

**PARTICIPATING ADDENDUM #PA-2022-WDV-TMUS  
UNDER THE  
STATE OF UTAH COOPERATIVE CONTRACT #MA176  
(NASPO VALUEPOINT WIRELESS DATA, VOICE, AND ACCESSORIES)**

**PARTICIPATING ENTITY: STATE OF CALIFORNIA**

This Participating Addendum, including the attached Appendix A and Appendix A-1 (the “PA”) is made on 1/26/2022 (the “PA Effective Date”), between the State of California, California Department of Technology (“Participating Entity” or “State”), and T-Mobile USA, Inc. (“Contractor”) (Participating Entity and Contractor are, at times, referred to individually as a “Party” or together as the “Parties”).

**Section 1. Recitals**

- 1.1** The Contractor and the State of Utah, acting through its Department of Administration, Purchasing Division, individually and on behalf of the NASPO ValuePoint, a division of the National Association of State Procurement Officials (“NASPO”), are parties to the State of Utah Cooperative Contract #MA176 (NASPO ValuePoint Wireless Data, Voice, and Accessories) dated July 1, 2019, as amended (the “Master Agreement”).
- 1.2** Participating Entity wants to participate in the Master Agreement pursuant to the terms and conditions of the PA.
- 1.3** The term of this PA begins on the PA Effective Date through May 22, 2027. Notwithstanding the foregoing, the term of this PA will automatically terminate upon the termination or expiration of the Master Agreement.

**Section 2. Agreement**

In consideration of the recitals set forth in §1 above, which are hereby re-stated and agreed to by the Parties, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Participating Entity and the Contractor hereby agree to the terms and conditions of the PA. The Master Agreement and the PA, together with all valid Purchase Orders submitted to the Contractor by an Authorized Purchasing Entity, together constitute the “CA Agreement”. Unless otherwise defined, capitalized terms in the PA have the meanings ascribed to them in the Master Agreement.

### **Section 3. Authorized Purchasing Entities**

The State hereby designates the following as Authorized Purchasing Entities under the CA Agreement: Local government entities defined as any city, county, city and county, district or other local governmental body empowered to expend public funds for the acquisition of goods. Additional qualifying entities include those that are either (i) entirely 100% tax supported, (ii) a local governmental entity with a Joint Powers Agreement (JPA), or (iii) a Federally recognized Indian Tribe. State agencies or other state entities are not Authorized Purchasing Entities. "Authorized Purchasing Entities" also may be referred to as "Purchasing Entities" for purposes of the CA Agreement.

Each Authorized Purchasing Entity placing an Order under this PA will be treated as if it was an individual customer. Except to the extent modified in this PA, each Authorized Purchasing Entity will be responsible for compliance with the terms and conditions of the Master Agreement. Each Authorized Purchasing Entity will be responsible for its own charges, fees and liabilities. Each Authorized Purchasing Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for its purchases; and Contractor will apply the charges to each Authorized Purchasing Entity individually. Each Authorized Purchasing Entity agrees to the terms of this PA, including the disclosure of limited account information (including the name, address, email and phone number of each Authorized Purchasing Entity's authorized/designated purchasing agent(s)) as part of the contractual reporting requirements to NASPO ValuePoint and/or the Participating Entity, for purposes of monitoring the contract and calculating the administrative fee.

### **Section 4. Purchase Orders**

Except as set forth herein, Purchase Orders must reference both Master Agreement #MA176 and the PA number to be valid. Upon acceptance of any such valid Purchase Order, the corresponding Authorized Purchasing Entities will be bound by the terms and conditions of the CA Agreement including, without limitation, the obligation to pay the Contractor for Services and related Products provided. Notwithstanding the foregoing, any Purchase Order submitted that does not properly reference the Master Agreement number and/or the PA may be accepted, at the Contractor's sole discretion, if the Contractor can reasonably ascertain that such Purchase Order was properly authorized and intended for use with the PA. In such instances, the corresponding Purchase Order will be similarly valid and binding. The terms and conditions of the CA Agreement will not be modified or superseded by any terms and conditions in

any Authorized Purchasing Entity-generated Purchase Order. Purchase Orders will have no force or effect other than to denote quantity, the products or services purchased, delivery destinations, requested delivery dates and any other information required by the CA Agreement.

## **Section 5 Primary Contacts**

	<b>Participating Entity (State): California Department of Technology</b>	<b>Contractor:</b>
<b>Name</b>	Raman Pabla	David Bezzant
<b>Title</b>	Branch Chief	Vice President, T-Mobile for Government
<b>Address</b>	P.O.BOX 1810, MS 12 Rancho Cordova, CA 95741	c/o T-Mobile USA, Inc. 12920 SE 38 <sup>th</sup> Street Bellevue, WA 98006
<b>Telephone</b>	(916)460-9812	(425) 383-4000
<b>Email</b>	<a href="mailto:CDTStatewides@state.ca.gov">CDTStatewides@state.ca.gov</a>	<a href="mailto:David.Bezzant@T-Mobile.com">David.Bezzant@T-Mobile.com</a>

## **Section 6. Notice of Administrative Fees**

The following charges are being paid by the Contractor under this PA.

### **6.1 California Department of Technology Administrative Fee**

Contract Fees to Participating Entity: The Contractor is being charged an Administrative Fee of 1.00% of all Authorized Purchasing Entities Corporate Responsibility Users (CRU) Total Wireless Spend, pursuant to the schedule of payments set forth in the Master Agreement. "CRU Total Wireless Spend" for the Participating Entity's state will be calculated (with respect to Participating Entity state sales only) in the same manner as set forth in Section 6 of Attachment A (NASPO ValuePoint Master Agreement Terms and Conditions) to the Master Agreement.

The Contractor shall submit a check payable to the California Department of Technology, Accounting, P.O. Box 1810, MS Y06, Rancho Cordova, CA 95741 or remit the fee electronically (ACH/wire transfer) for the calculated administrative fee. This fee shall be included as an adjustment to the Contractor's NASPO ValuePoint pricing and not invoiced or charged to the Authorized Purchasing Entities for the use of this PA.

## **Section 7. Authority**

By signing below, the corresponding Party's representative represents that he or she is duly authorized by the Contractor or Participating Entity, as applicable, to

execute the PA on behalf of the respective Party, and that the Contractor and Participating Entity agree to be bound by the provisions hereof. In addition, Participating Entity represents that it has received the requisite approvals from the applicable State authority and NASPO to participate in the Master Agreement.

**Section 8. Entire Agreement**

The Master Agreement and this PA set forth the entire agreement between the Parties with respect to its subject matter, and it supersedes all previous communications, representations or agreements, whether oral or written, with respect thereto.

IN WITNESS WHEREOF, the Parties have executed the PA as of the PA Effective Date.

<b>T-Mobile USA, Inc.</b>	<b>State of California</b>
Signature: <u>David Bezzant</u> <small>David Bezzant (May 8, 2025 17:48 MDT)</small>	Signature: <u>Samit Wangnoo</u>
Printed Name: David Bezzant	Printed Name: Samit Wangnoo
Title: Vice President	Title: Assistant Deputy Director
Date Signed: <b>05/08/2025</b>	Date Signed: <b>05/12/2025</b>
Signature: <u>David Viscovich</u> <small>David Viscovich (May 12, 2025 13:54 EDT)</small>	
Printed Name: David Viscovich	
Title: Director, Legal Affairs	
Date Signed: <b>05/12/2025</b>	

## **Appendix A**

### **1. General Provisions - Wireless Voice And Data Services**

This PA shall automatically incorporate by reference the General Provisions - Wireless Voice and Data Services for NASPO Participating Addendum for Local Government, which can be found attached hereto as Appendix A-1.

### **2. Reporting**

The Contractor shall provide the following management reports to the State Contract Administrator as reasonably requested. The reports shall reflect the agency's usage under the contract for the respective quarter. Reports shall be submitted in electronic format by email to [CDTStatewides@state.ca.gov](mailto:CDTStatewides@state.ca.gov). Upon execution of the Purchase Order, the Authorized Purchasing Entities understand and agree that the Contractor may provide the State Customer Proprietary Network Information (CPNI) as part of Contractor's reporting obligations under the Contract for purposes of administering the Participating Addendum.

Listed below are the management reports that shall be provided:

#### **a) Usage Report (quarterly):**

The Contractor shall submit a Usage Report for the Total Wireless spend of all Authorized Purchasing Entities on a quarterly basis by the 45th day of the new quarter. This report shall be reviewed by the State Contract Administrator and shall correlate with the Administration Fee. The Usage Report shall contain the same fields as Attachment H (NASPO ValuePoint Cooperative Contract Detailed Sales Report) of the Contractor's Master Agreement.

#### **b) Authorized Purchasing Entities Report (annually):**

The Authorized Purchasing Entities Report shall be submitted to the State Contract Administrator annually by the 30th of January. The report shall include the name of the Authorized Purchasing Entity, contact name, phone number and email address of the individual responsible for submitting purchase requests for each Authorized Purchasing Entity. This information will be used for the State Contract Administrator to communicate with the Authorized Purchasing Entity's regarding Contract expiration and transition options.

#### **c) Custom Reports:**

Authorized Purchasing Entities will have access to Contractor's order and support portal, which provides a variety of reporting tools, including account management reports, invoicing reports, order reports, and usage reports.

### **3. CONTRACTOR'S WEBSITE**

The Contractor shall provide a website for Authorized Purchasing Entities to manage accounts, get product information, and to order Products and Services. The Contractor shall maintain, support and keep current a NASPO-specific contract website with current pricing, general contract information, and Contractor point of contact information.

### **4. LOCAL NUMBER PORTABILITY**

Authorized Purchasing Entities may be able to transfer a Master Account User's Number to or from another provider with whom Contractor has a porting relationship in accordance with Contractor internal business policies.

### **5. OUT OF STOCK**

The Contractor shall alert the Authorized Purchasing Entities at time of order, or within three (3) business days after order if a Product is out of stock or subject to backorder date for delivery. The Authorized Purchasing Entity has the option to cancel the Product and/or purchase another Product. Under no circumstances the Contractor will make unauthorized substitutions.

### **6. SHIPPED ORDERS**

All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

### **7. ORDER ACKNOWLEDGEMENT**

The Contractor shall provide the Authorized Purchasing Entities (via self-service in the Contractor's order and support portal) with an Order receipt acknowledgement within one (1) business day after receipt of Order. The Order receipt acknowledgement shall contain:

- a) Product(s) and/or Service plan(s) purchased
- b) Contractor order number
- c) Customer name, as designated by the Authorized Purchasing Entity
- d) Bill to address
- e) Ship to address

### **8. SHIPMENT CONFIRMATION**

The Contractor shall provide a shipment confirmation to the Authorized Purchasing Entity (via self-service in the Contractor's order and support portal) on the day the Order is shipped. Shipment confirmation shall include, at a minimum:

- a) Phone number for new lines, if applicable
- b) Electronic Serial Number (ESN), International Mobile Equipment Identity (IMEI), or Mobile Equipment Identifier (MEID), if applicable
- c) Date shipped
- d) Tracking number

## **9. DELIVERY SCHEDULES**

Delivery for Orders placed against this CA Agreement shall be in accordance with the following:

- a) Locations

Deliveries are to be made (statewide) to the location specified on the individual Purchase Order, which may include, but not limited to inside buildings, high-rise office buildings, and receiving docks.

- b) Schedule

The Contractor shall make reasonable efforts to deliver in-stock Products within five (5) business days after order receipt acknowledgement.

## **10. PACKING SLIP INFORMATION**

All shipped Orders shall include a packing slip (via self-service in the Contractor's order and support portal) with the following information:

- a) Customer name, as designated by the Authorized Purchasing Entity
- b) Ship-to address
- c) Contractor Order number
- d) Description of items

## **11. INVOICING**

Invoice content will vary depending on the type of Service. Invoices shall include data as defined below for an Authorized Purchasing Entity to validate charges.

The Contractor's Invoice shall include, at a minimum:

- a) Contractor name, address, and telephone number
- b) Authorized Purchasing Entity Name
- c) Invoice number
- d) Invoice date

- e) Account Number
- f) Line-item description
- g) Quantity purchased
- h) Unit of measure
- i) Unit Price
- j) Total Non-recurring Charges (NRC)/Total One-Time Charges
- k) Total Recurring Charges (MRC)/Total Monthly Recurring Charges
- l) State sales and/or use tax
- m) Total Adjustments
- n) Total Charges

The Authorized Purchasing Entity's obligation to make payment pursuant to the contract is subject to services completed and signed off by the Authorized Purchasing Entity and the availability of appropriation funds. Receipt of a Purchase Order under this Participating Addendum is proof of funds for that order.

## **12. WARRANTY**

Equipment is covered by the manufacturer's consumer warranty that will be passed through to the Customer. The Contractor shall provide manufacturer's warranty information (terms and conditions, provider, etc.) to the Customer with all Equipment at the time of delivery. The Contractor shall work with the Customer to facilitate Equipment replacement.

## **13. DAMAGED, DEFECTIVE AND ITEMS SHIPPED IN ERROR**

The Contractor shall provide credit and/or replacement for freight-damaged or defective Products within 48 hours after notification by the Authorized Purchasing Entity at no charge. This also includes incorrect Products shipped or an order entry error by the Contractor's customer service representative. The Contractor cannot require the Authorized Purchasing Entity to deal directly with the manufacturer. Additionally, the Contractor shall provide the Authorized Purchasing Entities with a prepaid and self-addressed container suitable for the return of the Products. Authorized Purchasing Entities shall not be assessed restocking fees or any other fees for items trialed and then returned as unacceptable for any reason.

## **14. ACTIVATIONS/TERMINATIONS/SUSPENSIONS AND ACCOUNT CHANGES**

- a) Existing Equipment: The Contractor shall activate or suspend Service or make account changes on existing Product(s) and complete requested plan changes within 48 hours of notification by the Authorized Purchasing Entity. The Contractor shall provide the appropriate Authorized Purchasing



Entity with an account change or suspension confirmation within 24 hours of a change or suspension request.

- b) New Equipment: The Contractor shall allow for Service activation on new equipment promptly following delivery of equipment, excluding activations involving number portability.
- c) Emergency Service Activation: In the event of emergency, i.e. State declaration of emergency during a disaster, the Contractor shall (subject to any force majeure rights available to Contractor) make commercially reasonable efforts to activate Products within 24 hours or less after request.
- d) Temporary Suspension and Reactivation: The Contractor shall suspend or reactivate lines within 48 hours of request. During periods of suspension, the line must not incur any charges and the wireless number must not change, provided that the suspension period does not exceed 90 consecutive calendar days or 180 total days in any year.

#### **15. SERVICE PLAN CHANGES**

There shall be no change fees or service plan term extensions when a subscriber changes service plans, unless expressly provided otherwise within the terms and conditions of the service plan(s).

#### **16. PRODUCT RECALL**

Authorized Purchasing Entities will be notified if a Master Agreement Product is affected by a product recall. The Contractor will provide notification and instructions on how to return or replace the Product.

#### **17. ACCEPTANCE TESTING PERIOD**

Inspection and acceptance will be in accordance with Section 15 of Attachment A (NASPO ValuePoint Master Agreement Terms and Conditions) to the Master Agreement.

**APPENDIX A-1**

**GENERAL PROVISIONS – WIRELESS VOICE AND DATA SERVICES  
FOR  
NASPO PARTICIPATING ADDENDUM FOR LOCAL GOVERNMENT**

**Revised** 12/14/2021

Issued By:

**STATE OF CALIFORNIA**

California Department of Technology  
Office of Statewide Technology Procurement  
P.O. BOX 1910  
RANCHO CORDOVA, CA 95741

1. DEFINITIONS	3
2. PURPOSE	6
3. PARTICIPATING ADDENDUM EFFECTIVE DATE	6
4. IRREVOCABLE OFFER	6
5. COMPLETE INTEGRATION	6
6. SEVERABILITY/SURVIVAL CLAUSE	6
7. INDEPENDENT CONTRACTOR	6
8. APPLICABLE LAW	6
9. COMPLIANCE WITH STATUTES AND REGULATIONS	7
10. CONTRACTOR'S POWER AND AUTHORITY	8
11. ASSIGNMENT	9
12. WAIVER OF RIGHTS	9
13. ORDER OF PRECEDENCE	9
14. SUBSTITUTIONS	9
15. SERVICE INTERRUPTIONS	10
16. ENHANCEMENT OF CELLULAR SERVICE	10
17. SAFETY AND ACCIDENT PREVENTION	10
18. INSURANCE	10
19. TERMINATION FOR THE CONVENIENCE OF THE STATE	10
20. TERMINATION FOR DEFAULT	11
21. RIGHTS AND REMEDIES FOR DEFAULT	12
22. LIMITATION OF LIABILITY	13
23. STATEMENT OF ECONOMIC INTERESTS	14
24. ACCESS TO FACILITIES/FACILITIES ACCESS POLICIES	14
25. USE AND ADVERTISING USE OF DATA	15
26. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY	15
27. INDEMNIFICATION	15
28. SERVICE TAXES, FEES, SURCHARGES, AND SURCREDITS	16
29. NEWLY MANUFACTURED EQUIPMENT	17
30. PARTICIPATING ADDENDUM MODIFICATION	18
31. NEWS RELEASES	18
32. SOFTWARE LICENSE	18
33. PROTECTION OF CONTRACTOR FURNISHED PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA	18
34. FUTURE RELEASES	19
35. ENCRYPTION & AUTHORIZATION KEYS	19

36. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY	19
37. EXAMINATION AND AUDIT	22
38. CONTINUING STANDARDS OF PERFORMANCE FOR CONTRACTOR SERVICES	23
39. AVAILABILITY <sup>26</sup>	
40. DISPUTES	27
41. STOP WORK	28
42. COVENANT AGAINST GRATUITIES	29
43. ASSIGNMENT OF ANTITRUST ACTIONS	29
44. RECYCLING	30
45. CHILD SUPPORT COMPLIANCE ACT	30
46. SET-OFF RIGHTS	31
47. CONTRACTOR PERSONNEL	31
48. CONTRACTOR BUSINESS RELATIONSHIP RESPONSIBILITY	32
49. PROVISIONING OF DELIVERABLES AND SERVICES	33
50. NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY	33
51. NON-EXCLUSIVE AGREEMENT	33
52. CHARGES	34
53. CONTRACTOR COMMITMENTS AND REPRESENTATIONS	34
54. SERVICE TO PUBLIC ENTITIES AND LOCAL GOVERNMENT AGENCIES	34
55. SERVICE COSTS	35
56. FEDERAL UNIVERSAL SERVICE FUND	35
57. EXISTING EQUIPMENT & TITLE TO EQUIPMENT	35
58. UNLAWFUL USE	36
59. DISENTANGLEMENT (MIGRATION-OUT)	36
60. SUBCONTRACTORS	38
61. SECURITY AND POLICIES	39
62. ELECTRONIC WASTE RECYCLING ACT OF 2003	40
63. USE TAX COLLECTION	40
64. EXPATRIATE CORPORATIONS	40
65. DOMESTIC PARTNERS	40
66. PRIORITY HIRING	40

## 1. DEFINITIONS

The following terms shall be given the meaning shown below.

**"Application Program"** means a computer program 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.

**"Authorized Purchasing Entities"** means any Local government entities defined as any city, county, city and county, district or other local governmental body empowered to expend public funds for the acquisition of goods. Additional qualifying entities include those that are either entirely 100% tax supported, a local governmental entity with a Joint Powers Agreement (JPA), or a federally recognized Indian Tribe.

State agencies or other state entities are not Authorized Purchasing Entities.

**"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.

**"CA Agreement" or "Contract"** means the Master Agreement and the PA, together with all valid Purchase Orders submitted to the Contractor by an Authorized Purchasing Entity.

**"Contractor"** means the business entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.

**"Deliverables"** means Equipment (including Cellular Equipment) Services, Software, Information Technology, Telecommunications, Hardware, Documentation and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of Services.

**"Documentation"** means manuals and other printed materials necessary or useful to the Authorized Purchasing Entities in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the Authorized Purchasing Entities hereunder constitute Work Product if such materials are required by the Purchase Order.

**"Equipment"** is an all-inclusive term which refers either to individual machines or to a complete data processing system including its Hardware and Operating Software (if any), and Cellular Equipment.

**"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.

**"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also equipment.

**"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.

**"Maintenance"** includes: (i) remedial maintenance performed by the Contractor or manufacturer as a result of Services, Equipment or Software failure, and which is performed as required, i.e. on an unscheduled basis; or (ii) maintenance performed on a scheduled basis by the Contractor or manufacturer and is designed to keep the Equipment and/or Software in proper operating condition.

**"Master Agreement"** means the Contractor's State of Utah Cooperative Contract (NASPO ValuePoint Wireless Data, Voice, and Accessories), and any amendments thereto.

**"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.

**"Participating Addendum" or "PA"** means the Participating Addendum under the NASPO ValuePoint Wireless Communication Services and Equipment to which these General Provisions are attached and into which these General Provisions are incorporated.

**"Purchase Order"** has the meaning given to it in the Master Agreement.

**"Services"** means any and all Services, including cellular Services required to be performed by the Contractor pursuant to Contract.

**"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.

**"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.

**"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.

**"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.

**"Telecommunications"** means to include all Hardware, Software and Service components involved in the secure, efficient and reliable delivery of analog and digital data streams to and/or from government 'end systems'. Examples of the components that comprise a Telecommunications System are communications links, routers, switches, multiplexers, transmitters, repeaters, and firewalls. The end systems which are interconnected via a telecommunications system include discrete hardware and software elements that accept analog or digital data streams for storage, processing or conversion to an end user. Examples of end systems are servers, telephones, video displays, and handheld computing devices.

**"Telecommunications Service"** means the providing, allowing, facilitating, or generating of any form of Telecommunication through the use of a Telecommunications device over a Telecommunications system.

**"Telecommunications System"** means systems, Services or components that: (i) Do not create data except for use by the Telecommunications system or systems used to monitor or manage the Telecommunications system. (ii) Do not store data except transiently for purposes related to network routing, performance optimization or error recovery. (iii) Do not delete or modify data except for purposes related to the reliability, efficiency and security of the Telecommunications Service.

## **2. PURPOSE**

These General Provisions-Wireless Voice and Data Services are part of the Participating Addendum ("PA") entered into between the State and the Contractor.

## **3. PARTICIPATING ADDENDUM EFFECTIVE DATE**

The PA (including this Appendix A-1) signed by the Contractor shall not become effective until signed by the Department of Technology ("PA Effective Date").

## **4. IRREVOCABLE OFFER**

From the date that the Contractor executes the PA ("Signing Date") until such time as the State executes the PA (but in no event beyond 90 days after the Signing Date), and as such process is further described herein, the PA constitutes the irrevocable, firm offer by the Contractor to provide the Services to the Authorized Purchasing Entities for the charges in accordance with the PA. The PA shall not be binding or of any legal force or effect on the State until the authorized execution of the PA by the California Department of Technology, as provided in Section 3 (Participating Addendum Effective Date).

## **5. COMPLETE INTEGRATION**

The PA, including any documents incorporated herein by express reference (including the Master Agreement referenced in the PA), is intended to be a complete integration and there are no prior, contemporaneous, different, or additional agreements pertaining to the subject matter of the PA.

## **6. SEVERABILITY/SURVIVAL CLAUSE**

If any provision of the PA is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the PA shall remain in full force and effect.

## **7. INDEPENDENT CONTRACTOR**

The Contractor and the agents and employees of the Contractor, in the performance of the PA, shall act in an independent capacity and not as officers or employees or agents of the State or any Authorized Purchasing Entities.

## **8. APPLICABLE LAW**

- a) The PA shall be governed by and interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this PA shall be in Sacramento County, Sacramento, California. Each party irrevocably submits to the sole and exclusive jurisdiction of the courts in Sacramento County, Sacramento



California. To the extent Services in the PA are subject to the jurisdiction of the California Public Utilities Commission (CPUC), the CPUC shall have jurisdiction over the PA, and the PA and related Services may be subject to modification from time to time as the CPUC may so order in the exercise of their lawful jurisdiction. The United Nations Convention on Contracts for the International Sale of Equipment shall not apply to the PA.

- b) The Contractor, in conducting its business as required by the PA, shall comply with the Communications Act of 1934, as amended (including, but not limited to, the Telecommunications Act of 1996 and subsequent Acts), and as interpreted and applied by the applicable regulatory authorities and courts and any applicable rules, regulations and decisions of the Federal Communications Commission (FCC) and the CPUC.

## **9. COMPLIANCE WITH STATUTES AND REGULATIONS**

- a) The State, Authorized Purchasing Entities and the Contractor warrant and certify that in the performance of the PA, they 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 and Authorized Purchasing Entities against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State and Authorized Purchasing Entities 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 and Authorized Purchasing Entities operations or liability, or when involvement of the State and Authorized Purchasing Entities is otherwise mandated by law, the State and Authorized Purchasing Entities may participate in such action at their own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State and Authorized Purchasing Entities, affect principles of California government or public law, or impact the authority of the State and Authorized Purchasing Entities, the Department of Technology shall have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State and Authorized

Purchasing Entities will reasonably cooperate in the defense and in any related settlement negotiations.

- d) To the extent that the PA falls within the scope of Government Code section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought against the Contractor pursuant to this section.
- e) In the event that any term or action required in the PA requires a regulatory filing, the Contractor shall make such filing and such action and/or term shall, to the extent applicable, be made effective pursuant to the rules of the FCC and/or the CPUC. To the extent applicable, the Contractor shall make the appropriate FCC filing in a timely manner with the rates being effective consistent with FCC requirements.
- f) In addition to the foregoing, the Contractor shall, after execution of the PA, make all necessary regulatory filings.

#### **10. CONTRACTOR'S POWER AND AUTHORITY**

- a) The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State and Authorized Purchasing Entities 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 and Authorized Purchasing Entities under the PA.
- b) The State and Authorized Purchasing Entities 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 and Authorized Purchasing Entities operations or liability, or when involvement of the State and Authorized Purchasing Entities is otherwise mandated by law, the State and Authorized Purchasing Entities may participate in such action at their own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State and Authorized Purchasing Entities, affect principles of California government or public law, or impact the authority of the State and Authorized Purchasing Entities, the Department of Technology 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 and Authorized Purchasing Entities will reasonably cooperate in the defense and in any related settlement negotiations.

#### **11.ASSIGNMENT**

The PA 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 Contractor remains responsible for its obligations hereunder.

#### **12.WAIVER OF RIGHTS**

Any action (other than an express written waiver) or inaction by the State and Authorized Purchasing Entities or the failure of the State and Authorized Purchasing Entities on any occasion, to enforce any right or provision of the PA, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State and Authorized Purchasing Entities from enforcing such provision or right on any future occasion. The rights and remedies of the State and Authorized Purchasing Entities herein are cumulative and are in addition to any other rights or remedies that the State and Authorized Purchasing Entities may have at law or in equity.

#### **13.ORDER OF PRECEDENCE**

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

- 1) The PA including the General Provisions - Wireless Voice and Data Services.
- 2) The NASPO Master Agreement (Master Agreement), and any attachments thereto.
- 3) Purchase Order and related ordering documents such as Work Authorizations (subject to Section 4 of the PA).

#### **14.SUBSTITUTIONS**

Substitution of Deliverables may not be tendered without five (5) days advance written consent of the Authorized Purchasing Entities. The Contractor shall not use any specification in lieu of those contained in the PA without written consent of the Authorized Purchasing Entities.

## **15. SERVICE INTERRUPTIONS**

The Contractor's liability for Service interruptions, if any, shall be limited to credit out of allowances provided for in the Master Agreement.

## **16. ENHANCEMENT OF CELLULAR SERVICE**

The Authorized Purchasing Entities must obtain the Contractor's prior approval (which Contractor may withhold in its sole discretion) and written agreement before they may install, deploy or use any regeneration equipment or similar mechanism (for example, a repeater) to originate, amplify, enhance, retransmit or regenerate Cellular Service.

## **17. SAFETY AND ACCIDENT PREVENTION**

In performing work on Authorized Purchasing Entities premises, the Contractor shall conform to any specific safety requirements required by law or regulation. The Contractor may consider any additional precautions as reasonably requested by the Authorized Purchasing Entities for safety and accident prevention purposes.

## **18. INSURANCE**

The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Master Agreement.

## **19. TERMINATION FOR THE CONVENIENCE OF THE STATE**

- a) The State may terminate this Contract for convenience if the Deputy Director, Department of Technology, Office of Statewide Technology Procurement, or designee, determines that a termination is in the State's interest. The Deputy Director, Department of Technology, Office of Statewide Technology Procurement, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof, such date not to be earlier than thirty (30) days from the date the notice is delivered.
- 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 (except as required by any Disentanglement/Migration-Out Services).

- ii. Place no further subcontracts for materials, Services, or facilities, except as necessary to complete the continuing portion of the Contract.
  - iii. Terminate all subcontracts to the extent they relate to the work terminated.
  - iv. Settle all outstanding liabilities and 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 ninety (90) days after the effective date of termination, unless a different time is provided 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 specified, upon the termination for convenience, the State shall have no obligation to pay the Contractor any amount other than in accordance with the terms of this Contract the agreed upon price for Deliverables accepted by the State, adjusted for any savings on freight and other charges plus any unrecovered amortized capital costs originally identified in writing by the Contractor and approved in advance by the State, calculated using Generally Accepted Accounting Principles.

## **20. TERMINATION FOR DEFAULT**

Unless otherwise specified in the Contract:

- a) The State may, subject to the clause titled "Force Majeure", 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 material provisions of this Contract.
- b) The State's right to terminate this Contract under subsection a) above, may be exercised if the failure constitutes a material breach of this Contract and if the

Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than thirty (30) days.

- c) 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.
- d) Both parties, State and the Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- e) 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".

## **21. RIGHTS AND REMEDIES FOR DEFAULT**

- a) In the event any Deliverables furnished or Services provided by the Contractor in the performance of the PA should fail to conform to the requirements herein, the Authorized Purchasing Entities may reject the same, and it shall become the duty of the Contractor to reclaim and remove the Deliverables promptly, including by providing the Authorized Purchasing Entities with appropriate instructions for returning the Equipment, or to correct the performance of the Services, without expense to the Authorized Purchasing Entities, and promptly replace or re-perform all such rejected Deliverables or Services, as applicable, with others conforming to the Contract.
- b) In addition to any other rights and remedies, the Authorized Purchasing Entities may require the Contractor, at the Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any direct damages sustained by the Authorized Purchasing Entities in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor.
- d) The Authorized Purchasing Entities reserves the right to offset the reasonable cost of all direct damages caused to the Authorized Purchasing Entities against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefore.

## **22. LIMITATION OF LIABILITY**

- a) Except as may be otherwise approved by the California Department of Technology, Chief Technology Officer or designee, and subject to subsection b) below, the Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the Purchase Price. For purposes of this subsection a), "Purchase Price" will mean the aggregate PA 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 Section 9 (Compliance with Statutes and Regulations) (ii) to liability under Section 38 (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 covered by any specific provision herein calling for liquidated damages; (iv) to claims arising under provisions herein calling for indemnification for third party claims against the State or Authorized Purchasing Entities for bodily injury to persons or damage to real or tangible personal property caused by the Contractor's negligence or willful misconduct; (v) to costs or attorney's fees that the State or Authorized Purchasing Entities becomes entitled to recover as a prevailing party in any action, or (vi) to direct costs of mitigation, remediation and/or notification obligations resulting from any data breach.
- c) 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 or Authorized Purchasing Entities 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 Purchase Order or (ii) to the extent that the Contractor's liability for such damages arises out of subsection b) (i), b) (ii), or b) (iv) above.

### **23. STATEMENT OF ECONOMIC INTERESTS**

As applicable, consultants can be categorized as a public official for purposes of adherence to Conflict of Interest laws and the filing of a Statement of Economic Interests (Form 700). As such, upon award and prior to beginning work, and on an annual basis, the consultant's staff and/or subcontractors (as applicable) engaged in performing the Services described in the PA are required to complete and submit a Form 700 to the State of California. To acquire an exemption from this requirement, consultant must submit a request to the Department of Technology, Office of Statewide Technology Procurement explaining the basis for the request and the staff or subcontractor staff to be excluded on that basis. Form 700 and instructions can be accessed at the California Fair Political Practices Commission website, <http://www.fppc.ca.gov>.

### **24. ACCESS TO FACILITIES/FACILITIES ACCESS POLICIES**

- a) The Authorized Purchasing Entities acknowledge that the Contractor or its employees and/or subcontractors (collectively the "Contractor Personnel") may work closely with the Authorized Purchasing Entities to implement and perform the Services by working on the premises of participating Authorized Purchasing Entities.
- b) The Authorized Purchasing Entities will ensure that Contractor Personnel have access to Authorized Purchasing Entities' Locations as reasonably necessary for the Contractor to provide the Services for which the Contractor is responsible.
- c) Contractor Personnel will coordinate with the Authorized Purchasing Entities as necessary to obtain access to Authorized Purchasing Entities' Locations to perform the Services, or to perform other obligations as contained herein.
- d) If, as part of Authorized Purchasing Entities' agency or standard policies and procedures regarding the Contractors working onsite, Authorized Purchasing Entities may require Contractor Personnel to comply with the Authorized Purchasing Entities standard access policies, prior to placing an order, that requires access to Authorized Purchasing Entities' Locations ("Standard Access Agreements"), the Authorized Purchasing Entities will: (i) provide a copy of or an URL link to such Standard Access Agreements to the Contractor in advance of placing any order that requires access to the Authorized Purchasing Entities' Locations, or (ii) copies or references to Standard Access Agreements already executed by the Contractor that apply, if any, with a statement that those are still applicable to Contractor Personnel.



## **25. USE AND ADVERTISING USE OF DATA**

The Contractor or its third party providers are not authorized to use, sell, resell, package or repackage or publicly display any information deemed by the Authorized Purchasing Entities as confidential, sensitive or personal information pursuant to the PA language or Authorized Purchasing Entities data without written express approval of the Authorized Purchasing Entities. This restriction includes key word searching or data mining of Authorized Purchasing Entities data.

## **26. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY**

- a) Except to the extent arising out of an Authorized Purchasing Entities Representative's (as defined below) own negligence, the Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the Authorized Purchasing Entities, employees of the Authorized Purchasing Entities, persons designated by the Authorized Purchasing Entities for training, or any other person(s) other than agents or employees of the Contractor, designated by the Authorized Purchasing Entities 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 Authorized Purchasing Entities' place of business, provided that the injury or damage was caused by the fault, negligence, or willful misconduct of the Contractor.

The Contractor shall not be liable for damages solely 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.

- b) The Contractor shall not be liable for damages solely 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.

## **27. INDEMNIFICATION**

The Contractor agrees to indemnify, defend and hold harmless the State and Authorized Purchasing Entities, 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, to the extent 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, Deliverables, 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 and Authorized Purchasing Entities will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify the Contractor shall relieve it of its obligations under the PA except to the extent that Contractor has suffered actual prejudice by such delay or failure); 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 and Authorized Purchasing Entities operations or liability, or when involvement of the State and Authorized Purchasing Entities is otherwise mandated by law, the State and Authorized Purchasing Entities 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 and Authorized Purchasing Entities, affect principles of California government or public law, or impact the authority of the State and Authorized Purchasing Entities, the California Department of Technology shall have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State and Authorized Purchasing Entities will reasonably cooperate in the defense and in any related settlement negotiations.

## **28. SERVICE TAXES, FEES, SURCHARGES, AND SURCREDITS**

- a) The Authorized Purchasing Entities shall be subject to Service taxes, fees, surcharges, and surcredits that are mandated by the government of the State of California (including the CPUC), and the federal government (including the FCC), as applicable. The Authorized Purchasing Entities shall be subject to Service taxes, fees, surcharges and surcredits mandated by the State and federal governments, and also as mandated by California local government jurisdictions and political subdivisions, as applicable. Mandates in effect at the time of award and as hereafter mandated may be recovered from Authorized Purchasing Entities of the applicable Service.

- b) The Authorized Purchasing Entities reserves the right to verify, and if necessary, challenge the Contractor and the applicable regulatory authority, the application by the Contractor of Service taxes, fees, surcharges, and surcredits referred to in subsection a) above. Should the Authorized Purchasing Entities consider the application of such items to be inappropriate, the Authorized Purchasing Entities and the Contractor shall meet and confer regarding the applicability of such items. If thereafter a dispute exists regarding the proper application of such items, the parties may resolve such disputes in accordance with Section 40, Disputes. Either party may seek guidance or clarification from the applicable regulatory authority regarding the appropriate application of such items. If the application of such items is deemed inappropriate by the regulatory authority, the Contractor shall cease and/or revise the application of such items and, if appropriate, issue retroactive credits to the impacted Authorized Purchasing Entities.
- c) All charges under the PA are exclusive of applicable federal, state and local sales, use, excise, utility, and gross receipt taxes, other similar tax-like charges and surcharges. The Authorized Purchasing Entities will provide the Contractor the tax exemption certificates that comply with the requirements of the Internal Revenue Code and Regulations (i.e., see Internal Revenue Regulations section 49.4253-11 and IRS Publication 510 or their current equivalent versions). The Contractor agrees to exempt all Entities from federal excise taxes and E-9-1-1 taxes, all as applicable, promptly after the date the Contractor receives a duly authorized and valid exemption certificate. The Contractor agrees, for the purpose of federal exemption, that the State will act as the authorized agent for the PA in submitting exemption requests on behalf of all Authorized Purchasing Entities.

The Contractor shall be authorized to include as a separate line item a charge for reimbursement of sales tax or use tax expense that is incurred with respect to a sale of handsets, accessories, or other tangible property to Authorized Purchasing Entities, and the Authorized Purchasing Entities shall pay such sales tax or use tax reimbursement charge to the Contractor.

## **29. NEWLY MANUFACTURED EQUIPMENT**

Except where requested by the Authorized Purchasing Entity or when Equipment is provided as a warranty replacement, all Equipment furnished under the PA shall be newly manufactured Equipment or certified as new and warranted as new by the manufacturer; used or reconditioned Equipment is prohibited, unless otherwise specified.

### **30. PARTICIPATING ADDENDUM MODIFICATION**

- a) No amendment or variation of the terms of the PA shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the PA is binding on any of the parties.
- b) Any change to the Contractor's name will require a PA amendment. The State, upon notification and receipt of legal documentation indicating the name change from the Contractor, will process the required amendment, assuming no other change has been made to the business entity.

### **31. NEWS RELEASES**

Any news releases, endorsements, advertising, and social media content pertaining to the PA shall not be made without prior written approval of the California Department of Technology and the applicable Authorized Purchasing Entity.

### **32. SOFTWARE LICENSE**

Unless otherwise specified in the Purchase Order, the Contractor hereby grants to the Authorized Purchasing Entities and the Authorized Purchasing Entities accepts from the Contractor, subject to the terms and conditions of this Contract, a royalty-free, non-exclusive right to the use of Software Products in this Contract. The Authorized Purchasing Entities may use the Software Products only in connection with the use of the Service and according to the licensing terms specified in the Contract. Acceptance of the Software (including any click-to-accept (Click Wrap) third party Commercial Software/EULAs associated with Services sold under this Contract) will be governed by the terms and conditions of this Contract.

### **33. PROTECTION OF CONTRACTOR FURNISHED PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA**

- a) The Authorized Purchasing Entities agree that all material appropriately marked or identified in writing as proprietary, and furnished by the Contractor hereunder are provided for the Authorized Purchasing Entities exclusive use for the purposes of the PA only. All such proprietary data shall remain the property of the Contractor. The Authorized Purchasing Entities agree 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 Authorized Purchasing Entities will insure, prior to disposing of any Contractor furnished media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The Authorized Purchasing Entities agree that they will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to the Contractor furnished licensed software and other proprietary data to satisfy its obligations in the PA with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

### **34. FUTURE RELEASES**

Unless otherwise specifically provided in the Purchase Order, 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 Authorized Purchasing Entities at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the Authorized Purchasing Entities at the Authorized Purchasing Entities option at a price no greater than the Master Agreement 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.

### **35. ENCRYPTION & AUTHORIZATION KEYS**

Upon initiation of Service, the Contractor, where applicable, shall provide all encryption and authorization keys required by the Authorized Purchasing Entities to operate or access the Software Products, Services or Equipment.

### **36. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY**

- a) The Contractor will indemnify, defend, and hold harmless the State and Authorized Purchasing Entities, 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, equipment or service provided hereunder. With respect to claims arising from Equipment or Software manufactured by a third party and sold by the Contractor, pursuant to this Contract, the Contractor will pass through to the State and Authorized Purchasing Entities 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, the Contractor will provide the State and Authorized Purchasing Entities 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 Equipment or Software sold as a distinct unit and accepted by the State and Authorized Purchasing Entities. Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this subsection will be conditional upon the following:

- i. The State and Authorized Purchasing Entities 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 and Authorized Purchasing Entities operations or liability, or when involvement of the State and Authorized Purchasing Entities is otherwise mandated by law, the State and Authorized Purchasing Entities 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 and Authorized Purchasing Entities, affect principles of California government or public law, or impact the authority of the State and Authorized Purchasing Entities, the California Department of Technology 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 and Authorized Purchasing Entities will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Should the Deliverables (including any Software or Equipment) or Cellular Service, 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 and Authorized Purchasing Entities shall permit the Contractor, at its option and expense either (i) to procure for the State and Authorized Purchasing Entities the right to continue using the Deliverables or Cellular Service (ii) to replace or modify the same so that they become non-infringing or (iii) discontinue Cellular Service to the infringing lines and refund any amounts prepaid by the State and Authorized Purchasing Entities for such Service

for the period after the State and Authorized Purchasing Entities cease use of the Deliverables or Cellular Service. If none of these options can reasonably be taken, or if the use of such Deliverables or Service by the State and Authorized Purchasing Entities shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State and Authorized Purchasing Entities in procuring substitute Deliverables. If in the reasonable, good faith opinion of the State and Authorized Purchasing Entities, the return of such infringing Deliverables makes the retention of other Deliverables or the use of Services acquired from the Contractor under the PA impractical, the State and Authorized Purchasing Entities shall then have the option of terminating such PAs or applicable Purchase Order thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State and Authorized Purchasing Entities has paid the Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State and Authorized Purchasing Entities 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 Cellular Service furnished hereunder with Equipment, Software, or devices not provided or made available 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 or manufacturer-supplied operating software; or
  - iii. The unauthorized modification by or on behalf of the State and Authorized Purchasing Entities of the Equipment or Software furnished hereunder; or
  - iv. Any illegal or unauthorized use of the Cellular Service; or
  - v. The Authorized Purchasing Entities continuance of an infringing activity after being notified thereof; or
  - vi. Any negligent or willful act or omission by or attributable to the Authorized Purchasing Entities.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that Authorized Purchasing Entities funds will not be used in the performance of the PA for the acquisition, operation, or maintenance of Software or Equipment in violation of U.S Intellectual Property laws.

### **37. EXAMINATION AND AUDIT**

Unless otherwise specified in the Purchase Order:

- a) Without limiting any examination or audit rights, or other rights of the State and Authorized Purchasing Entities set forth in the Contract, the Contractor agrees that the State and Authorized Purchasing Entities, or its designated representative, shall have the right, to audit, review and copy any records and supporting documentation pertaining to performance of and invoicing under this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment and five (5) years for Federal Universal Service Fund ("E-rate") funded projects, unless a longer period of records retention is stipulated or required by law. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. The State and Authorized Purchasing Entities agrees to take all reasonable steps to ensure that such information is not disclosed to third parties, subject to the California Public Records Act or other lawful process (e.g. in response to a subpoena).
- b) For avoidance of doubt, audits may include those conducted by personnel of the State and Authorized Purchasing Entities, or its designated representative, in performance of PA oversight responsibilities in reviewing invoices, monthly fiscal management and/or other required reports, as well as the application of Service taxes, fees, surcharges and surcredits on invoices.
- c) Subject to the Disputes clause, if an audit reveals that the Contractor has overcharged the State and Authorized Purchasing Entities for Service(s) during the period to which the audit relates, then the Contractor shall promptly refund such overcharges to the State and Authorized Purchasing Entities as appropriate, and, if the amount of the overcharge (offset by any undercharges revealed by such audit) is more than five percent (5%) of the Contractor's charges to the State and Authorized Purchasing Entities for such Service(s) for such period, the reasonable cost of such audit (including any imputed costs of State and Authorized Purchasing Entities for audits performed by the State and Authorized Purchasing Entities itself) shall be borne by the Contractor.
- d) If any audit reveals an inadequacy or insufficiency of the Contractor's performance, including performance in connection with any security obligations of the Contractor as set forth in this Contract, the Contractor shall promptly



develop and provide to the State and Authorized Purchasing Entities, for approval, a reasonable and detailed corrective action plan and promptly thereafter implement such plan in accordance with its terms. In addition, the cost of such audit, and subsequent related audits or audit activity, shall be borne by the Contractor in the event that: (i) the State and Authorized Purchasing Entities specifically identifies a particular deficiency with respect to the Contractor's performance of any particular Service; and (ii) The Contractor either denies or fails to cure such identified deficiency within thirty (30) calendar days. Further, the Contractor agrees to include an equivalent right of the State and Authorized Purchasing Entities to audit records and interview staff in any subcontract related to performance of and invoicing under this Contract.

- e) Notwithstanding anything to the contrary in this section, the State and Authorized Purchasing Entities or any auditing body or its designated representative, agrees that it will not exercise the audit rights described in this section more than once per calendar year, however, any follow-up reviews or other investigations related to an audit initiated under this section may be conducted at any time and upon reasonable notice.
- f) Where the Contractor conducts an internal audit of the Contractor's performance under the PA which shows any significant failures by the Contractor to meet its obligations hereunder, the Contractor shall provide to the State and Authorized Purchasing Entities a written summary describing in reasonable detail such findings of such internal audit. If the Contractor determines at any time that it has overcharged any Authorized Purchasing Entities, then the Contractor shall promptly provide to the applicable Authorized Purchasing Entities a credit equal to the amount of such overcharge plus interest from the date of the Contractor's receipt of such overcharge at a rate which is consistent with the rate provided in the California Prompt Payment Act, Government Code section 927 et seq.
- g) The Contractor agrees that (i) the State or its designees will have the right to obtain, copy and review all billing records of public or local government entities purchasing under this PA; and (ii) the State and Authorized Purchasing Entities may forward audit results showing call rate discrepancies to the CPUC.

### **38. CONTINUING STANDARDS OF PERFORMANCE FOR CONTRACTOR SERVICES**

Unless otherwise specified in the Purchase Order:

- a) Applicability:

The Contractor agrees that subsequent to completion of the successful performance period and acceptance of the Services by the Authorized Purchasing Entities, the Contractor will comply with the availability and/or performance requirements and criteria established in the PA throughout the full PA Term, including any extensions.

b) Causes and Effects of Contractor Service Malfunctions:

- i. The Authorized Purchasing Entities recognize that Equipment failures do occur, and that software is not infallible. Moreover, the Authorized Purchasing Entities concedes that conditions external to Equipment may cause it to fail, particularly environmental conditions, that are outside the Equipment design operating parameters. The Authorized Purchasing Entities agree, therefore, that unsatisfactory Contractor Service performance which is outside the control of the Contractor will not be considered in a determination of the level of performance.
- ii. In the event the Contractor's Service failure or unsatisfactory performance is a result of factors external to the PA, the Contractor agrees to make appropriate recommendations to the Authorized Purchasing Entities in order that such external factors may be corrected to preclude future problems of a similar nature. Within five (5) business days after such failure occurs, the Contractor shall meet and confer with the Authorized Purchasing Entities regarding appropriate next steps, which may include preparation, for the Authorized Purchasing Entities review, comment and approval, of a milestone-based action plan making such recommendations and corrections described in the preceding sentence.
- iii. In the event that the precise cause of a failure cannot be readily determined, both the Authorized Purchasing Entities and the Contractor shall continue to research the situation until the probable cause has been identified or until agreement is reached that the probable cause cannot be identified. Within five (5) business days after such failure occurs (or such other timeframe specified in the solicitation), the Contractor shall meet and confer with the Authorized Purchasing Entities regarding appropriate next steps, which may include preparation, for the Authorized Purchasing Entities review, comment and approval, of a milestone-based action plan for researching the probable cause of the failure.

c) Levels of Performance Required

The Contractor shall perform the Deliverables or Services at the levels of quality, completeness, accuracy, timeliness, responsiveness and efficiency that are consistent with the accepted industry standards or Service Level Agreements applicable to the performance of such Deliverables and the Services or, if higher, the levels of the same received by the Authorized Purchasing Entities prior to the Effective Date and as set out in applicable Service performance exhibits or the Purchase Order, agreed upon by the parties and incorporated into the Contract. Without limiting the foregoing or other obligations of the Contractor, for those Deliverables, requirements, and Services for which the Purchase Order specifies a particular Service level, the Contractor shall provide all Deliverables, requirements, and Services at levels at least in accordance with such Service levels.

d) Remedies for Unacceptable Levels of Performance

The remedies provided in this section shall be in addition to any remedies regarding Warranty. If a Contractor Deliverable, requirement, or Service does not meet the minimum level of performance as set forth in the Purchase Order, the remedy or process for correction set forth in the Purchase Order will be followed by the parties. If the specific Deliverable or Service has no remedy or process for correction set forth in the Purchase Order, Authorized Purchasing Entities shall promptly notify the Contractor in writing of such unacceptable performance and the impact on the Authorized Purchasing Entities, and the Contractor shall promptly initiate action to remedy the unsatisfactory performance. The Contractor shall, at its option, take one or more of the following actions to correct the situation:

- i. Provide on-site Contractor personnel for analysis of the problem;
- ii. Replace the faulty Equipment, Deliverable or Service;
- iii. Provide substitute Equipment, Deliverable or Service satisfactory to the Authorized Purchasing Entities;
- iv. Modify the Equipment, Deliverable or Service; or
- v. Take any other action with which the Authorized Purchasing Entities concurs.

If the Contractor fails to correct an unacceptable level of performance with respect to any Equipment, Deliverable, or Service to the requirements of the PA during the thirty (30) calendar days following receipt of written notice from the Authorized Purchasing Entities (or such other timeframe specified in the Contract), the Authorized Purchasing Entities and the Contractor can mutually agree to extend the time to a specified date. If the Contractor fails to correct the situation

to the satisfaction of the Authorized Purchasing Entities by the end of the specified time period, then, without limiting any other remedy specified in the Contract, the Authorized Purchasing Entities may (i) secure replacement Equipment, Deliverables or Services with the Contractor responsible for payment of Costs to Cover, and/or (ii) terminate that portion of the Purchasing Order relating to the deficient equipment, Deliverable, Requirement, or Service. The above-described remedies are not intended to constrain either party from any other action mutually agreed to by the Contractor and the Authorized Purchasing Entities as being more appropriate or to limit any of the Authorized Purchasing Entities other rights and remedies under this Contract, at law or in equity, including the exercise of Section 46 (Set-Off Rights).

e) Replacement or Substitution of Equipment by the Contractor

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

f) Review of Performance

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

### **39. AVAILABILITY**

- a) If at any time after award of this Contract, the Contractor becomes unable to provide any part of its contracted Services, the Contractor must, within ten (10) Business Days, notify the Authorized Purchasing Entities in writing to seek a potential resolution, and if appropriate, propose a replacement of those Services which it can no longer provide. The replacement must be at no cost to the Authorized Purchasing Entities, and shall be materially equivalent to or exceed the proposed Service which was previously offered and accepted by the Authorized Purchasing Entities in the Contractor's Final Bid or awarded Contract.
- b) The Authorized Purchasing Entities reserve the sole right to determine if the proposed replacement is acceptable. An inability to provide a Mandatory requirement may be grounds for PA termination in whole or in part.

#### **40. DISPUTES**

Unless otherwise specified in the Contract:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally.
- b) If the dispute persists, the Contractor shall submit to the Authorized Purchasing Entities' Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this PA. The Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the applicable Purchase Order, the Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Purchase Order adjustment for which the Contractor believes the Authorized Purchasing Entities are liable. The Authorized Purchasing Entities' Director or designee shall have thirty (30) days after receipt of the Contractor's written demand invoking this Section 42 (Disputes) to render a written decision. If a written decision is not rendered within thirty (30) days after receipt of the Contractor's demand, it shall be deemed a decision adverse to the Contractor's contention.
- c) If the Contractor is not satisfied with the decision of the Authorized Purchasing Entities' Director or designee, the Contractor may appeal the decision, in writing, within fifteen (15) days of its issuance (or the expiration of the thirty (30) day period in the event no decision is rendered by the Authorized Purchasing Entities, to the Department of Technology, Office of Statewide Technology Procurement Deputy Director or designee, who shall have thirty (30) days to render a final decision. If the Contractor does not appeal the decision of the Authorized Purchasing Entities' Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court.
- d) Pending the final resolution of any dispute arising under, related to or involving this PA, the Contractor agrees to diligently proceed with the performance of the applicable Purchase Order.
- e) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department of Technology, Office of Statewide Technology Procurement Deputy Director or designee if an appeal was made. If

Department of Technology, Office of Statewide Technology Procurement Deputy Director or designee fails to render a final decision within thirty (30) days after receipt of the Contractor's appeal 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 to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

#### **41. STOP WORK**

- a) The Authorized Purchasing Entities 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 the applicable Purchase Order for a period of forty-five (45) days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of forty-five (45) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Authorized Purchasing Entities 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 the PA.
- 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 Authorized Purchasing Entities shall make an equitable adjustment in the delivery schedule, the Purchase Order price, or both, and the Purchase Order shall be modified, in writing, accordingly, if: (i) The Stop Work Order results in an increase in the time required, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and (ii) The Contractor asserts its right to an equitable adjustment within sixty (60) days after the end of the period of work stoppage; provided, that if the Authorized Purchasing Entities decides the facts justify the action, the Authorized Purchasing Entities 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 and Authorized Purchasing Entities shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

#### **42. COVENANT AGAINST GRATUITIES**

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

#### **43. ASSIGNMENT OF ANTITRUST ACTIONS**

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

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

- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (i) The assignee has not been injured thereby, or (ii) The assignee declines to file a court action for the cause of action.

#### **44. RECYCLING**

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 section 12200 -12209, in products, materials, Equipment, 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 subsection shall specify that the cartridges so comply (Public Contract Code section 12205(b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, Equipment, 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. The Contractor is to use, to the maximum extent economically feasible in the performance of the PA work, recycled content products (Public Contract Code section 12203(d)).

#### **45. CHILD SUPPORT COMPLIANCE ACT**

For any PA in excess of \$100,000, the Contractor acknowledges in accordance with Public Contract Code 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.

#### **46.SET-OFF RIGHTS**

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

#### **47.CONTRACTOR PERSONNEL**

- a) When the Contractor needs access to Authorized Purchasing Entities' premises to perform the required Services under this Contract, the Contractor personnel shall perform their duties during Authorized Purchasing Entities' regular work days and normal work hours, except as may be specifically agreed to otherwise by the Authorized Purchasing Entities and the Contractor.
- b) The Authorized Purchasing Entities reserve the right to disapprove the continuing assignment of the Contractor personnel working on Authorized Purchasing Entities' premises. If the Authorized Purchasing Entities exercise this right, and the Contractor cannot immediately replace the disapproved personnel, the Authorized Purchasing Entities agree to an equitable adjustment in schedule or other terms that may be affected hereby.
- c) The Contractor will make every effort consistent with sound business practices to honor the specific, commercially reasonable request of the Authorized Purchasing

Entities with regard to assignment of its employees; however, subject to the above paragraph and the paragraph below, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make reasonable effort to provide suitable substitute personnel.

The Contractor represents that the individuals designated as PA Contact in the PA are, and promises that any subsequent PA Contact shall be, experienced professionals, possessing the appropriate knowledge, skills, and expertise to perform properly their assigned duties. The Contractor may transfer or terminate PA Contact at any time in the event the needs of the Contractor's business support a transfer, or the individual is eligible for a promotion or other positive type of employment opportunity, or the individual's personal life experience requires a transfer, or the individual's employment is terminated for "good cause" (which term, as used in this Contract, means cause for termination, including a lay-off, as determined in accordance with the Contractor's employment policies, consistently applied). The Contractor shall exercise every reasonable effort to notify the State prior to the transfer of PA Contact to another position within the Contractor's organization, including upon any such replacement or reassignment if the function being performed by the individual being replaced or reassigned is eliminated from the Services. If any of the PA Contact is reassigned, becomes incapacitated, or ceases to be employed by the Contractor, and therefore becomes unable to perform the functions or responsibilities assigned to such person, the Contractor shall promptly replace such person with another person at least as well qualified to perform such functions and responsibilities as the person being replaced.

The parties acknowledge that qualifications include a mix of experience and education and that equally qualified individuals may have different mixes thereof. The Contractor shall cause its subcontractors to comply with this provision with respect to any of individuals of such subcontractors that are designated as PA Contact.

#### **48. CONTRACTOR BUSINESS RELATIONSHIP RESPONSIBILITY**

The Contractor shall cooperate in good faith with the State and Authorized Purchasing Entities and the other contractors as necessary, including participation in any advisory forum established by the State and Authorized Purchasing Entities and the establishment

of business processes that facilitate the orderly Transition, Migration, and Transfer of Authorized Purchasing Entities to other said Services and the implementation of any other ongoing provisioning support for Services.

#### **49. PROVISIONING OF DELIVERABLES AND SERVICES**

The Authorized Purchasing Entities may order Deliverables and Services under the PA by issuing the appropriate Purchase Order. The Contractor will not commence provisioning Deliverables or Services for a given Authorized Purchasing Entities until the Contractor receives a complete, signed, accepted, and accurate order form.

#### **50. NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY**

Unless otherwise specified in the Purchase Order, an emergency is defined in Public Contract Code Section 1102: "Emergency," as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public Services.

- a) The Contractor shall make reasonable effort to assist the Authorized Purchasing Entities in procuring use of the Contractor Services consistent with that provided under the PA to meet emergencies. The price for such compatible Services shall be reasonably set by the Contractor and, to the extent possible, shall be no greater than the PA rates set forth in the PA.
- b) The Authorized Purchasing Entities, at its option, may accept or reject the use of emergency equipment.

#### **51. NON-EXCLUSIVE AGREEMENT**

Nothing in the PA shall be construed as a requirements contract or interpreted as preventing the Authorized Purchasing Entities from obtaining, consistent with Authorized Purchasing Entities policy, any portion, component, subset or all of the Services offered under the terms and conditions of the PA, or any other Services (analogous, similar, comparable or otherwise) from third parties, or providing the same to itself. Nor shall anything in the PA be construed or interpreted as limiting the Authorized Purchasing Entities right or ability during the Term of the PA to increase or decrease its demand for Services hereunder. To the extent the Authorized Purchasing Entities, consistent with Authorized Purchasing Entities policy, obtains from third parties, or provides to itself, replacement Services for any of the Services hereunder, the amount to be paid to the Contractor by the Authorized Purchasing Entities will be for Products and Services delivered and for the remaining Products and Services.

## **52. CHARGES**

Unless otherwise specified in the Purchase Order (or rate plan thereunder):

The Contractor agrees that the Authorized Purchasing Entities are not subject to any minimum monthly usage charges for any Services contracted under this Contract.

- a) The Contractor agrees that Services not identified in the PA may not be provided nor charged to the Authorized Purchasing Entities pursuant to the PA, but that the Contractor may use the invoicing process of the PA so as to allow for invoicing of Services not related to the PA, provided that such items are clearly identified as not related to the PA and the Contractor otherwise complies with the requirements in the PA related to invoicing.
- b) The Contractor agrees that charges not identified in the PA may not be assessed to the Authorized Purchasing Entities in accordance with subsection a).
- c) Invoices for all contracted Services shall not be subject to late payment charges prior to the Purchase Order defined due date.

## **53. CONTRACTOR COMMITMENTS AND REPRESENTATIONS**

Any written commitment by a duly authorized representative of the Contractor within the scope of the PA shall be binding upon the Contractor. Failure of the Contractor to fulfill any such commitment shall render the Contractor liable for performance deficiency charges or other damages due to the Authorized Purchasing Entities as set forth herein. Such written commitments include but are not limited to:

- a) Any warranty or representation expressly made by the Contractor as to Deliverables, Service, equipment or software performance, total System performance, or other physical design or functioning characteristics of a Machine or software System.
- b) Any warranty or representation expressly made by the Contractor concerning the characteristics of the items described in (a) above, made in any publication, drawings, or specifications accompanying or referred to in the PA.
- c) Any written notification of or affirmation or representation as to the above which is made by the Contractor in or during the course of negotiations and which is incorporated into a formal amendment to the PA .

## **54. SERVICE TO PUBLIC ENTITIES AND LOCAL GOVERNMENT AGENCIES**

In accordance with Government Code Section 11541, the Contractor agrees to provide

Service to all Authorized Purchasing Entities in the State pursuant to the PA and hereby acknowledges that the State is not responsible for payment, Deliverables, requirements or services rendered these entities. The Contractor agrees that it shall have no recourse against the State for any act or omission of the Authorized Purchasing Entities, which arises from the Contractor furnishing Equipment or Services pursuant to the PA. The Contractor understands and acknowledges that under the PA the State neither promises nor guarantees any minimum amount of revenue for the Contractor or minimum amount of Deliverables, requirements, or Services to be purchased.

## **55. SERVICE COSTS**

The Contractor's list of Service and product descriptions accepted by the Authorized Purchasing Entities shall correlate the Service to the associated PA rates as applicable under the PA. All Service costs will include all monthly recurring and usage charges, volume discounts, and non-recurring charges as applicable. Listed pricing will include all elements necessary to configure an instance of working Service including activation, delivery, and training. Any no-cost items will be clearly identified and any Service elements without associated pricing will be considered no charge items.

## **56. FEDERAL UNIVERSAL SERVICE FUND**

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

- a) Provide PA Services to public entities qualified for Universal Service Fund Support;
- b) Be certified as a Universal Service Administrative Company (USAC);
- c) Meet Federal requirements for timeliness and accuracy in processing E-rate and other USAC program request and invoicing; and

## **57. EXISTING EQUIPMENT & TITLE TO EQUIPMENT**

- a) The Contractor agrees to reasonably accommodate Authorized Purchasing Entities and utilize existing equipment. The Contractor's proposed Services shall reasonably accommodate the use of such existing Authorized Purchasing Entities' equipment.

Title to equipment, accessories, and devices provided under the PA shall not vest in the State, unless such items are purchased by the State. All devices and

accessories furnished by the Contractor hereunder, except those purchased by the Authorized Purchasing Entities, shall accompany the equipment when returned to the Contractor.

## **58. UNLAWFUL USE**

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

## **59. DISENTANGLEMENT (MIGRATION-OUT)**

- a) Term Migration-Out shall be synonymous with Disentanglement. The Migration-Out shall begin on the earlier of the following dates, as applicable, the "Migration-Out Commencement Date": (1) as elected by the State, up to sixty (60) calendar days prior to the end of the PA Term that the State has not elected to extend pursuant Section 3 (PA Effective Date) or has already extended fully as permitted under this section; or (2) the date a Notice of Termination is delivered pursuant to Section 19 (Termination for the Convenience of the State) or Section 20 (Termination for Default); or (3) the Authorized Purchasing Entities' election pursuant to Section 54, Non-Exclusive Agreement, to obtain any portion, component, subset or all of the Services offered under the terms and conditions of the PA, or any other Services (analogous, similar, comparable or otherwise) from third parties, including other Contractors, or to provide the same to itself. The Contractor shall provide Migration-Out Services until it has completed the obligations of this Section.

The Contractor's obligation to continue to provide the affected Services shall continue until the earlier of (i) completion of a migration to a new Service provider as provided in this Section, or (ii) eighteen (18) months after the effective date of any termination or expiration. During Migration-Out, the Contractor shall continue to provide Service(s) in a manner consistent with the Contractor's provision and performance of such Service(s) during the period such Service(s) were provided to the Authorized Purchasing Entities hereunder.

- b) Subject to the performance by the Authorized Purchasing Entities and any subsequent provider of similar Services, the Contractor shall cooperate fully with the Authorized Purchasing Entities and third parties and shall take all actions

requested by the Authorized Purchasing Entities or as necessary to accomplish a smooth, complete conversion of responsibility for the Services being terminated from the Contractor to the Authorized Purchasing Entities, or to any replacement provider designated by the Authorized Purchasing Entities (a "Migration-Out"), with no material interruption of, or adverse impact on, the Authorized Purchasing Entities in any way, including on the Services. In the event the Authorized Purchasing Entities elects to terminate any Service (but not all Services in the aggregate) pursuant to the terms hereof, the Contractor shall perform its Migration-Out obligations hereunder to the extent applicable to the Service or Services being terminated. The Contractor's obligations hereunder regarding the collection and payment to the California Department of Technology of administrative fees shall continue throughout Migration-Out.

- c) If the Authorized Purchasing Entities determines that the Contractor has not complied, or is unlikely to comply, with Migration-Out requirements identified in the Migration-Out Plan, and such non-compliance was a direct result of the Contractor, Subcontractor or supplier, and not due to any third party or situations outside the control of the Contractor, as determined by the Authorized Purchasing Entities, the Authorized Purchasing Entities may give written notice to the Contractor of non-compliance. After such notice, the Contractor shall provide to the Authorized Purchasing Entities all necessary additional Contractor personnel to accelerate performance as may be required or necessary to timely achieve compliance or, if the Contractor has already failed to comply, achieve compliance within a re-adjusted time frame established by the Authorized Purchasing Entities. The Contractor shall have seven (7) calendar days, or longer if agreed to by the Authorized Purchasing Entities in writing, to achieve compliance.

For each material Migration-Out requirement not completed after the notice of non-compliance period, the Authorized Purchasing Entities shall be entitled to invoice the Contractor for up to \$2,000 per day for each material deficiency, not to exceed \$10,000 per day for all deficiencies until the Contractor is in material compliance with the requirements of the Migration-Out Plan. The Contractor may exercise its dispute rights under Section 42 (Disputes), in the event that the Contractor disagrees with the Authorized Purchasing Entities application of this Section; however, pending final resolution of any dispute, the Contractor shall diligently proceed without disruption or delay with the performance of the Migration-Out Plan.

All Migration-Out Services performed by the Contractor during the conversion shall be performed by the Contractor at no additional cost to the Authorized Purchasing Entities beyond what the Authorized Purchasing Entities would pay for the Services.

The Contractor shall provide to the Authorized Purchasing Entities all their data and documentation and other information reasonably requested by the Authorized Purchasing Entities in connection with the conversion that is sufficient to enable the Authorized Purchasing Entities, or another reasonably competent Service provider, to fully assume the provision of any terminated Services. Except as the Contractor is otherwise required to retain such data under the PA or by law, the Contractor shall destroy all copies of Customer data not turned over to the Authorized Purchasing Entities.

The Contractor shall export all artifacts and data to the requesting Customer. The Authorized Purchasing Entities reserves the right to define export data formats, storage media type, locations to which data is to be delivered, and other special criteria deemed necessary for successful Migration-Out.

- d) To the extent applicable to the Services provided by the Contractor hereunder, the Contractor shall provide to the Authorized Purchasing Entities as complete and accurate an inventory as is reasonably practicable and such other information regarding such items as the Authorized Purchasing Entities reasonably requests and is necessary for Migration-Out of Services.

## **60.SUBCONTRACTORS**

As prime vendor, Contractor is responsible for overall service performance and requires the ability to manage its subcontractors as necessary to fulfill the overall service performance if and when a subcontractor is required.

As additional clarification, Contractor does not consider local exchange carriers to be Contractor's subcontractors and will not be responsible for the actions or inactions of access providers. In addition, Contractor does not consider subcontractor requirements set forth in this PA to be applicable to any agreements, subcontracts or other business arrangements between Contractor and its affiliates, roaming partners, suppliers, subcontractors or any third-parties relating to the provision of any Products or Services purchased or used by a customer (collectively, "General Supply & Support Agreements") where such General Supply and Support Agreements were entered into for the purpose of providing Products and Services to Contractor's customers generally (as opposed to specifically for the applicable Authorized Purchasing Entity).



## 61. SECURITY AND POLICIES

Unless otherwise specified in the PA or Purchase Order:

At all times during the Term, in addition to any other requirements in the PA, at all times during the Term, the Contractor shall provide all Services, use all resources related thereto, and use, operate, support, and maintain any systems, in an appropriately secure and commercially reasonable manner ("**Security Policies**").

The Contractor shall at all times take all reasonably necessary and appropriate action with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to and use of systems and the networks involved with the provision or receipt of Services, including the implementation and deployment network management and maintenance applications and tools, the use of appropriate encryption technologies, and other security-related Services. In addition, with respect to the premises of the State and Authorized Purchasing Entities, all Contractor personnel (including personnel of any subcontractors) shall be subject to, and shall at all times conform to, all of the State or Authorized Purchasing Entities' policies, procedures, rules, and requirements regarding the protection of premises, materials, equipment, and personnel, as the State or Authorized Purchasing Entities shall provide (in writing or electronically) in advance to the Contractor. The Contractor shall, and shall cause the Contractor personnel and subcontractors to, fully comply with and abide by all such Security Policies provided in advance to the Contractor at all times during the Term. Any violation or disregard of such Security Policies by an individual shall be cause for denial of access of such individual to the State or Authorized Purchasing Entities' property. The Contractor shall exercise due care and diligence to prevent any injury to person or damage to property while on the State or Authorized Purchasing Entities' premises. The operation of the Contractor vehicles or private vehicles of the Contractor personnel on the State or Authorized Purchasing Entities' property shall conform to posted and other regulations and safe driving practices. Vehicular accidents on the State or Authorized Purchasing Entities' property and involving the Contractor personnel shall be reported promptly to the appropriate State or Authorized Purchasing Entities' personnel. The Contractor shall, and shall cause the Contractor personnel and subcontractors, to not exceed (or attempt to exceed) the level of authorized access, if any, to any networks, computer or electronic data storage systems of the State or Authorized Purchasing Entities' that may be granted during the Term for purposes only of performing the Services hereunder.

## **62. 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.

## **63. USE TAX COLLECTION**

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

## **64. EXPATRIATE CORPORATIONS**

The 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 and Authorized Purchasing Entities.

## **65. DOMESTIC PARTNERS**

For contracts over \$100,000, the Contractor certifies that the Contractor is in compliance with Public Contract Code Section 10295.3.

## **66. PRIORITY HIRING**

For contracts including 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 Public Contract Code Section 10353.