the coming month. • Identification and management of risks and issues. • Corrective action plan to correct Contractor performance issues. • Actual contract expenditures versus planned expenditures. • Lessons learned.
1.4	Final Report At the end of the contract, prepare and deliver a final report documenting the SOW results. The Final Report shall include: <ul style="list-style-type: none"> • Summary of all SOW activities. • Deliverables. • Milestone accomplishments. • Lessons Learned.

Task No.	Task Description
	<ul style="list-style-type: none"> • Actual contract expenditures versus planned expenditures.
Task 2 – Scrum Activities	
2.1	The Contractor shall produce and receive agreement from the State Project Manager for all Sprint Zero artifacts prior to commencing delivery sprints.
2.2	The Contractor shall produce and deliver a User Story definition and acceptance criteria format.
2.3	<p>The Contractor shall produce and deliver a sprint-level Definition of Done that includes the following concepts:</p> <ol style="list-style-type: none"> a. Code produced (all 'to do' items in code completed) b. Code commented, checked in and run against current mainline version in source control c. Peer reviewed (or produced with pair programming) and meeting development standards d. Builds without errors e. Unit tests written and passing f. Deployed to system test environment and passed system tests g. Passed Product Owner acceptance testing h. Any build, deployment, configuration changes implemented, documented, and communicated i. Relevant documentation produced/updated (e.g., user needs, user stories, sketches, wireframes, clickable prototypes, API descriptions) j. Remaining hours for task set to zero and task closed
2.4	<p>The Contractor shall produce and deliver a Release-level Definition of Done that includes the following concepts:</p> <ol style="list-style-type: none"> a. Release Notes prepared b. Deployed to a higher order environment (e.g., staging) and integration, performance and load tests run c. Relevant documentation/diagrams produced and/or updated
2.5	The Contractor shall use an agile sprint planning and user story approval process for each Sprint. The agile sprint planning process shall include the following activities: product backlog refinement, user story creation, estimation, and commitment.
2.6	The Contractor shall demonstrate that each user story has met the Definition of Done so that the Product Owner can approve each user story as it is completed.
2.7	The Contractor shall utilize scrum-based agile processes (e.g., user story development, product backlog maintenance, user story acceptance by Product Owner as representative of user, sprint retrospective, and product review).
2.8	The Contractor shall revise sprint zero artifacts during each sprint retrospective process, as appropriate.
2.9	The Contractor shall use an open source scrum tool to manage the product backlog, user story acceptance, and maintain a scrum board.
2.10	The Contractor shall provide a report at the conclusion of each sprint that documents the planned user stories, accepted user stories, open impediments, and technical debt.

Task No.	Task Description
Task 3 – Unanticipated Tasks	
3.1	The Agreement value may include up to ten (10) percent of the total Agreement amount (excluding travel) for unanticipated tasks. These funds may be used at the State's discretion. Unanticipated tasks will be contracted for on an as-needed basis and shall be optional throughout the term of the Agreement. Work for unanticipated tasks will be assigned and agreed to in writing by the Contractor and the state via a work authorization and a revised TAP before the work can commence. The rates for unanticipated tasks must not exceed the original Offeror's hourly rates for unanticipated tasks and the total expenditures for unanticipated tasks shall not exceed the total amount set aside for unanticipated tasks.

6. DELIVERABLES AND DUE DATES

The deliverables and due dates for this Agreement are as follows.

Task	Deliverable	Due Date
Task Group 1.0 – Task Management		
Task 1.1	TAP	Ten (10) calendar days after Agreement start date.
Task 1.2	TAP Updates	As needed.
Task 1.3	MSR	Monthly, by the fifth business day of each month.
Task 1.4	Final Report	30 calendar days prior to the end of the Agreement.
Task Group 2.0 – Scrum Activities		
Task 2.2	User Story definition and acceptance criteria	As Needed.
Task 2.3	Sprint-level Definition of Done	As Needed.
Task 2.4	Release-level Definition of Done	As Needed.
Task 2.10	Sprint Status Report - Identifies the planned user stories, accepted user stories, open impediments, and newly accumulated or resolved technical debt.	Conclusion of each sprint
Task Group 3.0 – Unanticipated Tasks		
Task 3.1	Ad hoc issue papers, briefings, presentations, analyses, reports, and lessons learned reports.	As needed.

A. Deliverable Format

- 1) All deliverables shall be provided in a format compatible with the OSI Project Office standard applications (currently, Microsoft Office 2013). In all cases, the Contractor shall verify application compatibility with the State Contract Manager prior to creation or delivery of any electronic documentation. Any deviations to these standards shall be approved by the OSI Information Technology Office (ITO) and Information Security Office (ISO).
- 2) Hardcopy deliverables shall be on standard 8 ½" x 11" paper. Electronic versions shall be stored in a State designated central repository and remain the sole property of the State. The delivery media shall be compatible with the State storage devices.

- 3) If the State does not accept the deliverable(s) or services in the executed Agreement, payment for the deliverable(s)/services shall be withheld by the State and the Contractor will be notified. The Contractor shall take timely and appropriate measures to correct or remediate the reason(s) for non-acceptance and demonstrate to the State that the Contractor has successfully completed the scheduled work for each deliverable/service before payment is made.

B. Media and Number of Copies

One (1) electronic copy of the deliverable is to be submitted. Submit electronic copy to:

Child Welfare Services – New System Project
Email address: Robyn.Sasaki@osi.ca.gov

7. CONTRACTOR STAFF

For the duration of the Agreement term, the Contractor staff shall meet all MQs as described herein.

A. Mandatory Qualifications

The Contractor shall provide one (1) experienced resource that meets **all** of the MQs as follows: All experience used to meet the MQs shall have been where the staff had primary responsibility.

MQ#	Scrum Master - Mandatory Qualifications (MQs)
1.	The Scrum Master shall have been involved in a minimum of two software development projects using Scrum.
2.	The Scrum Master shall have a minimum of three (3) years of full-time equivalent (FTE) experience within the last ten (10) years in Scrum.
3.	The Scrum Master shall hold an industry certification related to Scrum.

B. Staff and Rates

The staff shall perform the tasks described in this SOW, at the rates indicated in the Agreement.

- 1) Given the size, scope, and complexity of this work, it is of utmost importance that the Contractor shall be responsible for monitoring the monthly hours billed to ensure the staff effectively meet the needs of the State.
- 2) Changes in cost estimates that do not alter the total cost of this SOW will be conveyed to the State in writing. The rationale for the change shall be included. The State shall approve any change to the cost estimates in writing. The identified staff will perform the tasks described and at the rates indicated in this Agreement. The Contractor shall identify its staffs by name and hourly rate.
- 3) The assigned staff will perform the tasks described in this SOW, at the rates indicated in Exhibit B Budget Detail – Rate Sheet. The Contractor shall identify each staff by name, labor category, and hourly rate.

C. Reassignment of Staff

- 1) The Contractor shall not add and/or substitute staff without the prior written consent of the State, which consent shall not be unreasonably withheld. The Contractor shall make every reasonable effort to provide suitable substitute staff. The additional and/or substitute staff shall meet all the requirements and shall be approved in writing by the State prior to substitute staff beginning work.
- 2) Additional and/or substitute staff shall not automatically receive the hourly rate of the staff or positions being replaced. The State and the Contractor shall negotiate the hourly rate of any additional and/or substitute staff to the Agreement. The hourly rate negotiated shall be dependent, in part, upon the experience and individual skills of the proposed additional and/or substitute staff. The negotiated hourly rate shall not exceed the hourly rate for that position as set forth in the Agreement.
- 3) The State Project Director or designee may request that Contractor replace a staff member and shall advise Contractor in writing of the basis for the request. In such event, Contractor shall provide a proposed replacement candidate's resume within seven (7) Calendar Days of the date the requested replacement is made by the State.
- 4) If substituting staff is acceptable by the State and permissible by this Agreement:
 - a) The Contractor shall submit:
 - Exhibit D, Add, Delete or Substitute Staff Request Form;
 - RFO Attachment II-C, Staff Resume Table;
 - RFO Attachment II-E, Staff Reference Forms from two of the references listed on the Staff Resume Table to validate the experience listed; and
 - RFO Attachment II-G, CMAS/GSA Classification Qualifications table with any required degrees.

The request and the completed documents shall be provided to the State Contract Manager for review and approval. The State will provide a disposition of the request and related materials within ten (10) business days after receipt of these documents. However, addition of staff may require an amendment to this Agreement.
 - b) The Contractor and State Contract Manager shall negotiate a staff start time which is agreeable to both Parties.
- 5) If the addition, substitution and/or deletion does not increase the total cost of the Agreement, an amendment may not be required to make this change to the Agreement.

8. PAYMENTS AND INVOICING

Payment for services performed under this Agreement shall be made in accordance with the State of California's Prompt Payment Act (California Government Code Section 927, et seq.).

A. Submission of Invoices

- 1) Invoices shall be submitted monthly, in arrears, not later than 30 days after the end of the billing period. All invoices shall be through the Financial Information System for California (Fi\$Cal) or for transactions approved for submission outside of Fi\$Cal, hard copies must be submitted in triplicate. Invoices must detail the labor category hours (incremental hours shall be billed to the nearest 15 or 30 minutes) with hourly rate(s), and must include the following:

- a) Transmittal with the Agreement number;
 - b) A certification statement signed by a company official, attesting to the accuracy of the invoice data; and
 - c) Copies of signed timesheet(s).
- 2) Invoices shall be submitted directly to:

Office of Systems Integration
Attn: Accounting Office
2525 Natomas Park Drive, Suite 200
Sacramento, CA 95833

- 3) The Contactor staff shall not be reimbursed for travel to and from the CDSS/CWS-NS Project Offices.

9. POINTS OF CONTACT

Contractor – Contract Manager:	
Name, Title:	Pradeep Goel
Address:	3901 Calverton Blvd, Suite 110, Calverton, MD 20705
Phone Number:	(301) 388-7900
Fax Number:	(954) 315-0903
E-mail address:	Pradeep.Goel@EngagePoint.com

State – Contract Manager:	
Name, Title:	Robyn Sasaki, State Contract Manager
Address:	2870 Gateway Oaks, Sacramento, CA 95833
Phone Number:	(916) 891-3203
E-mail address:	Robyn.Sasaki@osi.ca.gov

10. STATE FURNISHED ITEMS

The following items shall be provided by the State to support this effort and all policies and procedures regarding access to and the use of the state facilities shall be applicable:

- A. Office space for the duration of the Agreement, including a desk, chair, desk phone, computer workstation (desktop or laptop), and Internet connection.
- B. Access to office building and office suite.
- C. All policies and procedures regarding access to and the use of the state facilities are applicable.

11. RESPONSIBILITIES OF PARTIES

A. The Contractor Responsibilities

1. The Contractor shall require its employees and or subcontractors to agree to and comply with the CDSS Confidentiality and Security Requirements.
2. All work products and deliverables shall be stored on the State document repository (e.g. Worksite Web or SharePoint) in a format compatible with the OSI document standards. The most current version of all work products and deliverables shall be continuously available for State review at all times.

3. The Contractor shall receive all project communications and has the authority to act on all aspects of the services. The Contractor will review the Agreement and associated Agreement documents with the State Contract Manager to ensure understanding of the responsibilities of both parties.
4. Prior to expiration of the Agreement, the Contractor shall return all State property, including security badges to the State Contract Manager.
5. As part of this Agreement, the Contractor (data custodian) shall be responsible for all costs incurred by the State (data owner) due to any and every security incident resulting from the Contractor's failure to perform or negligent acts of its staff, and resulting in an unauthorized disclosure, release, access, review, or destruction; or loss, theft or misuse of an information asset. : The Contractor shall notify the OSI immediately by telephone call plus email or fax upon the discovery of breach of security of Personal, Sensitive, or Confidential Information (PSCI) in computerized form if the PSCI was, or is reasonably believed to have been, acquired by an unauthorized person, or within two hours by email of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PSCI in violation of this Agreement, this provision, the law, or potential loss of confidential data affecting this Agreement. If the State determines that notice to the individual(s) whose data has been lost or breached is appropriate, the Contractor will bear any and all costs associated with the notice or any mitigation selected by the State. These costs include, but are not limited to, consultant time, material costs, postage, media announcements, and other identifiable costs associated with the breach or loss of data.
6. The Contractor shall comply with all applicable State policies including, but not limited to (State Administrative Manual 5300-5399, State Information Management Manual procedures, and the OSI's security policies including, but not limited to, its Acceptable Use Policy, Confidentiality and Non-Disclosure Policy, CHHSA Security Policies and the OSI Security templates. (See Attachment III-B, Special Provisions.)
7. All the Contractor-owned or managed laptops, Ultra books, net books, tablets, Smart phones and similar devices, if allowed by the State Contract Manager, shall be encrypted using commercial third-party encryption software. The encryption software shall meet the level standards of National Institute of Standards and Technology (NIST), Federal Information Processing Standards (FIPS) Publication 140-2, Security Requirements for Cryptographic Modules. Additionally, anti-virus and anti-malware software shall be used and kept up to date along with software patches and supported versions. The OSI Information Security Office shall have the right to audit the Contractor-owned devices connected to State networks.
8. If the Contractor use of removable media storage devices (i.e. Universal Serial Bus [USB] thumb drives, disk tapes, micro SD, SD cards, CD/DVD, etc.) is allowed by the State Contract Manager, all electronic files stored on the removable media storage device used to store State information shall be encrypted using a commercial third-party encryption software. The encryption software shall meet the standards set forth in NIST FIPS 140-2. Information stored on approved removable storage devices shall not be copied to any unencrypted computer (i.e., desktop or laptop) not connected to State network. Any personally identifiable information, personal health information, or other confidential information shall be encrypted when stored on State network file shares or document repositories.

B. State Responsibilities

1. The State Contract Manager shall receive all project communications and has the authority to act on all aspects of the services. The State Contract Manager will review the Agreement and associated Agreement documents with the Contractor to ensure understanding of the responsibilities of both parties.

2. The State will provide timely review and approval of the information and documentation provided in order for the Contractor to perform its obligations under this Agreement.

12. PROBLEM ESCALATION

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

- A. First level, the CWS-NS Project Director.
- B. Second level, the CWDS Deputy Director.

13. OSI SPECIAL PROVISIONS (PRIVACY AND SECURITY CONTROLS)

The OSI Special Provisions shall include any special directions or project specific requirements that are not otherwise stated explicitly in the Agreement. Refer to Exhibit E, Special Provisions (Privacy and Security Controls).

14. SUBCONTRACTORS

The Contractor may, with the approval of the OSI, enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. Any such approval may be rescinded at the OSI's discretion. The Contractor is responsible and liable for the proper performance and quality of any work performed by any, and all, subcontractors. The OSI reserves the right to reject or refuse admission to any subcontractor staff whose performance, in the reasonable judgment of the OSI, is deemed to be substandard. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the OSI for any breach in performance of the Contractor's duties.

The Contractor warrants and agrees that any subcontract resulting from its performance under the terms and conditions of the Agreement and the associated leveraged procurement agreement (LPA) shall include a provision that the subcontractor shall abide by the terms and conditions of the Agreement and the associated LPA, as well as all other applicable federal and state laws, rules, and regulations pertinent hereto that have been or may hereafter be established. Also, the Contractor warrants and agrees that all subcontracts shall include a provision that the subcontractor shall indemnify and hold harmless the OSI to the same extent as provided in the LPA. Any Agreement between the Contractor and its subcontractors shall require the subcontractors to adhere to the same performance standards and other standards required of the Contractor. When a subcontractor ultimately performs all of the services that the Contractor has agreed to provide and the prime Contractor only handles the invoicing of expenditures, then the prime Contractor's role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a CUF. It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs. Contractors may not subcontract 100 percent of the tasks of this SOW.

15. CALIFORNIA DEPARTMENT OF SOCIAL SERVICES BACKGROUND CHECK

In addition to the background check requirements set forth in the OSI Special Provisions (Privacy and Security Controls), prior to the commencement of work, Contractor staff having access to the System shall be required to undergo fingerprinting and a criminal records check from the Department of Justice and Federal Bureau of Investigation, at the direction of the California Department of Social Services. The State reserves the right to require that the Contractor replace staff possessing a felony conviction that:

- A. occurred within the last seven (7) years from the date of performing work under this Contract;
- B. was for a crime involving fraud, dishonesty, deceit, or other crime that has a reasonable nexus to the functions or duties of the position, or the information or data to which the staff will have access; and
- C. was not judicially dismissed or ordered sealed, expunged, or statutorily eradicated.

**EXHIBIT B
BUDGET DETAIL – RATE SHEET**

The hourly rates provide in the Rate Sheet below shall extend to the work performed and contracted in the future years. Hourly rates will not be adjusted and are required to remain at the same rate throughout the original term and through any optional years of service for this Agreement.

Core Term through June 30, 2018

Vendor/ Contractor Name:		EngagePoint, Inc.				
Proposed Staff's Name	Proposed Staff Person's Role	CMAS/GSA Classification	Subcontracted Staff Person? (Yes or No)	Hourly Rate (Remains the same for entire Agreement term)	Number of Hours (Core Term: January 17, 2017 through June 30, 2018) total hours not to exceed 3,006 for the proposed staff	Original Engagement Subtotals (Multiply the Hourly Rate by the Number of Hours)
Sukhdeep Singh	Scrum Master	Business Analyst Level III	No	\$79.57	3,006	\$ 239,189.55
Sub-total						\$ 239,189.55
Unanticipated Tasks (Multiply Subtotal Cost by 0.10) - 10% of Subtotal Cost (above):						\$ 23,918.95
(Add Subtotal Cost + Unanticipated Tasks) TOTAL COST:						\$ 263,108.50

Option Year: July 1, 2018 through June 30, 2019

Proposed Staff's Name	Proposed Staff Person's Role	CMAS/GSA Classification	Subcontracted Staff Person? (Yes or No)	Hourly Rate (Remains the same for entire Agreement term)	Number of Hours (Option Term: July 1, 2018 through June 30, 2019) total hours not to exceed 2,004 for the proposed staff	Original Engagement Subtotals (Multiply the Hourly Rate by the Number of Hours)
Sukhdeep Singh	Scrum Master	Business Analyst Level III	No	\$79.57	2,004	\$ 159,459.70
Sub-total Cost						\$ 159,459.70
Unanticipated Tasks (Multiply Subtotal Cost by 0.10) - 10% of Subtotal Cost (above):						\$ 15,945.97
(Add Subtotal Cost + Unanticipated Tasks) TOTAL COST OPTION YEAR:						\$ 175,405.67
TOTAL AGREEMENT Core plus Option						\$ 438,514.17



EXHIBIT D ADD, DELETE OR SUBSTITUTE CONTRACTOR STAFF REQUEST FORM

Contractor Name		Contractor Phone No.		Date
CMAS Number		Project Name/Agreement Number		
Staff To Be Added	Staff Replaced	Proposed Effective Date	Classification	Resume Meets MQs and CMAS requirements
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
Staff To Be Deleted	Date Effective	Reason		
		Reason:		
		Reason:		
		Reason:		
		Reason:		
Comments/Special Instructions Please note: The changes as indicated in this request are being made at no additional cost to the STATE. – Sample (Include this language, if applicable).				
STATE Acceptance		Contractor Acceptance		
Division/Project		Contractor (If other than an individual, state whether a corporation, partnership, etc.)		
By (Authorized Signature)		By (Authorized Signature)		
Printed Name of Person Signing		Printed Name of Person Signing		
Title		Title		

EXHIBIT E OSI SPECIAL PROVISIONS (PRIVACY AND SECURITY CONTROLS)

Special Provisions shall include any special directions or project specific requirements that are not otherwise stated explicitly in the Agreement. Privacy and Security Control provisions address the Contractor requirements based upon access and usage of the OSI information and equipment.

1. **Definitions.** For purposes of this Attachment, the following definitions shall apply:
 - a. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6270) or other applicable state or federal laws.
 - b. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6270) or other applicable state or federal laws.
 - c. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
 - d. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. **It is the OSI's policy to consider all information about individuals private unless such information is determined to be a public record.** This information shall be protected from inappropriate access, use, or disclosure and shall be made accessible to data subjects upon request. Personal Information includes the following:
Notice-triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. See Civil Code sections 1798.29 and 1798.82.
2. **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
3. The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the State Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
5. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than the OSI without prior written authorization from the State Contract Manager, except if disclosure is required by State or Federal law.
6. The Contractor shall observe the following requirements:
 - a. **Requirements and Guidelines.**
 - 1) The Contractor shall classify their data pursuant to the California State Administrative Manual (SAM) 5305.5.
 - 2) The Contractor shall comply with the following:
 - i. The California Information Practices Act (Civil Code sections 1798 et seq.);
 - ii. Security provisions of the SAM (Chapters 5100 and 5300) and the California Statewide Information Management Manual (SIMM) (Sections 58-C, 58-D, 66-B, 5305-A, 5310-A and B, 5325-A and B, 5330-A, B and C, 5340-A, B and C, 5360B);
 - iii. Privacy provisions of the Federal Privacy Act of 1974;

- iv. California Penal Code, section 11142; and
 - v. California Welfare and Institutions Code, section 10850(b).
- 3) The Contractor shall comply with the information security and privacy controls set forth in the NIST Special Publication (SP); including but not limited to NIST 800-53R4 (tailored to the OSI Requirements for a Low or Moderate Level Of Concern).
- b. **Safeguards.** The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of the OSI. The Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the appropriate levels of security (confidentiality, integrity, and availability) for the data based on data categorization and classification and FIPS Publication 199 protection levels, including at a minimum the following safeguards:
- 1) **Personnel Controls**
 - i. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of the OSI, or access or disclose PSCI shall complete information privacy and security training, at least annually, at the Contractor's expense. Each workforce member who receives information privacy and security training shall sign a certification, indicating the member's name and the date on which the training was completed. These certifications shall be retained for a period of three (3) years following agreement termination.
 - ii. **Employee Discipline.** Appropriate sanctions shall be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
 - iii. **Confidentiality Statement.** All persons that will be working with PSCI shall sign a confidentiality statement. The statement shall include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement shall be signed by the workforce member prior to access to PSCI. The statement shall be renewed annually. The Contractor shall retain each person's written confidentiality statement for the OSI inspection for a period of three (3) years following agreement termination.
 - iv. **Background Checks.** Prior to the commencement of work by Contractor's staff, the Contractor shall: (1) conduct a thorough background check of each proposed staff, (2) evaluate the results, and (3) certify in writing to the State Project Director and State Contract Manager within 15 business days of Contract execution (or immediately following the addition of new staff) that there is no indication that the proposed staff may present a risk to the security or integrity of the State's information technology systems or the data residing therein. The Contractor shall retain each staff's background check documentation for a period of three (3) years following agreement termination. If, during the term of the Contract, the Contractor becomes aware of new or previously unknown information which may impact the staff's suitability for the position, the Contractor shall immediately notify the State Project Director and State Contract Manager.
 - 2) **Technical Security Controls**
 - i. **Workstation/Laptop Encryption.** All workstations and laptops that process and/or store PSCI shall be encrypted with an OSI approved solution (i.e. FIPS 140-2). The encryption solution shall be full disk.
 - ii. **Minimum Necessary.** Only the minimum necessary amount of PSCI may be downloaded to a laptop or hard drive when absolutely necessary for current business purposes.

- iii. **Removable Media Devices.** All electronic files that contain PSCI data shall be encrypted when stored on any removable media type device (i.e. USB thumb drives, floppies, CD/DVD, etc.) with the OSI approved solution (i.e. FIPS 140-2).
 - iv. **Email Security.** All emails that include PSCI shall be sent in an encrypted method using an OSI approved solution.
 - v. **Antivirus Software.** All workstations, laptops, other devices, and systems that process and/or store PSCI shall have a commercial third-party anti-virus software solution with a minimum daily automatic update.
 - vi. **Patch Management.** All workstations, laptops, other devices, and systems that process and/or store PSCI shall have security patches applied and up-to-date.
 - vii. **User IDs and Password Controls.** All users shall be issued a unique user name for accessing PSCI. Passwords shall not to be shared. Passwords shall adhere to the following:
 - Be at least eight characters
 - Be a non-dictionary word
 - Not be stored in readable format on the computer
 - Be changed every 90 days
 - Be changed if revealed or compromisedPassword shall be composed of characters from at least three of the following four groups from the standard keyboard:
 - Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
 - viii. **Data Destruction.** The Contractor shall meet the standards as set forth in NIST 800-88 for destruction of data. All PSCI shall be wiped from systems when the data is no longer necessary. The wipe method shall conform to Department of Defense standards for data destruction. If data was Personally Identifiable Information (PII) or Protected Health Information (PHI), then the Gutmann 35 pass wipe is required. All PSCI on removable media shall be returned to the OSI when the data is no longer necessary. Once data has been destroyed and logged, the State Contract Manager shall be notified and provided logs for auditing and retention period.
 - ix. **Remote Access.** Any remote access to PSCI shall be executed over an encrypted method approved by the OSI. All remote access shall be limited to minimum necessary and least privilege principles. Remote Access shall meet security standards as defined in SAM 5360.1 and SIMM 5360-A.
- 3) **System Security Controls**
- i. **System Timeout.** The System shall provide an automatic timeout after no more than 20 minutes of inactivity.
 - ii. **Warning Banners.** All Systems containing PSCI shall display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. Users shall be directed to log off the system if they do not agree with these requirements.
 - iii. **System Logging.** The System shall log successes and failures of user authentication at all layers. The System shall log all system administrator/developer access and changes if the system is processing and/or storing PSCI. The System shall log all user transactions at the database layer if processing and/or storing PSCI.
 - iv. **Access Controls.** The System shall use role based access controls for all user authentications, enforcing the principle of least privilege.

- v. **Transmission Encryption.** Confidential, sensitive or personal information shall be encrypted in accordance with SAM 5350.1 and SIMM 5305-A. All data transmissions shall be encrypted end-to-end using the OSI approved solution, when transmitting PSCI. Contact the Procurement Official listed on the first page of this RFO to obtain a copy of the CHHS Security Policy – Data Encryption.
 - vi. **Host Based Intrusion Detection.** All systems that are accessible via the Internet or store PSCI shall actively use a comprehensive third-party real-time host based intrusion detection and prevention solution.
- 4) **System Security Review**
- i. An independent security risk assessment shall be required when the Contractor is permitted access to the OSI data and systems with PCSI.
 - ii. The Contractor shall obtain independent security risk assessment consultants to meet the SAM 5305.7 and NIST standards (800-30, 800-37, 800-39, and 800-53) as well as OWASP standards including but not limited to the Development and Testing Guidelines for web services. Assessor independence provides a degree of impartiality to the monitoring process. To achieve such impartiality, assessors should not:
 - Create a mutual or conflicting interest with the organizations where the assessments are being conducted.
 - Self-assess their work.
 - Act as management or employees of the organizations they are serving.
 - Place themselves in advocacy positions for the organizations
 - Have an affiliation, either personal or business, with the Contractor or subcontractors working under agreement with the OSI.
 - iii. The OSI shall have approval of the independent risk assessment consultants that will perform the security risk assessments prior to the Contractor hiring the firm.
 - iv. The independent security risk assessment firm shall have references from comparable State agencies (comparable system complexity as the OSI).
 - v. The Contractor shall have independent security risk assessment consultants conduct security risk assessments every two years of the OSI Project Systems (e.g. CWS/CMS, CWS-NS, CMIPS II, and SFIS) and Project Support Systems (.e.g. shared drives, web sites, web applications, Clarity, SharePoint, County Access Data, and SARS).
 - vi. The Contractor shall have the security risk assessment provide a gap analysis using the latest version of the Low or Moderate Tailored Baseline NIST 800-53 security controls.
 - vii. The State Project Manager or designee and the OSI ISO shall have full access to the results of the independent risk assessment.
 - viii. The Contractor shall provide to the OSI a Security Assessment Report created by the independent security assessors as defined in NIST 800-53. This report shall contain, as a minimum, identification and score of risks and provide recommended mitigation solutions.
- 5) **Audit Controls**
- i. **Log Reviews.** All systems processing and/or storing PSCI shall have a routine procedure in place to review system logs for unauthorized access.
 - ii. **Change Control.** All systems processing and/or storing PSCI shall have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity, and availability of data.
- 6) **Business Continuity / Disaster Recovery Controls**
- i. **Emergency Mode Operation Plan.** The Contractor shall establish a documented plan to enable continuation of critical business processes and protection of the security of electronic PSCI in the

event of an emergency. An emergency is an interruption of business operations for more than 24 hours.

- ii. **Data Backup Plan.** The Contractor shall have established documented procedures to backup PSCI to maintain retrievable exact copies of PSCI. The plan shall include a regular schedule for making backups, storing backup's offsite, an inventory of backup media, and the amount of time to restore PSCI should it be lost. At a minimum, the schedule shall be a weekly full backup and monthly offsite storage of data.

7) Paper Document Controls

- i. **Supervision of Data.** PSCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, or desk. Unattended means that information is not being observed by an employee authorized to access the information. PSCI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- ii. **Escorting Visitors.** Visitors to areas where PSCI is contained shall be escorted and PSCI shall be kept out of sight while visitors are in the area.
- iii. **Confidential Destruction.** The Contractor shall meet the standards as set forth in NIST 800-88 for destruction of data. PSCI shall be disposed of through confidential means, such as cross cut shredding and pulverizing.
- iv. **Removal of Data.** PSCI shall not be removed from the premises of the Contractor except with express written permission of the OSI.
- v. **Faxing.** Faxes containing PSCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending. The Contractor fax machines shall be located in secure areas, per SAM 5365.1.
- vi. **Mailing.** PSCI shall only be mailed using secure methods. Large volume mailings of PSCI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail shall be encrypted with the OSI approved solution.

8) Physical Transport of Paper/Electronic Data/Media

- i. a. There are specific precautions that shall be taken when transporting electronic data/media. The data/media shall be wrapped or sealed in an envelope or pouch in such a manner that the contents cannot be identified during the transportation process. The outside of the container shall clearly identify the addressee, which includes the name, address and telephone number where he/she can be reached. The Contractor shall ensure that transported data/media be delivered only to the appropriate individuals who are authorized to receive the information. This can be accomplished by implementing a tracking method by which the sender and the recipient can sign and verify delivery and receipt of the information.
 - ii. b. The Contractor shall ensure that there is a tracking process in place for the transportation of data/media, whether in paper records or physical media devices, and that accountability be strongly emphasized with the establishment of this process. Existing tracking processes such as those associated with FedEx, UPS and the U.S. Postal Service are permitted, however when sending information on physical media devices via these methods or by similar means, the information shall be encrypted.
- c. **CA Public Records Act.** The Contractor shall work cooperatively with the State to respond timely and correctly to public records requests.
 - d. **Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with the OSI.

- e. Training. The Contractor shall provide training on its data privacy and security policies, at least annually, at its own expense, to all its employees and volunteers who assist in the performance of functions or activities on behalf of the OSI under this Agreement and use or disclose PSCI.
- (1) The Contractor shall require each employee and volunteer who receives data privacy and security training to sign a certification, indicating the employee's/volunteer's name and the date on which the training was completed.
 - (2) The Contractor shall retain each employee's/volunteer's written certifications for the OSI inspection for a period of three years following agreement termination.
- f. Breaches.
- (1) Discovery and Notification of Breach. The Contractor shall be responsible for facilitating the security incident process as described in California Civil Code section 1798.29(e), California Civil Code section 1798.82(f), and SAM 5340, Incident Management. The Contractor shall notify the OSI immediately by telephone call plus email or fax upon the discovery of breach of security of PSCI in computerized form if the PSCI was, or is reasonably believed to have been, acquired by an unauthorized person, or within two hours by email of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PSCI in violation of this Agreement, this provision, the law, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the State Contract Manager, the OSI Privacy Officer and the OSI Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PSCI, notification shall be provided by e-mailing the OSI Security Office at osiinfosecurity@osi.ca.gov. The Contractor shall take:
 - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
 - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
 - (2) Investigation of Breach. The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI and within twelve (12) to twenty-four (24) hours of the discovery, shall notify the State Contract Manager, the OSI Privacy Officer, and the OSI Information Security Officer of:
 - i. What data elements were involved and the extent of the data involved in the breach,
 - ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PSCI,
 - iii. A description of where the PSCI is believed to have been improperly transmitted, sent, or utilized,
 - iv. A description of the probable causes of the improper use or disclosure; and
 - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
 - (3) **Updates on Investigation.** The Contractor shall provide regular (every 24 hours) updates on the progress of the investigation to the State Contract Manager, the OSI Privacy Officer, and the OSI Information Security Officer.
 - (4) **Written Report.** The Contractor shall provide a written report of the investigation to the State Contract Manager, the OSI Privacy Officer, and the OSI Information Security Officer within seven (7) working days of the discovery of the breach or unauthorized use or disclosure. The report will, at a minimum, follow the format of SIMM 5340-B. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

- (5) **Notification of Individuals.** The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The State Contract Manager, the OSI Privacy Officer, and the OSI Information Security Officer shall approve the time, manner and content of any such notifications.
7. **Effect on lower tier transactions.** The terms of this Attachment shall apply to all agreements, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Attachment into each subcontract or subaward to its agents, subcontractors, or independent consultants.
8. **Contact Information.** To direct communications to the above referenced OSI staff, the Contractor shall initiate contact as indicated herein. The OSI reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Attachment or the Agreement to which it is incorporated.

OSI State Contract Manager	OSI Privacy Officer	OSI Information Security Officer
See the Agreement for State Contract Manager information	Privacy Officer c/o OSI Legal Division Office of Systems Integration 2525 Natomas Park Drive, Suite 200 Sacramento, CA 95833 Email: david.haynes@osi.ca.gov Telephone: (916) 263-0744	Information Security Officer OSI Information Security Office Office of Systems Integration 2525 Natomas Park Drive, Suite 200 Sacramento, CA 95833 Email: osiinfosecurity@osi.ca.gov Telephone: (916) 263-0744 or (916) 825-9213

9. **Audits and Inspections.** From time to time, the OSI may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the ICSR Attachment. The Contractor shall promptly remedy any violation of any provision of this ICSR Attachment. The fact that the OSI inspects, or fails to inspect, or has the right to inspect the Contractor's facilities, systems and procedures does not relieve the Contractor of its responsibility to comply with this ICSR Attachment.

CLOUD COMPUTING SERVICES SPECIAL PROVISIONS (Software as a Service)

These special provisions are only to be used for software as a service (SaaS), as defined below. These special provisions are to be attached to the general provisions – information technology and accompanied by, at minimum, a statement of work (SOW) and service level agreement (SLA). State agencies shall first:

- A. Classify their data pursuant to the California State Administrative Manual (SAM) 5305.5;
- B. Consider the factors to be taken into account when selecting a particular technological approach, in accordance with SAM 4981.1, 4983 and 4983.1 and then;
- C. Modify these special provisions through the SOW and/or SLA to meet the needs of each acquisition.

1. Definitions

- a) **"Cloud Software as a Service (SaaS)"** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser (e.g., web-based email). The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **"Cloud Platform as a Service (PaaS)"** - The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- c) **"Cloud Infrastructure as a Service (IaaS)"** - The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems; storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- d) **"Data"** - Any information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the SaaS pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- e) **"Data Breach"** - Any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable state or federal law.
- f) **"Recovery Point Objective (RPO)"** - The point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
- g) **"Recovery Time Objective (RTO)"** - The period of time within which information technology services, systems, applications and functions shall be recovered following an unplanned interruption. The RTO is detailed in the SLA.

Terms

2. SaaS AVAILABILITY: Unless otherwise stated in the SOW,

- a) The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SOW.

- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the Agreement for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.
- d) The Contractor shall provide advance written notice to the State in the manner set forth in the SOW of any major upgrades or changes that will affect the SaaS availability.

3. DATA AVAILABILITY: Unless otherwise stated in the SOW,

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

4. SaaS and DATA SECURITY:

- a) In addition to the Compliance with Statutes and Regulations provision set forth in the General Provisions – Information Technology, the Contractor shall certify to the State:
 - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Agreement;
 - 2) Compliance with the following:
 - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
 - ii. Security provisions of the California State Administrative Manual (Chapters 5100 and 5300) and the California Statewide Information Management Manual (Sections 58C, 58D, 66B, 5305A, 5310A and B, 5325A and B, 5330A, B and C, 5340A, B and C, 5360B);
 - iii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Audit results and the Contractor's plan to correct any negative findings shall be made available to the State upon request; and
 - iv. Privacy provisions of the Federal Privacy Act of 1974;
 - 3) Compliance with applicable industry standards and guidelines, including but not limited to relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines.
- b) The Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data.
- c) The Contractor shall allow the State reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Agreement and the State's Data, at no cost to the State.

- d) The Contractor assumes responsibility for the security and confidentiality of the Data under its control.
- e) No Data shall be copied, modified, destroyed or deleted by the Contractor other than for normal operation or maintenance of SaaS during the Agreement period without prior written notice to and written approval by the State.
- f) Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Security Officer.

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

6. DATA LOCATION: Unless otherwise stated in the SOW and approved in advance by the State Chief Information Security Officer, the physical location of the Contractor's data center where the Data is stored shall be within the continental United States.

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

8. TRANSITION PERIOD:

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

9. DATA BREACH: Unless otherwise stated in the SOW,

- a) Upon discovery or reasonable belief of any Data Breach, the Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. The Contractor shall provide such notification within forty-eight (48) hours after the Contractor reasonably believes there has been such a Data Breach. The Contractor's notification shall identify:
 - 1) The nature of the Data Breach;
 - 2) The Data accessed, used or disclosed;
 - 3) The person(s) who accessed, used, disclosed and/or received Data (if known);
 - 4) What the Contractor has done or will do to quarantine and mitigate the Data Breach; and

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

10. DISASTER RECOVERY/BUSINESS CONTINUITY: Unless otherwise stated in the SOW,

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

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

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

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

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