

STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES  
STATEWIDE CONTRACT  
CONTRACT 1-24-70-19-19  
AHEAD, INC., DBA KOVARUS, INC

---

APPROVED:  
CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
D. Scott McBride  
City Manager

ATTEST:  
D. SCOTT MCBRIDE, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:  
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 2/21/2025  
City Attorney Date

ACCOUNT DATA:  
M. VENUS RODRIGUEZ

BY: \_\_\_\_\_  
Verified by Finance Officer



**STATE OF CALIFORNIA  
DEPARTMENT OF GENERAL SERVICES – PROCUREMENT DIVISION  
SCOPE OF WORK – EXHIBIT A**

**Enterprise Technology**  
**CONTRACT 1-24-70-19-19**  
**October 1, 2024**

1.1	Contract Items.....	4
1.1.1	Contract Products .....	4
1.1.1.1	Accessories.....	5
1.1.1.2	Value Added Services (VAS) .....	5
1.1.1.3	Additional Software Products.....	6
1.1.1.4	Related Software .....	6
1.1.1.5	Title (Software/Firmware).....	6
1.1.1.6	Trade-In Program.....	6
1.1.1.7	Take-Back Program.....	6
1.1.2	Post-Consumer Recycled Content Certification .....	7
1.1.3	Recyclable and Post-Consumer Recycled Packaging .....	7
1.1.4	Warranty .....	7
1.1.4.1	Quality Assurance Guarantees .....	7
1.1.4.2	Equipment Replacement During Warranty.....	8
1.1.4.3	Continuous Warranty Coverage for Equipment Acquired Under State Contracts .....	8
1.1.4.4	Principal Period of Maintenance (PPM) .....	8
1.1.5	Pricing.....	9
1.1.5.1	Promotional Pricing.....	9
1.1.5.2	Price Adjustments.....	10
1.2	Contract Requirements .....	10
1.2.1	Responsibilities .....	10
1.2.2	Confidentiality .....	10
1.2.3	Contract Terms and Conditions .....	10
1.2.4	Insurance Requirements.....	11
1.2.5	State Contract Administrator.....	11
1.2.6	Contractor Contract Manager.....	11
1.2.7	Customer Service.....	11
1.2.8	Problem Resolution.....	11
1.2.9	Promotional Materials .....	12
1.2.10	Contract Website.....	12
1.2.10.1	Contract Website Contents .....	12
1.2.10.2	Contractor Website Maintenance.....	12
1.2.11	Offer/Quote Format.....	12

1.2.12	Order Acceptance .....	13
1.2.13	Purchase Execution .....	13
1.2.14	Minimum Order .....	13
1.2.15	Ordering Methods .....	13
1.2.16	Order Acknowledgement.....	13
1.2.17	Out-of-Stock Item Remedy.....	14
1.2.18	Discontinued Item Remedy .....	14
1.2.19	Free on Board (F.O.B) Destination.....	14
1.2.20	Delivery Locations.....	14
1.2.20.1	Secure Grounds Delivery.....	14
1.2.21	Delivery Schedules .....	15
1.2.22	Packing Information .....	15
1.2.23	Pallets .....	15
1.2.24	Inspection and Acceptance .....	15
1.2.25	Return Policy .....	16
1.2.25.1	Custom Product Return Policy .....	16
1.2.26	Product Recall Procedures .....	16
1.2.27	Restocking Fees .....	17
1.2.28	Invoicing.....	17
1.2.28.1	CAL-Card Invoicing.....	17
1.2.29	Payment.....	17
1.2.29.1	State Financial Marketplace.....	17
1.2.30	Reporting .....	18
1.2.30.1	Contract Usage Report .....	18
1.2.30.2	Small Business (SB)/Disabled Veteran Business Enterprise (DVBE) Participation Report	18
1.2.30.3	GenAI Reporting .....	19
1.2.30.4	Aging Debt Report .....	20
1.2.30.5	Ad Hoc Reporting.....	20
1.2.31	Incentive Fee for Sales to Local Governmental Agencies.....	20
1.2.32	Contract Termination/Expiration Transition Plan.....	21
1.2.33	System Termination .....	21



## 1. Scope

Ahead, Inc., dba Kovarus, Inc. in CA shall provide the following Enterprise Technology, to the State of California and participating local government agencies at contracted discounts off the OEM MSRP:

- **Dell/EMC Complete Silo**
- **Gigamon Complete Silo**
- **Palo Alto Complete Silo**

Enterprise Technology hardware and associated software, accessories, and value-added services (VAS) will be ordered as needed at the discretion of the ordering agency and will be identified on the purchase document.

The term of this contract is three (3) years with two (2) additional one (1) year extension options or portion thereof. All terms and conditions will remain the same for the entire contract period including any extension periods. If a mutual agreement cannot be met, the contract will expire at the end of the current contract term. Contractor shall be the primary point of contact for warehousing, customer service, data collection, reporting, and distribution. The contract may be amended by mutual consent of the State and the Contractor.

The use of this contract is mandatory for hardware purchases for all State departments except in cases of emergency as defined in Public Contract Code (PCC), section 1102.

### 1.1 Contract Items

#### 1.1.1 Contract Products

Contractor is required to provide the Enterprise Technology hardware, listed in Section 1, including associated software, accessories, and (VAS). All discounts offered in each silo must be offered for the life of any resultant contract. The purchase of all hardware categories is mandatory for State departments with the exception of the On-Campus Networking category.

The Scope of the RFP does not include the following items:

- Cloud Services including acquisitions structured as managed on-site services.
- Storage as a Service, an architecture model by which a provider allows a customer to rent or lease storage space on the provider's hardware infrastructure on a subscription basis.
- Hardware and services for the purpose of telecommunications
- PC Goods
- Wireless phone and internet service
- Managed Print Services
- Printers, Tablets, Cellular Phone Equipment
- Off-campus networking
- Public Works
- Consulting Services

If new product Groups/Categories become available (new revolution, not old evolution), the State may negotiate the new Group/Category into a silo award only.

If a product can fall under two (2) different Groups/Categories, the State shall receive the higher discount offered.

All equipment offered must be new and the latest model in current production. Used, shopworn, refurbished, demonstrator, prototype, or discontinued models are not acceptable.

**1.1.1.1 Accessories**

Accessories extend the functionality without modifying the components of the system. The Contractor shall provide the warranty service and/or replacement of product for all accessories on the Contract. Accessories may be manufactured by a third party but must be carried in the OEM Price List (MSRP).

**1.1.1.2 Value Added Services (VAS)**

Contractor shall offer VAS related to the contract items, including, but not limited to pre-work consultation, installation, professional services, and warranty support. It is not mandatory for ordering agencies to purchase VAS.

**1.1.1.2.1 Pre-Order Configuration Consultation**

The Contractor shall provide pre-sale pre-order technical consultation in accordance with Section 1.1.1.1.3, Professional Services, and configuration certifications to ensure acquired configurations are operationally designed for the ordering agency's technical needs. Ordering agencies will ensure that the Contractor has been appraised on the technical needs of the systems and components acquired under the contract.

**1.1.1.2.2 Installation**

Contractor shall provide installation as a value-added service. Physical installation includes coordination of installation with State representative, power-up, installation of latest firmware, installation of software and updates, and removal of trade-in equipment and dunnage. Testing and diagnostics must include execution of a suite of hardware and software. The basic configuration must be completed and accepted by a State representative.

Installation shall include electronic documentation, including configuration instructions, at no additional price. Ordering agencies may purchase installation at the discount off MSRP.

**1.1.1.2.3 Professional Services**

Professional Services are considered to be any services outside of installation services.

Contractor shall offer professional services such as pre-order configuration, technical support, and engineering. Professional services do not include consulting services. Contractors shall not create their own professional service prices. Contractors must use

the professional services manufacturer's part numbers from the OEM Price List (MSRP) and give a discount based on those OEM Price List (MSRP) prices.

All orders containing professional services will require a statement of work (SOW) with the purchase order from the ordering agencies.

**1.1.1.2.4 Purchase of Warranty/Support**

Purchase of an extended warranty is non-mandatory. State and local agencies may elect to purchase additional warranty at any time during the initial warranty period, in accordance with Section 1.1.4, Warranty/Support. State and local agencies may also purchase the extended warranty within thirty (30) days after the original warranty expires.

**1.1.1.3 Additional Software Products**

The purchase of additional software products from the contract is optional.

**1.1.1.4 Related Software**

Contractor must communicate and provide to the State (at no additional cost) updates and releases of related software required to make a complete working configuration.

**1.1.1.5 Title (Software/Firmware)**

Contractor represents and warrants that it is the sole owner of the goods or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this contract. Contractor further warrants and represents that the software/firmware package, and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

**1.1.1.6 Trade-In Program**

Before any Trade-In can occur, State Departments must obtain approval for discarding their IT equipment from the DGS Surplus Property and Reutilization Program. In accordance with the State Administrative Manual (SAM), Chapter 5900, Information Technology-Disposal of IT Equipment, each agency must explore the reutilization of surplus IT equipment prior to requesting approval for recycling or attempting to use the equipment as a credit toward the purchase of new equipment.

This contract offers a Trade-In Program. It is not mandatory that ordering agencies use the Trade-In service offered.

**There is no Trade-In Program associated with Dell/EMC, Gigamon or Palo Alto for this contract.**

### **1.1.2 Post-Consumer Recycled Content Certification**

State departments are required to report purchases made within eleven (11) product categories in the California Department of Resources Recycling and Recovery's (CalRecycle), State Agency Buy Recycled Campaign (SABRC) per PCC sections 12200-12217.

PCRC Certification Workbook information shall be provided to ordering agencies with quotes.

### **1.1.3 Recyclable and Post-Consumer Recycled Packaging**

Containers and packaging materials should be readily recyclable, and the use of post-consumer recycled content materials should be maximized.

### **1.1.4 Warranty**

During the warranty period, the Contractor must:

- Honor all manufacturers' warranties and guarantees on all products offered through the contract.
- Continue to provide warranty service after contract termination until expiration of warranties for products that have been sold under the contract.
- Provide all labor, parts, and travel necessary to keep the products in good operating condition and preserve its operating efficiency in accordance with its technical specifications.
- Pay any necessary shipment and insurance costs.
- The warranty services listed shall include all products, software and firmware maintenance costs, and costs of labor, parts, travel, factory overhaul, rehabilitation, transportation, and substitute products as necessary. If it is necessary to remove any products from an ordering agency's location where on-site warranty is specified, the Contractor will provide substitute products at the time of removal.

Substitute products will be comparable to or better than the products removed. In instances where it is necessary for the Contractor to return the products to the factory, the Contractor will be responsible for all costs of the products from the time it leaves the ordering agency's site until it is returned to the site in good operating condition.

Only new standard parts or parts equal in performance to new parts will be used in making repairs. Parts that have been replaced will become the property of the Contractor except in instances where the State chooses to keep the hard drives. Replacement parts installed will become the property of the ordering agency.

All operating system software and firmware will be considered an integral component of the equipment, and the Contractor will respond to all requests for warranty service for any failure.

Warranty services during the warranty period will not include electrical work external to the products, the furnishing of supplies, or adding or removing accessories, attachments, or other devices not provided under this contract. Warranty services also will not include repair of damage resulting from transportation by the ordering agency between State or local sites or

from accident unless the accident is caused by negligent, intentional acts, or omissions of Contractor or its agents.

**1.1.4.1 Equipment Replacement During Warranty**

All product provided under the resultant contract shall perform in accordance with technical specifications and functional descriptions contained or referenced in the awarded contract agreement. If provided product is subject to warranty response three (3) or more times during any ninety (90) day period, the Contractor will, upon the ordering agency's request, replace the product at no cost. The replacement product will be delivered no later than fifteen (15) working days after the ordering agency's request is received by the Contractor. Replacement goods cannot be used, refurbished, or recycled, and must be of equal or greater value.

**1.1.4.2 Continuous Warranty Coverage for Equipment Acquired Under State Contracts**

The Contractor agrees to provide extended warranty coverage and honor all manufacturers' warranties and guarantees on OEM products acquired under any prior State of California storage, server, or Enterprise Technology contracts. This option is available conditionally when the equipment has been on continuous maintenance or upgraded extended warranty coverage. The extended warranty coverage shall be offered in the OEM Price List (MSRP) and discount off index pricing under this contract.

**1.1.4.3 Principal Period of Maintenance (PPM)**

The Contractor must provide warranty and unscheduled service calls for equipment failure in accordance with the following Principal Period of Maintenance (PPM) times after notification from an ordering agency of a problem with any of the goods provided under the resultant contract.

- Metropolitan Areas shall be 8x5x8 Next Business Day (NBD) onsite – Eight (8) hours, typically 8:00 am to 5:00 pm, Pacific Time, five (5) days a week, Monday through Friday, eight (8) hour NBD onsite response time in metropolitan areas, excluding State holidays.
- Non-Metropolitan Areas shall be 8x5x2 (two (2) hour call back response time, excluding State holidays.) Remediation shall be underway within forty-eight (48) hours.

Metropolitan Areas:

Counties

San Diego, Orange, Riverside, Los Angeles, San Francisco, Alameda, Sacramento, Santa Clara, San Bernardino, Yolo, Solano, Contra Costa, and San Mateo.

Cities

Redding, Stockton, Bakersfield, Ventura, Tracy, San Quentin, Santa Rosa, Santa Barbara, Frontera, and Fresno.



At the discretion and mutual agreement of State agencies and Contractor, the PPM service availability may be changed for a site by attaching an amendment to their purchase order that states the alternative hours of maintenance at that site. All equipment at a single State site shall have a common PPM service availability. If the State requests unscheduled on-call PPM be performed at a time which is outside the PPM service availability, the service will be furnished at the applicable per call rates and terms then in effect. Travel time and expenses are not billable in connection with such maintenance.

PPM after manufacturers' warranty will be based on the warranty/support offered/purchased by the Contractor.

#### **1.1.5 Pricing**

The contract will employ a discount-off OEM List Price (MSRP) structure for each sub-category (i.e. hardware, software, services). The discount percentage applied to each Sub-Category shall apply to all products or services applicable to that Sub-Category (e.g., all hardware products will be sold at the discount off list price indicated) within the relevant Category.

The OEM's commercially available OEM Price List (MSRP) shall include all products available in the Categories proposed. OEM Price List (MSRP) versions shall be identifiable by a revision date. The URL shall not redirect to other contracts (NASPO, etc.) with the exception of the General Services Administration (GSA) Schedules. A Contractor's self-created catalog/MSRP will not be allowed.

Only items in the OEM Price List (MSRP) can be sold, with the exception of Converged Solutions. The Contractor may use other OEM product, but the end product must have at least one component from their awarded OEM Price List (MSRP) and have an OEM Price List (MSRP) for all products not contained in their OEM Price List (MSRP) within the converged system. OEM Price List (MSRP) may be added during the life of the contract for converged systems, with the approval of DGS.

##### **1.1.5.1 Promotional Materials (M)**

All promotional materials or press releases referencing the contract shall be submitted to the State Contract Administrator for review and DGS approval prior to release.

##### **1.1.5.2 Promotional Pricing**

During special pricing promotions, the Contractor shall offer State and local agency purchasers the promotional pricing or the discount percentage off list price, in accordance with Section 1.1.5, Pricing, whichever is lower.

The Contractor shall notify the State Contract Administrator of all promotional pricing changes. Notification shall include at a minimum:

- Promotion start and end date.
- Models, products, and services included in the promotion.
- Promotional pricing

Promotional pricing shall not be cause for a permanent change in pricing.

Promotional items shall come with all benefits of the statewide contract terms and conditions and shall include all provisions such as warranty and delivery.

#### **1.1.5.3 Price Adjustments**

All discount percentages shall be firm fixed for all catalog items for the contract term, including any optional extension periods unless a discount adjustment is negotiated. A discount percentage will not decrease during the contract term including any extension period. The OEM Price List (MSRP) for catalog items may fluctuate throughout the contract term.

### **1.2 Contract Requirements**

#### **1.2.1 Responsibilities**

The Contractor shall be responsible for successful performance of this Contract. The prime Contractor shall also be responsible for successful performance of all their subcontractors.

Furthermore, the State will consider the prime Contractor to be the sole point of contact regarding contractual matters, payments, and warranty issues for the term of the contract and any extensions.

The prime Contractor will be responsible for compliance with requirements under the contract, even if requirements are delegated to subcontractors. All State policies, guidelines, and requirements apply to subcontractors. The prime Contractor and subcontractors shall not in any way represent themselves in the name of the State of California without prior written approval.

#### **1.2.2 Confidentiality**

The Contractor, with access to confidential State information in the course of performing under the contract, will be required to exercise security precautions for such data that is made available and must accept full legal responsibility for the protection of this confidential information. This includes financial, statistical, personal, technical and all other types of data and information relating to operations of any State or local agency, whether expressly made available to the Contractors or encountered coincident to programming work or testing.

Under no circumstances shall the Contractor use or publish, sell, or otherwise disclose to any third party the contents of any records or data, or reports derived from data, without the authorization and written consent of the State.

#### **1.2.3 Contract Terms and Conditions**

Contractors must adhere to the following terms and conditions without addition or modification:

- [IT General Provisions \(rev 6/21/2022\)](#)

Contractor shall also comply with all applicable statutes, rules, regulations and orders of the United States and the State of California which include, but are not limited to:

- [Non-Discrimination Toward WTO GPA Signatories](#)
- Plastic Trash Bag Certification Violations (Public Resources Code section 42290, et seq.)
- Air or Water Pollution Violations (Government Code section 4477)
- Fair Employment and Housing Commission Regulations (Government Code section 12990)
- Unfair Practices Act and Other Laws (Business and Professions Code section 17000 et seq.)

#### **1.2.4 Insurance Requirements**

The Contractor must maintain in force applicable insurance in accordance Section 1.2.3, Contract Terms and Conditions, General Provisions – Information Technology, paragraph 20, Rev. 06/21/22.

#### **1.2.5 State Contract Administrator**

The State Contract Administrator will be the contact person throughout the life of the contract, unless modified by contract supplement. Any modifications to the requirements contained in the contract may only be authorized by the State Contract Administrator or his/her designee through contract supplement.

#### **1.2.6 Contractor Contract Manager**

The Contract Manager will be the contact person throughout the life of the contract, unless modified by contract supplement. Contractor must immediately notify the State Contract Administrator of changes to the Contract Manager. The Contract Manager must be authorized to make decisions on behalf of the Contractor.

#### **1.2.7 Customer Service**

The Contractor will have a customer service unit that supports this contract. The customer service unit shall provide office and personnel resources for responding to inquiries, including telephone and email coverage weekdays during the hours of 8:00 a.m. - 5:00 p.m., PT. The customer service unit shall respond to all inquiries within twenty-four (24) hours.

The customer service unit shall be staffed with individuals that:

- Are trained in the requirements of this contract.
- Have the authority to take administrative action to correct problems that may occur.

#### **1.2.8 Problem Resolution**

The Contractor shall promptly notify the State Contract Administrator in writing of any unresolved issues or problems that have been outstanding for more than three (3) business days. The State Contract Administrator shall notify the Contractor of the same.



### **1.2.9 Promotional Materials**

All promotional materials or press releases referencing the contract shall be submitted to the State Contract Administrator for review and DGS approval prior to release.

### **1.2.10 Contract Website**

Contractor shall develop a state contract website and maintain an electronic catalog. The contract website shall be available twenty-four (24) hours per day, seven (7) days per week except for regularly scheduled maintenance times. Redirection to the Contractor or reseller commercial website is prohibited. Contractor shall not use MSRP list associated with any other contracts with the exception of GSA Schedules. Website shall be fully functioning within thirty (30) calendar days of the contract start date.

#### **1.2.10.1 Contract Website Contents**

The State Contract Administrator will review and determine acceptability of the website format and data. The Electronic Catalog for any given contract resulting from the RFP shall contain the following data elements at minimum:

- Contract specific discounts.
- Warranty information
- SB/DVBE participation information (if applicable)
- Quote generation (if offered)
- Contractor's customer service contact information
- Commercially available OEM price lists (current and archives)

#### **1.2.10.2 Contractor Website Maintenance**

The OEM Price List (MSRP) shall be updated upon permanent change by any OEM. Any and all changes to the OEM Price List (MSRP) must be archived on the Contractor's Website and the new OEM Price List (MSRP) posted.

#### **1.2.11 Offer/Quote Format**

The Contractor shall provide a quote to ordering agencies in MS Excel spreadsheet format that contain at minimum the following information:

- |   |  |
|---|--|
| • Contractor letterhead                                   | • Manufacturer's Part Number/SKU   |
| • Offer/Quote "prepared by" name and contact information. | • Contractor part # (for Contractor services only – use with manufacturer's SKU) |
| • Offer/Quote number.                                     | • MSRP/Index Price   |
| • Date of Offer/Quote                                     | • Contract Discount  |
| • Ordering agency name                                    | • Contract Unit Price  |
| • Ordering agency contact person.                         | • Extended Price (Quantity x Contract Price)                                     |
| • Contract number.  | • Subtotals of taxable and non-taxable items                                     |
| • Segment ID (Contract line-item #)                       | • Rate and calculated tax.   |
| • Quantity  | • Applicable fees  |
| • Description of Item                                     | • Grand total  |

#### **1.2.12 Order Acceptance**

The Contractor shall accept orders from any State department or local governmental agency.

The Contractor shall not accept purchase documents for this contract that:

- Are incomplete (required information on purchase documents will be provided by the State during contract implementation)
- Contain non-contract items or items outside the scope of the contract.
- Contain non-contract terms and conditions.

The Contractor must not refuse to accept orders from any ordering agency for any other reason without written authorization from the State Contract Administrator.

#### **1.2.13 Purchase Execution**

State Departments will submit orders directly to the Contractor via one of the ordering methods in accordance with Section 1.2.15, Ordering Methods.

Orders will be submitted using a Purchasing Authority Purchase Order (Std. 65) or using the Fi\$Cal Purchase Order process.

Local governmental agencies may submit orders on their own purchase document directly to the Contractor via one of the ordering methods in accordance with Section 1.2.15, Ordering Methods.

#### **1.2.14 Minimum Order**

This contract contains no minimum order.

#### **1.2.15 Ordering Methods**

The Contractor shall accept orders through the following methods:

- Facsimile – A facsimile number to be used by ordering agencies for placing orders is to be in place before the commencement of this contract. Facsimile orders must be accepted between the hours of 8:00 AM and 5:00 PM (PT), Monday through Friday.
- Mail – Contractor must have the capability to receive orders by mail in place before the commencement of this contract.
- Email – An email address to be used by ordering agencies for placing orders is to be in place before the commencement of this contract.

#### **1.2.16 Order Acknowledgement**

The Contractor must provide the ordering agencies with an order receipt acknowledgment through e-mail/facsimile within forty-eight (48) hours after receipt of the purchase order. The acknowledgement will include:

- Contractor's Order Number
- Ordering Agency Name
- Purchase Order Number

- Description of Goods
- Total Cost
- Anticipated Delivery Date
- Identification of any Out of Stock/Discontinued Items

#### **1.2.17 Out-of-Stock Item Remedy**

Upon receipt of order acknowledgment identifying out of stock items, the ordering agencies shall have the following options:

- Request back order.
- Cancel the item from the order with no penalty.

Under no circumstance is the Contractor permitted to make substitutions with non-contract items or unauthorized products without approval from the State Contract Administrator.

#### **1.2.18 Discontinued Item Remedy**

Upon receipt of order acknowledgment identifying discontinued items, the ordering agencies shall have the following options:

- Amend purchase document to reflect State-approved substitute item.
- Cancel the item from the order.

Under no circumstance is the Contractor permitted to make substitutions with non-contract items or unauthorized products without approval from the State Contract Administrator.

#### **1.2.19 Free on Board (F.O.B) Destination**

All prices offered shall be F.O.B. destination, freight prepaid by the Contractor, to the ordering organization's final receiving point. Responsibility and liability for loss or damage for all orders shall remain with the Contractor until final inspection and acceptance, when all responsibility shall pass to the ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations.

#### **1.2.20 Delivery Locations**

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

Contractor is requested to make deliveries in Los Angeles County, Orange County, San Bernardino Metropolitan Area, and San Diego Metropolitan Area during off-peak hours. Off-peak hours are 10:00AM to 4:00PM PT.

##### **1.2.20.1 Secure Grounds Delivery**

Deliveries may be made to locations inside secure grounds that require prior clearances or special entry procedures to be followed for delivery drivers.

Security procedures may vary from facility to facility. The Contractor will be responsible for contacting the secure location for security procedures, hours of operation for deliveries and service, dress code, and other rules of delivery.

Deliveries that are delayed due to drivers not being cleared to enter secure grounds may be cause for contract default.

#### **1.2.21 Delivery Schedules**

Delivery of ordered product shall be completed within thirty (30) calendar days after receipt of an order, unless otherwise agreed to by the ordering agency. Since receiving hours for each ordering agency will vary by facility, it will be the Contractor's responsibility to check with each facility for their specific delivery hours before delivery occurs.

The Contractor must notify the ordering agency within twelve (12) hours of scheduled delivery time if delivery cannot be made within the time frame specified on the order.

#### **1.2.22 Packing Information**

Packing requirements shall be in accordance with Section 1.2.3, Contract Terms and Conditions, General Provisions – Information Technology, paragraph 12, Rev. 06/21/22.

Any back ordered or out of stock items shall be identified on the packing sheet as well as the availability date of unfilled and partial shipment.

A packing label shall also be included with each order shipped and include the following items, visible on the outside of the box:

- Ordering Agency Name
- Delivery Address, Unit, and/or Floor
- Ordering Agency Contact Information

#### **1.2.23 Pallets**

Unless otherwise specified on the ordering agency's purchase order document, standard commercially available pallet sizes should be used. All pallets shall be of sturdy construction and adequate condition to assure delivery of the goods without damage to the goods or safety hazards.

Exchange pallets may be available; however, the State assumes no responsibility for the availability to exchange pallets. Delivery drivers shall not remove more pallets from the location than delivering at time of delivery.

#### **1.2.24 Inspection and Acceptance**

Inspection and acceptance shall be in accordance Section 1.2.3, Contract Terms and Conditions, - General Provisions, Information Technology, paragraph 16, Rev. 06/21/22.

### **1.2.25 Return Policy**

Contractor shall accept returns after delivery in accordance with the State's General Provisions. A full credit/refund shall be offered for the following reasons:

- Items shipped in error.
- Defective or freight-damaged items
- Unopened product (within 30 days of delivery)

Additionally, a full credit/refund shall be provided for products do not in substantially conform with the contract's specification requirements regardless of time of notification.

Contractor may charge a restocking fee for returns that do not meet the reasons above. In all cases, the ordering agency shall have the option of taking an exchange, receiving a credit, or receiving a refund. Restocking fees can be no greater than amount listed in Section 1.2.28, Restocking Fees.

All products returned should be in the packaging as delivered and include all documentation. Lost or damaged packaging materials and/or documentation shall be supplied by the Contractor. The Contractor shall not charge for these materials in excess of the Contractor's cost or the restocking fee, whichever is lower. The Contractor shall provide the State Contract Administrator and/or ordering department a copy of the Contractor's material cost, if requested, within ten (10) days of request.

All returns shall be picked up within seven (7) working days of notification. Notification is defined as notice in writing, by facsimile or e-mail. Shipping or freight costs for returned items that were shipped in error, defective or freight-damaged shall be paid by the Contractor.

The Contractor will be responsible for the credit/refund or replacement of all products, including those covered by manufacturer warranties as stated in Section 1.1.4, Warranty/Support. Contractor shall not require the ordering agency to deal directly with the manufacturer.

#### **1.2.25.1 Custom Product Return Policy**

Ordering agencies shall accrue no charges for custom product if the product is defective or freight damaged. Any other custom product may be returned by any ordering agency but may be subject to fees to remove customization (e.g., VAS), in addition to the fee specified in Section 1.2.26, Return Policy. These fees may be negotiated between the Contractor, ordering agency, and the State Contract Administrator.

### **1.2.26 Product Recall Procedures**

The Contractor shall provide recall notification, regardless of level, in writing to the State Contract Administrator and each applicable ordering agency through the most expedient method possible. The notices, at a minimum, shall include a complete product description and/or identification, contract number, delivery order number and disposition instructions.



The Contractor shall pick up, test, destroy, or return recalled products to the manufacturer at no expense to the ordering agency. The Contractor shall issue replacement of product or credit for any product removed or recalled. Each ordering agency shall have the option of accepting either replacement product or credit in exchange for recalled/removed products.

#### **1.2.27 Restocking Fees**

The Contractor may impose a restocking fee for returns for reasons not listed in Section 1.2.26, Return Policy. Re-stocking fee for this contract shall be no greater than the following:

- Dell/EMC – 10 percent
- Gigamon – 5 percent
- Palo Alto – no restocking fee

The packaging and documentation provisions of Section 1.2.26, Return Policy, shall apply to re-stocked items.

#### **1.2.28 Invoicing**

Invoices shall be submitted to the ordering agencies within seven (7) calendar days from date of delivery.

Ordering agencies may require separate invoicing, as specified by each ordering agency.

##### **1.2.28.1 CAL-Card Invoicing**

All CAL-Card invoices are to be processed separately from other payment methods. CAL-Card invoices shall be submitted to the CAL-Card account holder.

The total invoice amount for each CAL-Card order must reflect a zero-balance due or credit, if applicable, and state "paid by CAL-Card".

For additional information regarding Procurement Division's CAL-Card program, see the CAL-Card website: [CAL-Card](#).

#### **1.2.29 Payment**

Ordering agencies may pay by check, electronic funds transfer, or with the State's CAL-Card credit card. Payments are to be made in accordance with Section 1.2.3, Contract Terms and Conditions, General Provisions – Information Technology, paragraph 30, Rev. 06/21/22.

##### **1.2.29.1 State Financial Marketplace**

The State reserves the right to select the form of payment for all procurements, be it either an outright purchase with payment rendered directly by the State, or a financing (using GS \$Mart) or operating lease (using Lease \$Mart) via the State Financial Marketplace (GS \$Mart and/or Lease \$Mart). If payment is via the financial marketplace, the Contractor will invoice the State and the State will approve the invoice and the selected Lender/Lessor will pay the supplier on behalf of the State for all product listed on the State's procurement document.

### **1.2.30 Reporting**

During the contract period, the Contractor is required to submit the reports outlined in this section on a monthly basis. A report template will be provided by the State to the Contractor upon award and shall contain, but will not be limited to, the data elements identified in the Contract Usage Report Template.

Reports shall be provided to the State Contract Administrator, in Excel format only, via email, by the 15th day following the ending of the reporting period (previous calendar month).

Reports are required every month, including months of no new activity.

#### **1.2.30.1 Contract Usage Report**

The Contract Usage Report shall detail all invoiced purchases against the contract by both State and local governmental agencies during the specified reporting period.

#### **1.2.30.2 Small Business (SB)/Disabled Veteran Business Enterprise (DVBE) Participation Report**

The SB/DVBE Participation Report shall detail all payments to Small Business (SB) and/or Disabled Veteran Business Enterprise (DVBE) subcontractors during the specified reporting period.

##### **SB/DVBE Participation**

Within six (6) months of contract award, the Contractor shall meet or exceed their SB and/or DVBE commitment level on a contract-to-date basis. The State reserves the right to audit records (e.g., cancelled checks, work logs) to verify the SB/DBVE subcontractors are actually performing the work committed to and being paid accordingly, as reported in accordance with Section 1.2.30.2, Small Business/Disabled Veteran Business Enterprise Participation Report.

The corresponding percent of bid price identified in the Contractors proposal represents the percentage of total contract dollars to be paid to the subcontractor.

Example:

- Contractor committed 2 percent DVBE subcontractor participation on a contract.
- Total spend for the contract is \$1,000,000.00.
- Contractor shall pay DVBE subcontractor a minimum of \$20,000.00 for work performed under the contract.

The total spend includes purchases for all products and services. There are no exclusions/exceptions to this requirement.

It is the Contractor's responsibility to ensure that subcontractors have all necessary OEM certifications to perform subcontractor tasks under the contract. The State reserves the right to verify certification at any time during the life of the contract.

Only the Subcontractor Tasks outlined in the table below are considered distinct elements of the work for this contract.

Subcontractor Tasks
Installation
Professional Services
Warranty/Support
Pre-Order Configuration Consultation

Participation for this contract is as follows:

Company Name	Subcontractor or Bidder	SB and/or DVBE w/Certification #	Percentage claimed
Castro International Consulting	Subcontractor	DVBE: 1744407	1.5%

#### 1.2.30.3 GenAI Reporting

Upon request by an ordering agency, Contractor must complete a GenAI Reporting and Fact Sheet (STD 1000) to identify if their solution or service includes, or makes available, any GenAI including, GenAI from third parties or subcontractors.

During the term of the contract, Contractor must notify the State in writing if their services or any work under this contract includes, or makes available, any previously unreported GenAI technology, including GenAI from third parties or subcontractors. Contractor shall immediately complete the GenAI Reporting and Factsheet (STD 1000) to notify the State of any new or previously unreported GenAI technology.

At the direction of the State, Contractor shall discontinue the use of any new or previously undisclosed GenAI technology that materially impacts functionality, risk, or contract performance, until use of such GenAI technology has been approved by the State.

Failure to disclose GenAI use to the State and submit the GenAI Reporting and Factsheet (STD 1000) may be considered a breach of the contract by the State at its sole discretion and the State may consider such failure to disclose GenAI and/or failure to submit the GenAI Reporting and Factsheet (STD 1000) as grounds for the immediate termination of the contract. The State is entitled to seek any and all relief to which it may be entitled to as a result of such non-disclosure.

The State reserves the right to amend the contract, without additional cost, to incorporate GenAI Special Provisions into the contract at its sole discretion and/or terminate any contract that presents an unacceptable level of risk to the State.



#### **1.2.30.4 Aging Debt Report**

The Aging Debt Report must contain the outstanding invoices by State Department for the specified reporting period.

#### **1.2.30.5 Ad Hoc Reporting**

The Contractor shall have the ability to provide ad hoc reporting capabilities at no cost to the State. The Contractor shall permit and provide access to all data that pertains to any procurement action taken by an ordering agency or the State as a whole. The State or ordering agency may make copies of procurement data in any form and the use of such data shall not be restricted.

Dependent on future reporting requirements, the State may ask that certain reports become standard and delivered to the State on a monthly or quarterly basis.

The State reserves the right to request any additional data elements, as deemed necessary, to the reports listed in this section.

#### **1.2.31 Incentive Fee for Sales to Local Governmental Agencies**

For all local government agency transactions invoiced against the contract resulting from this solicitation, the Contractor will be required to remit the DGS-PD an Incentive Fee of an amount equal to 1.25 percent of the total purchase order amount excluding taxes and freight. Local government agencies include cities, counties, and special districts empowered to expend public funds (PCC section 10298). Local government agencies also include government entities in other states, as well as California non-executive branch departments including the University of California and California State University.

This Incentive Fee shall not be included in the agency's purchase price, nor invoiced or charged to the ordering agency. All prices quoted to local governmental agency customers shall reflect State contract pricing, including all applicable discounts, and shall include no other add-on fees. Payment by the Contractor shall be made monthly to DGS-PD irrespective of reimbursement by each ordering agency.

Contractor shall submit a payment to the State of California, Department of General Services, for an amount equal to 1.25 percent of the total local government agency sales for the monthly reporting period less freight, taxes, returned products and credits. (Example, if the net local governmental agency sales for a month totals \$100,000.00, the incentive fee due to DGS-PD would be \$1,250.00.)

Failure to submit correct reports and payments on a timely basis shall constitute grounds for default of this contract. Reports and payments are due for the reporting period by the 15th day of the next month in a format to be prescribed by the DGS-PD. (Note: If the due date is on a Saturday or Sunday, the due date will be the Monday following.)

Payment may be made in the form of an electronic payment using PD EPAY or by submitting a check payable to the State of California, Department of General Services. Along with each payment, a Contract Usage Report, filtered in Excel to include only local government agency sales, shall be submitted to the State Contract Administrator. The Contract Usage Report requirements are specified in Section 1.2.32.1, Contract Usage Report.

To submit Incentive Fees through PD EPAY, users must register on the DGS-PD [LPA Payment Portal](#).

Incentive Fee payments made by check shall be submitted to the following address:

Department of General Services  
Procurement Division  
Contracts Management Unit  
Attn: State Contract Administrator  
707 Third Street, 2nd Floor  
West Sacramento, CA 95605

If a Contractor holds multiple contracts, the Contractor may submit one (1) check per month covering the DGS-PD incentive fee for the total of all local governmental agency purchases. In this case, a separate report is still required for each contract and a list of the total local governmental agency sales for each contract must be included with the check.

#### **1.2.32 Contract Termination/Expiration Transition Plan**

The Contractor must agree to work with the State Contract Administrator to close out the contract. The Contractor will ensure that an efficient and effective transition takes place, including website closeout in accordance with Section 1.2.35, System Termination.

#### **1.2.33 System Termination**

Upon termination or expiration of the contract, the following will occur:

- All online offering systems and Electronic Catalog functions supported and/or available as part of the contract will cease and be removed from public viewing access without redirecting to another website.
- Customer data/user accounts acquired during the term of the contract shall be destroyed or returned to the State at the request of the State Contract Administrator.
- No references to the statewide contract shall be made after contract end on the Contractor's commercial website without permission by the State Contract Administrator.
- Hard copy catalogs and promotional literature shall be destroyed or returned to the State at the end of the contract term upon the request of the State's Contract Administrator.
- All invoicing disputes and/or order tracking will be conducted through the Contractor's Customer Service Unit via telephone or email.

This Scope of Work addresses key aspects of the contract requirements. It does not relieve Contractor's obligation to adhere to all terms, conditions, and requirements of RFP Event ID 0000028998 and associated exhibits.

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

1-24-70-19-19

PURCHASING AUTHORITY NUMBER (If Applicable)

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

CONTRACTING AGENCY NAME

Department of General Services, Procurement Division

CONTRACTOR NAME

Ahead, Inc., dba Kovarus, Inc. in CA

2. The term of this Agreement is:

START DATE

October 1, 2024, or upon DGS approval of contract, whichever is later.

THROUGH END DATE

September 30, 2027

3. The maximum amount of this Agreement is:

\$0.00

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

Exhibits	Title	Pages
Exhibit A	Scope of Work	21
Exhibit B	Contract Discounts	7
Exhibit C	General Provisions dated 6/21/2022	29
+ - Exhibit D	Contractor's Final Proposal	37
+ -		
+ -	The entire RFP Event ID 0000028998 is hereby incorporated by reference. These documents can be viewed at <a href="https://www.caleprocure.ca.gov/event/7760/0000028998">https://www.caleprocure.ca.gov/event/7760/0000028998</a> .	

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

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

Ahead, Inc., dba Kovarus, Inc. in CA

CONTRACTOR BUSINESS ADDRESS

444 W. Lake St., Suite 3000

CITY

Chicago

STATE

IL

ZIP

60606

PRINTED NAME OF PERSON SIGNING

Roxanne Corkin

TITLE

Vice President, Legal

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

9/25/2024

DocuSigned by:

Roxanne Corkin

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

**1-24-70-19-19**

PURCHASING AUTHORITY NUMBER (If Applicable)

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of General Services, Procurement Division

CONTRACTING AGENCY ADDRESS

707 3rd Street

CITY

West Sacramento

STATE

CA

ZIP

95605

PRINTED NAME OF PERSON SIGNING

Christina Nunez

TITLE

Manager, Contracts Management Section

CONTRACTING AGENCY AUTHORIZED SIGNATURE

**Christina**

Digitally signed by  
Christina Nunez

Date: 2024.09.25

**Nunez**

15:14:37 -07:00

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)




## Agreement Cover Letter

By signing below, with inclusion of the date of signature, the bidder declares that the undersigned complies with the requirements of the solicitation and that the information set forth within is true and correct. This document must be signed and returned along with the entire bid response. An electronic signature is acceptable. An unsigned cover letter will be cause for bid rejection. The signatory to this letter is authorized to bind the bidding company contractually.

- A. We have carefully read and will comply with the requirements in the solicitation.
- B. 1) ☐ By checking this box, we commit to all terms and conditions as required by this solicitation.  
or  
2) ☒ By checking this box, we request the State to enter into negotiations for terms and conditions, pursuant to Public Contract Code 6611. Note: Revised terms and conditions should not be included as part of the Final Proposal and will not be considered at this time.

<b>Event ID:</b>	0000028998
<b>Bidder Company Name:</b>	Ahead, Inc., dba Kovarus, Inc. in CA
<b>Address:</b>	Chicago Office (HQ) 401 N. Michigan Ave., Suite 3400  Irvine (CA) 7585 Irvine Center Drive, Suite 130  San Francisco (CA) 2000 Crow Canyon Place, Suite 350  Sacramento (CA) 1303 J Street, Suite 410
<b>City, State &amp; Zip Code:</b>	Chicago, Illinois 60611 Irvine, California 92618 San Ramon, California 94583 Sacramento, California 95814
<b>Telephone Number:</b>	Vernon Fletcher, Managing Director, 650.798.4475 Dan Morris, Client Director, 916.949.3442
<b>Facsimile Number:</b>	800.294.5141
<b>Email:</b>	Vernon.Fletcher@ahead.com Dan.Morris@ahead.com
<b>Print Name:</b>	Peter Theodore



<b>Title:</b>	Chief Administrative Officer
<b>Signature:</b>	<small>Designated by:</small>  <small>AUTHENTICATED</small>
<b>Date:</b>	12/8/2023



### EXHIBIT 3, NARRATIVE RESPONSE

**Instructions:** Bidder must complete each line item outlined below.

<b>BIDDER NAME:</b>	Ahead, Inc., dba Kovarus, Inc. in CA
---------------------	--------------------------------------

NARRATIVE QUESTIONS:	
1. Provide your company's Secretary of State business number in the space provided below. (RFP Section 3.2.3)	4555925
2. Provide the California Department of Tax and Fee Administration Retailer's Seller Permit number in the space provided below. (RFP Section 3.2.3)	235270272
3. Has your company conducted business outside of the United States in the last 3 years? If yes, complete the Darfur Contracting Act form per RFP Section 3.2.6)	No
4. Are you a California certified small business claiming the small business preference? Yes/No response only (RFP Section 3.2.13)	No
5. Are you a non-small business claiming at least 25 percent small business subcontractor preference? Yes/No response only (RFP Section 3.2.13)	No
6. Are you claiming the Disabled Veteran Business Enterprise (DVBE) incentive? Yes/No response only (RFP Section 3.2.13)	Yes
7. Please describe your Distribution Plan (RFP Section 3.2.18)	<p>Ahead's reseller model utilizes authorized distribution partners to procure hardware, software, subscriptions and services on Ahead's behalf and ships those goods and services directly to the end user. When a Purchase Order is received from the end user, Ahead places a Purchase Order with the appropriate, authorized distribution partner(s). That distribution partner fulfills the order with in-stock inventory if available at any of their warehouse locations. If product is not currently in stock within their inventory and/or the product is dropship only, the distribution partner places a PO with the OEM directly who fulfills the order and drop ships directly to the end user.</p> <p>In support of the Ahead's commitment to its' DVBE partner and the associated Commercially Useful Function, Ahead commits to engage the DVBE partner in pre-sales activities related to Pre-Order Configuration Consultation and post-sales activities related to Installation, Professional Services and Warranty/Support Services up to 1.5% of the total contract award.</p>

8. Is a Trade-In program offered? (Yes/No response only) (RFP Section 3.1.9.6)

No

9. What is your restocking fee? (**Restocking fee percentage only, not to exceed 10 percent**) (RFP Section 7.27)

OEM G - Dell/EMC: 10%

10. Will your company allow the use of Cal Card for this contract? Yes/No response only (RFP Section 7.30)

Yes

11. Provide which tier you are proposing, Tier 1(Silo) or Tier 2 (Category) (**Only 1 tier may be selected for any OEM**). If Tier 1, indicate which OEM Silo. If Tier 2, list the OEM and category. (RFP Section 3.1.1)

Tier 1 - OEM G - Dell/EMC

12. Provide the URL(s) for the OEM's MSRP catalog(s). (RFP Section 3.2.1)

OEM G - Dell/EMC: <http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf>





11/30/2023

AHEAD, INC.  
2032 NE 155TH ST  
NORTH MIAMI BEACH, Florida 331626058  
US

**RE: Dell Technologies Partner Program**

**Name of Solution Provider:** AHEAD, INC.

**Reference Event ID 0000028998**

This letter confirms that as of the date written above, Solution Provider identified above is currently an authorized reseller participating in the Dell Technologies Partner Program. This relationship authorizes Solution Provider to resell Dell-branded products and services in accordance with the applicable terms and conditions. If Solution Provider purchases from Dell directly, the governing agreement is the Dell Reseller Terms of Sale at [www.dell.com/resellerterms](http://www.dell.com/resellerterms) or a written resale agreement between Reseller and Dell or EMC that applies specifically to the products and services to be purchased. If Solution Provider purchases from an authorized Dell distributor, the governing agreement is between Solution Provider and the distributor.

This letter is not an authorization to resell Dell-branded products and services to Federal end-users. Federal end-user means the United States Government or other entities as authorized in GSA Order ADM 4800.2 as amended or utilizing Dell IT assets in support of USG contracts and/or for internal use as a normal course of business. Please contact the Dell Federal sales team for a letter of authorization to resell to Federal end-users. Reference Event ID 0000028998 AHEAD, Inc. is authorized to sell from and utilize the Dell complete catalog of Enterprise Technology products and services at the discount percentage-off Dell Price List (MSRP) offered for each of the represented Categories for this RFP

Please feel free to contact your sales representative if you have any questions regarding this letter. We look forward to doing business with you.

Sincerely,

Dell Technologies Partner Operations

*Katherine Castillo*

Katherine Castillo- Paralegal Advisor

### EXHIBIT 3, NARRATIVE RESPONSE

**Instructions:** Bidder must complete each line item outlined below.

<b>BIDDER NAME:</b>	Ahead, Inc., dba Kovarus, Inc. in CA
---------------------	--------------------------------------

#### NARRATIVE QUESTIONS:

1. Provide your company's Secretary of State business number in the space provided below. (RFP Section 3.2.3)

4555925

2. Provide the California Department of Tax and Fee Administration Retailer's Seller Permit number in the space provided below. (RFP Section 3.2.3)

235270272

3. Has your company conducted business outside of the United States in the last 3 years? If yes, complete the Darfur Contracting Act form per RFP Section 3.2.6)

No

4. Are you a California certified small business claiming the small business preference? Yes/No response only (RFP Section 3.2.13)

No

5. Are you a non-small business claiming at least 25 percent small business subcontractor preference? Yes/No response only (RFP Section 3.2.13)

No

6. Are you claiming the Disabled Veteran Business Enterprise (DVBE) incentive? Yes/No response only (RFP Section 3.2.13)

Yes

7. Please describe your Distribution Plan (RFP Section 3.2.18)

Ahead's reseller model utilizes authorized distribution partners to procure hardware, software, subscriptions and services on Ahead's behalf and ships those goods and services directly to the end user. When a Purchase Order is received from the end user, Ahead places a Purchase Order with the appropriate, authorized distribution partner(s). That distribution partner fulfills the order with in-stock inventory if available at any of their warehouse locations. If product is not currently in stock within their inventory and/or the product is dropship only, the distribution partner places a PO with the OEM directly who fulfills the order and drop ships directly to the end user.

In support of the Ahead's commitment to its' DVBE partner and the associated Commercially Useful Function, Ahead commits to engage the DVBE partner in pre-sales activities related to Pre-Order Configuration Consultation and post-sales activities related to Installation, Professional Services and Warranty/Support Services up to 1.5% of the total contract award.

8. Is a Trade-In program offered? (Yes/No response only) (RFP Section 3.1.9.6)

No

9. What is your restocking fee? (**Restocking fee percentage only, not to exceed 10 percent**) (RFP Section 7.27)

OEM I - Gigamon: 5%

10. Will your company allow the use of Cal Card for this contract? Yes/No response only (RFP Section 7.30)

Yes

11. Provide which tier you are proposing, Tier 1(Silo) or Tier 2 (Category) (**Only 1 tier may be selected for any OEM**). If Tier 1, indicate which OEM Silo. If Tier 2, list the OEM and category. (RFP Section 3.1.1)

Tier 1 - OEM I - Gigamon

12. Provide the URL(s) for the OEM's MSRP catalog(s). (RFP Section 3.2.1)

OEM I - Gigamon: <https://www.gigamon.com/resources/state-and-local-government-price-list.html>



October 5, 2023

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

Re: Letter of Authorization for Tender to the State of California re Event ID 0000026824 ("RFP")

To Whom It May Concern,

As of the date of this letter, Gigamon Inc. ("Gigamon"), located at 3300 Olcott Street, Santa Clara, CA 95054, confirms that Ahead, Inc. ("Ahead"), located at 401 N. Michigan Avenue, Suite 3400, Chicago, IL 60611, is authorized to resell Gigamon hardware, software, and product support maintenance, per the reseller agreement between Gigamon and Ahead dated March 16, 2021, to end customer entities located in the United States, including in connection the above-referenced RFP.

Gigamon understands that Ahead has submitted or will submit a cost worksheet in connection with the RFP, and does not object to the discounts set forth therein. However, purchase terms are negotiated directly between Ahead and the end customer, and Gigamon has no role in determining the prices or discounts extended by Ahead to its end customers. In addition, product availability is subject to Gigamon's product discontinuance/end-of-life policies.

This letter of authorization is valid until October 31, 2024, unless earlier terminated upon written notice to Ahead from Gigamon.

If you have any questions, please contact Chris Slocum at [chris.slocum@gigamon.com](mailto:chris.slocum@gigamon.com).

Sincerely,  
**Gigamon Inc.**

DocuSigned by:  
  
78ED5C8CAF5E402...

Anthony S. Kim  
Director, Legal

### EXHIBIT 3, NARRATIVE RESPONSE

**Instructions:** Bidder must complete each line item outlined below.

<b>BIDDER NAME:</b>	Ahead, Inc., dba Kovarus, Inc. in CA
---------------------	--------------------------------------

#### NARRATIVE QUESTIONS:

1. Provide your company's Secretary of State business number in the space provided below.  
(RFP Section 3.2.3)

4555925

2. Provide the California Department of Tax and Fee Administration Retailer's Seller Permit  
number in the space provided below. (RFP Section 3.2.3)

235270272

3. Has your company conducted business outside of the United States in the last 3 years? If  
yes, complete the Darfur Contracting Act form per RFP Section 3.2.6)

No

4. Are you a California certified small business claiming the small business preference?  
Yes/No response only (RFP Section 3.2.13)

No

5. Are you a non-small business claiming at least 25 percent small business subcontractor  
preference? Yes/No response only (RFP Section 3.2.13)

No

6. Are you claiming the Disabled Veteran Business Enterprise (DVBE) incentive? Yes/No  
response only (RFP Section 3.2.13)

Yes

7. Please describe your Distribution Plan (RFP Section 3.2.18)

Ahead's reseller model utilizes authorized distribution partners to procure hardware, software, subscriptions and services on Ahead's behalf and ships those goods and services directly to the end user. When a Purchase Order is received from the end user, Ahead places a Purchase Order with the appropriate, authorized distribution partner(s). That distribution partner fulfills the order with in-stock inventory if available at any of their warehouse locations. If product is not currently in stock within their inventory and/or the product is dropship only, the distribution partner places a PO with the OEM directly who fulfills the order and drop ships directly to the end user.

In support of the Ahead's commitment to its' DVBE partner and the associated Commercially Useful Function, Ahead commits to engage the DVBE partner in pre-sales activities related to Pre-Order Configuration Consultation and post-sales activities related to Installation, Professional Services and Warranty/Support Services up to 1.5% of the total contract award.

8. Is a Trade-In program offered? (Yes/No response only) (RFP Section 3.1.9.6)

Yes

9. What is your restocking fee? (**Restocking fee percentage only, not to exceed 10 percent**) (RFP Section 7.27)

OEM V - Palo Alto Networks: 0%

10. Will your company allow the use of Cal Card for this contract? Yes/No response only (RFP Section 7.30)

Yes

11. Provide which tier you are proposing, Tier 1(Silo) or Tier 2 (Category) (**Only 1 tier may be selected for any OEM**). If Tier 1, indicate which OEM Silo. If Tier 2, list the OEM and category. (RFP Section 3.1.1)

Tier 1 - OEM V - Palo Alto Networks

12. Provide the URL(s) for the OEM's MSRP catalog(s). (RFP Section 3.2.1)

OEM V - Palo Alto Networks:  
<https://www.immixgroup.com/paloaltonetworks/?section=contractspricelists>



## Letter of Authorization

Date: 2/26/2024

To Whom This May Concern:

This letter is to confirm that **Palo Alto Networks** ("OEM") is pleased to support **Ahead**, as a Reseller for the State of California Enterprise Technology RFP (event ID 0000028998). This letter confirms that **Ahead** is authorized to sell from and utilize Palo Alto Networks complete catalog of Enterprise Technology products and services at the discount percentage-off Palo Alto Networks Price List (MSRP) offered for each of the represented categories in this RFP.

For verification purposes, the following information may be used and/or contacted:

Point of Contact Name:	<u>Lauren Aloway</u>
Point of Contact Mailing Address:	<u>3000 Tannery Way Santa Clara, CA 95054</u>
Point of Contact Phone Number:	<u>408-941-3782</u>
Point of Contact Email:	<u>laloway@paloaltonetworks.com</u>

If you have any questions regarding our partnership, please contact the above listed Point of Contact.

Sincerely,

*lauren aloway*

Name: Lauren Aloway  
Title: Sr. GTM Manager – Public Sector Contracts



STATE OF CALIFORNIA  
**CALIFORNIA CIVIL RIGHTS LAWS ATTACHMENT**  
DGS OLS 04 (Rev. 01/17)

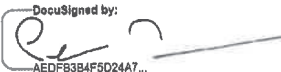
Exhibit D  
DEPARTMENT OF GENERAL SERVICES  
OFFICE OF LEGAL SERVICES

Pursuant to Public Contract Code section 2010, a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a state agency with respect to any contract in the amount of \$100,000 or above shall certify, under penalty of perjury, at the time the bid or proposal is submitted or the contract is renewed, all of the following:

1. **CALIFORNIA CIVIL RIGHTS LAWS:** For contracts executed or renewed after January 1, 2017, the contractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code); and
2. **EMPLOYER DISCRIMINATORY POLICIES:** For contracts executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).

**CERTIFICATION**

I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Proposer/Bidder Firm Name (Printed)	Federal ID Number
Ahead, Inc., dba Kovarus, Inc. in CA	84-3489032
By (Authorized Signature)	
 AEDFB3B4F8D24A7...	
Printed Name and Title of Person Signing	
Peter Theodore	
Executed in the County of	Executed in the State of
Onondaga	New York
Date Executed	
12/1/2023	



STATE OF CALIFORNIA

DEPARTMENT OF GENERAL SERVICES  
PROCUREMENT DIVISION**IRAN CONTRACTING ACT VERIFICATION FORM**

DGS PD 3 (Rev. 12/19)

**(Public Contract Code sections 2202-2208)**

Prior to bidding on, submitting a proposal or executing a contract or renewal for a State of California contract for goods or services of \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d). The DGS list of entities prohibited from contracting with public entities in California per the Iranian Contracting Act, 2010, can be found at:


[Department of General Services Procurement Division Iran Contracting Act List](http://www.documents.dgs.ca.gov/PD/poliproc/Iran%20Contracting%20Act%20List.pdf)

(<http://www.documents.dgs.ca.gov/PD/poliproc/Iran%20Contracting%20Act%20List.pdf>)

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i> Ahead, Inc., dba Kovarus, Inc. in CA	<i>Federal ID Number (or n/a)</i> 84-3489032
<i>By (Authorized Signature)</i>  <small>DocuSigned by: AEDFB3B4F5D24A7...</small>	<i>Date</i> 12/1/2023
<i>Printed Name and Title of Person Signing</i> Peter Theodore, Chief Administrative Officer	

**OPTION #2 – EXEMPTION**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	<i>Date</i>
<i>Printed Name and Title of Person Signing</i>	



## BIDDER DECLARATION Instructions

### All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.

1.a. Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:

- Microbusiness (MB)
- Small Business (SB)
- Nonprofit Veteran Service Agency (NWSA)
- Disabled Veteran Business Enterprise (DVBE)

1.b. Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No," proceed to Item #1.c. If "Yes," enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.

Bidders certified as MB, SB, NWSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999 for DVBEs and Government Code Section 14837(d)(4)(A) for small microbusinesses.

Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.

**Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.**

1.c. This item is only to be completed by businesses certified by California as a DVBE.

(1) Declare whether the prime bidder is a broker or agent by marking either "Yes" or "No." The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.

(2) If bidding rental equipment, mark either "Yes" or "No" to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If not bidding rental equipment, mark "N/A" for "not applicable."

2. If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete "Page \_\_\_\_ of \_\_\_\_" on the form.

If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the "Page \_\_\_\_ of \_\_\_\_" accordingly.

### 2. (continued) Column Labels

**Subcontractor Name, Contact Person, Phone Number & Fax Number**—List each element for all subcontractors.

**Subcontractor Address & Email Address**—Enter the address and if available, an Email address.

**CA Certification (MB, SB, NWSA, DVBE or None)**—If the subcontractor possesses a current State of California certification(s), verify on this website ([www.aprocure.pd.dgs.ca.gov](http://www.aprocure.pd.dgs.ca.gov)).

**Work performed or goods provided for this contract**—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

**Corresponding % of bid price**—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

**Good Standing?**—Provide a response for each subcontractor listed. Enter either "Yes" or "No" to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, NWSA, and/or DVBE status

**51% Rental?**—This pertains to the applicability of rental equipment. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

Enter "N/A" if the:

- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
- Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter "Yes" if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter "No" if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

**Read the certification at the bottom of the page and complete the "Page \_\_\_\_ of \_\_\_\_" accordingly.**



**DISABLED VETERAN BUSINESS ENTERPRISE DECLARATIONS**

Exhibit D

DGS PD 843 (Rev. 9/2019)

Formerly STD. 843

**Instructions:** The disabled veteran (DV) owner(s) and DV manager(s) of the Disabled Veteran Business Enterprise (DVBE) must complete this declaration when a DVBE contractor or subcontractor will provide materials, supplies, services or equipment [Military and Veterans Code Section 999.2]. Violations are misdemeanors and punishable by imprisonment or fine and violators are liable for civil penalties. All signatures are made under penalty of perjury.

**SECTION 1**

Name of certified DVBE: Castro International Consulting DVBE Ref. Number: 1744407  
 Description (materials/supplies/services/equipment proposed): Installation & Professional Services  
 Solicitation/Contract Number: 0000028998 SCPRS Ref. Number: \_\_\_\_\_  
 (FOR STATE USE ONLY)

**SECTION 2**

**APPLIES TO ALL DVBEs. Check only one box in Section 2 and provide original signatures.**

- ☒ I (we) declare that the DVBE is not a broker or agent, as defined in Military and Veterans Code Section 999.2 (b), of materials, supplies, services or equipment listed above. Also, complete Section 3 below if renting equipment.
- ☐ Pursuant to Military and Veterans Code Section 999.2 (f), I (we) declare that the DVBE is a broker or agent for the principal(s) listed below or on an attached sheet(s). (Pursuant to Military and Veterans Code 999.2 (e), State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the 3-percent DVBE participation goal.)

All DV owners and managers of the DVBE (attach additional pages with sufficient signature blocks for each person to sign):

<u>Joshua E Castro</u> (Printed Name of DV Owner/Manager)	<u>[Signature]</u> (Signature of DV Owner/ Manager)	<u>11/27/23</u> (Date Signed)
<u>Fidel E Castro</u> (Printed Name of DV Owner/Manager)	<u>[Signature]</u> (Signature of DV Owner/Manager)	<u>11-27-2023</u> (Date Signed)

Firm/Principal for whom the DVBE is acting as a broker or agent: \_\_\_\_\_  
 (If more than one firm, list on extra sheets.) (Print or Type Name)

Firm/Principal Phone: 916-580-7214 Address: 5170 Golden Foothill Parkway, El Dorado Hills, CA 95762

**SECTION 3**

**APPLIES TO ALL DVBEs THAT RENT EQUIPMENT AND DECLARE THE DVBE IS NOT A BROKER.**

- ☐ Pursuant to Military and Veterans Code Section 999.2 (c), (d) and (g), I am (we are) the DV(s) with at least 51% ownership of the DVBE, or a DV manager(s) of the DVBE. The DVBE maintains certification requirements in accordance with Military and Veterans Code Section 999 et. seq.
- ☐ The undersigned owner(s) own(s) at least 51% of the quantity and value of each piece of equipment that will be rented for use in the contract identified above. I (we), the DV owners of the equipment, have submitted to the administering agency my (our) personal federal tax return(s) at time of certification and annually thereafter as defined in *Military and Veterans Code 999.2, subsections (c) and (g).* *Failure by the disabled veteran equipment owner(s) to submit their personal federal tax return(s) to the administering agency as defined in Military and Veterans Code 999.2, subsections (c) and (g), will result in the DVBE being deemed an equipment broker.*

Disabled Veteran Owner(s) of the DVBE (attach additional pages with signature blocks for each person to sign):

_____ (Printed Name)	_____ (Signature)	_____ (Date Signed)
_____ (Address of Owner)	_____ (Telephone)	_____ (Tax Identification Number of Owner)

Disabled Veteran Manager(s) of the DVBE (attach additional pages with sufficient signature blocks for each person to sign):

_____ (Printed Name of DV Manager)	_____ (Signature of DV Manager)	_____ (Date Signed)
---------------------------------------	------------------------------------	------------------------

Page \_\_\_\_ of \_\_\_\_

PRINT

CLEAR

STATE OF CALIFORNIA

**DARFUR CONTRACTING ACT CERTIFICATION**

DGS PD 1 (Rev. 12/19)

DEPARTMENT OF GENERAL SERVICES  
PROCUREMENT DIVISION

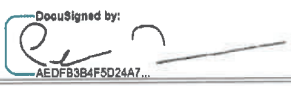
Public Contract Code Sections 10475 -10481 applies to any company that currently or within the previous three years has had business activities or other operations outside of the United States. For such a company to bid on or submit a proposal for a State of California contract, the company must certify that it is either a) not a scrutinized company; or b) a scrutinized company that has been granted permission by the Department of General Services to submit a proposal.

If your company has not, within the previous three years, had any business activities or other operations outside of the United States, you do **not** need to complete this form.

**OPTION #1 - CERTIFICATION**

If your company, within the previous three years, has had business activities or other operations outside of the United States, in order to be eligible to submit a bid or proposal, please insert your company name and Federal ID Number and complete the certification below.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that a) the prospective proposer/bidder named below is **not** a scrutinized company per Public Contract Code 10476; and b) I am duly authorized to legally bind the prospective proposer/bidder named below. This certification is made under the laws of the State of California.

<i>Company/Vendor Name (Printed)</i> Ahead, Inc., dba Kovarus, Inc. in CA	<i>Federal ID Number</i> 84-3489032
<i>By (Authorized Signature)</i>  AEDFB3B4F5D24A7...	<i>Date</i> 12/1/2023
<i>Printed Name and Title of Person Signing</i> Peter Theodore, Chief Administrative Officer	

**OPTION #2 – WRITTEN PERMISSION FROM DGS**

Pursuant to Public Contract Code Section 10477(b), the Director of the Department of General Services may permit a scrutinized company, on a case-by-case basis, to bid on or submit a proposal for a contract with a state agency for goods or services, if it is in the best interests of the state. If you are a scrutinized company that has obtained written permission from the DGS to submit a bid or proposal, complete the information below.



We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

<i>Company/Vendor Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	<i>Date</i>
<i>Printed Name and Title of Person Signing</i>	



AHEALLC-01

CLARGE

## CERTIFICATE OF LIABILITY INSURANCE

Exhibit D  
DATE (MM/DD/YYYY)  
10/31/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Robertson Ryan - Milwaukee 330 East Kilbourn Avenue, Suite 850 Milwaukee, WI 53202	CONTACT NAME: PHONE (A/C, No, Ext): (414) 271-3575 FAX (A/C, No): (877) 700-0139 E-MAIL ADDRESS:
INSURED Ahead Inc/RoundTower Technologies/Kovarus LLC/vCORE Technologies LLC 401 N. Michigan Ave. Suite 3400 Chicago, IL 60611	INSURER(S) AFFORDING COVERAGE INSURER A: Charter Oak Fire Insurance Company 25615 INSURER B: The Travelers Property Casualty Insurance Company of America 25674 INSURER C: Federal Insurance Company 20281 INSURER D: INSURER E: INSURER F:

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			6302P643059	11/8/2023	11/8/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			BA5P271843	11/8/2023	11/8/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP2P929768	11/8/2023	11/8/2024	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	UB2P644554	11/8/2023	11/8/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Cyber Liability/E&O			ZPL71N33760	11/8/2023	11/8/2024	Cyber Liability/E&O 10,000,000
C	Crime			82611822	11/8/2023	11/8/2024	Crime 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Named Insureds: Ahead Inc; RoundTower Technologies LLC; Kovarus LLC; Ahead Data Blue LLC; Vertical Trail LLC; vCORE Technology Partners, LLC; MBX Systems LLC

## CERTIFICATE HOLDER

## CANCELLATION

To Whom It May Concern

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

STATE OF CALIFORNIA

**FEDERAL DEBARMENT CERTIFICATION FORM**

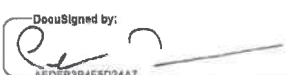
DGS PD 2 (Rev. 12/19)

DEPARTMENT OF GENERAL SERVICES  
EXHIBIT  
PROCUREMENT DIVISION**Certification Regarding Debarment, Suspension, Ineligibility  
and Voluntary Exclusion Lower Tier Covered Transactions**

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

**(BEFORE COMPLETING CERTIFICATION, READ THE INSTRUCTIONS ON THE NEXT PAGE  
WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)**

1. The prospective recipient of Federal assistance funds certifies, by submission of this IFB/RFP Response, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this IFB/RFP Response.

Name and Title of Authorized Representative Peter Theodore, Chief Administrative Officer	
Signature  <small>DocuSigned by: AEDFB3B4E5D24A7</small>	Date 12/1/2023

## FEDERAL DEBARMENT CERTIFICATION FORM (CONTINUED)

### Instructions for Certification

1. By signing and submitting this IFB Response, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this RFP Response is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "RFP Response," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this RFP Response is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this RFP Response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this RFP Response that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-Procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

## CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

**CERTIFICATE OF REGISTRATION - USE TAX**

ACCOUNT NUMBER

235270272

KOVARUS, INC.

AHEAD, INC.

401 N MICHIGAN AVE STE 3400

CHICAGO IL 60611-4249

**START DATE:**

December 1, 2019

*YOU ARE REQUIRED TO OBEY ALL FEDERAL AND STATE LAWS THAT REGULATE OR CONTROL YOUR BUSINESS. THIS PERMIT DOES NOT ALLOW YOU TO DO OTHERWISE.*

*PLEASE RETAIN THIS DOCUMENT FOR YOUR RECORDS.*

IS REGISTERED WITH THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION (CDTFA) AND IS AUTHORIZED TO COLLECT STATE AND LOCAL USE TAXES REQUIRED TO BE COLLECTED UNDER PARTS 1 AND 1.5 OF THE CALIFORNIA REVENUE AND TAXATION CODE, AND TO FURNISH RECEIPTS THEREFOR. FURTHER, THE SAME AUTHORITY EXTENDS TO SELLERS, WITH RESPECT TO COLLECTION OF TRANSIT DISTRICT USE TAXES UNDER PART 1.6 OF THE CALIFORNIA REVENUE AND TAXATION CODE, WHO ARE ENGAGED IN BUSINESS IN A TRANSIT DISTRICT IMPOSING TRANSIT DISTRICT USE TAXES, OR WHO, IF NOT ENGAGED IN BUSINESS IN A TRANSIT DISTRICT, HAVE BEEN AUTHORIZED TO COLLECT TRANSIT DISTRICT USE TAXES.

**THIS CERTIFICATE IS VALID UNTIL CANCELED AND IS NOT TRANSFERABLE.**

**FOR GENERAL TAX QUESTIONS, PLEASE CALL OUR CUSTOMER SERVICE CENTER AT 1-800-400-7115 (CRS:711).  
FOR INFORMATION ON YOUR RIGHTS, CONTACT THE TAXPAYERS' RIGHTS ADVOCATE OFFICE AT 1-888-324-2798.**

CDTFA-442-U REV. 15 (2-22)

**A MESSAGE TO OUR CERTIFICATE HOLDER**

**As a certificate holder, you have certain rights and responsibilities under the Sales and Use Tax Law. For assistance, we offer the following resources:**

- Our website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov).
- Our toll-free Customer Service Center at 1-800-400-7115 (CRS:711). Customer service representatives are available Monday through Friday from 7:30 a.m. to 5:00 p.m. (Pacific time), except state holidays.

You are expected to maintain the normal books and records of a prudent businessperson. You are required to maintain these books and records for no less than four years, and make them available for inspection by a CDTFA representative when requested.

You must notify us if you are buying, selling, or discontinuing your business; adding or dropping a partner, officer, or member; or when you are moving. This certificate is valid only for the owner specified on the certificate. A person who obtains a certificate and ceases to be a seller shall notify CDTFA immediately and surrender the certificate to the California Department of Tax and Fee Administration, Field Operations Division, P.O. Box 942879, Sacramento, CA 94279-0047. You may also surrender the certificate to a CDTFA representative.

If you would like to know more about your rights as a taxpayer, or if you are unable to resolve an issue with CDTFA, please contact the Taxpayers' Rights Advocate Office for help by calling 1-888-324-2798 or by faxing 1-916-323-3319.

As authorized by law, information provided by an applicant for a certificate may be disclosed to other government agencies.



**PAYEE DATA RECORD**

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)  
STD 204 (Rev. 03/2021)

Exhibit D

**Section 1 – Payee Information****NAME** (This is required. Do not leave this line blank. Must match the payee's federal tax return)

Ahead, Inc.

**BUSINESS NAME, DBA NAME or DISREGARDED SINGLE MEMBER LLC NAME** (If different from above)

Ahead, Inc. which will do business in California as Kovarus, Inc.

**MAILING ADDRESS** (number, street, apt. or suite no.) (See instructions on Page 2)

401 N Michigan Ave Ste 3400

**CITY, STATE, ZIP CODE**

Chicago, IL 60611

**E-MAIL ADDRESS**

tax@ahead.com

**Section 2 – Entity Type****Check one (1) box only that matches the entity type of the Payee listed in Section 1 above.** (See instructions on page 2)☐ **SOLE PROPRIETOR / INDIVIDUAL**☐ **SINGLE MEMBER LLC** *Disregarded Entity owned by an individual*☐ **PARTNERSHIP**☐ **ESTATE OR TRUST**☐ **CORPORATION** (see instructions on page 2)☐ **MEDICAL** (e.g., dentistry, chiropractic, etc.)☐ **LEGAL** (e.g., attorney services)☐ **EXEMPT** (e.g., nonprofit)☒ **ALL OTHERS****Section 3 – Tax Identification Number**

Enter your Tax Identification Number (TIN) in the appropriate box. The TIN must match the name given in Section 1 of this form. Do not provide more than one (1) TIN. The TIN is a 9-digit number. **Note:** Payment will not be processed without a TIN.

- For **Individuals**, enter SSN.
- If you are a **Resident Alien**, and you do not have and are not eligible to get an SSN, enter your ITIN.
- Grantor Trusts (such as a Revocable Living Trust while the grantors are alive) may not have a separate FEIN. Those trusts must enter the individual grantor's SSN.
- For **Sole Proprietor or Single Member LLC (disregarded entity)**, in which the sole member is an individual, enter SSN (ITIN if applicable) or FEIN (FTB prefers SSN).
- For **Single Member LLC (disregarded entity)**, in which the sole member is a business entity, enter the owner entity's FEIN. Do not use the disregarded entity's FEIN.
- For all other entities including LLC that is taxed as a corporation or partnership, estates/trusts (with FEINs), enter the entity's FEIN.

**Social Security Number (SSN) or Individual Tax Identification Number (ITIN)**

\_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**OR****Federal Employer Identification Number (FEIN)**8 4 - 3 4 8 9 0 3 2**Section 4 – Payee Residency Status** (See instructions)☒ **CALIFORNIA RESIDENT** – Qualified to do business in California or maintains a permanent place of business in California.☐ **CALIFORNIA NONRESIDENT** – Payments to nonresidents for services may be subject to state income tax withholding.☐ No services performed in California☐ Copy of Franchise Tax Board waiver of state withholding is attached.**Section 5 – Certification**

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

**NAME OF AUTHORIZED PAYEE REPRESENTATIVE**

Peter A. Theodore

**TITLE**

Chief Administrative Officer

**E-MAIL ADDRESS**

peter.theodore@ahead.com

**SIGNATURE****DATE**

2/28/2024

**TELEPHONE** (include area code)

(315) 247-7032

**Section 6 – Paying State Agency****Please return completed form to:****STATE AGENCY/DEPARTMENT OFFICE**

Department of General Services

**UNIT/SECTION**

Procurement Division

**MAILING ADDRESS**

707 3rd Street

**FAX****TELEPHONE** (include area code)

(279) 946.8417

**CITY**

West Sacramento

**STATE**

CA

**ZIP CODE**

95605

**E-MAIL ADDRESS**

lynne.edison@dgs.ca.gov



**PAYEE DATA RECORD**

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)  
STD 204 (Rev. 03/2021)

Exhibit D

**GENERAL INSTRUCTIONS**

Type or print the information on the Payee Data Record, STD 204 form. Sign, date, and return to the state agency/department office address shown in Section 6. Prompt return of this fully completed form will prevent delays when processing payments.

Information provided in this form will be used by California state agencies/departments to prepare Information Returns (Form 1099).

**NOTE:** Completion of this form is optional for Government entities, i.e. federal, state, local, and special districts.

A completed Payee Data Record, STD 204 form, is required for all payees (non-governmental entities or individuals) entering into a transaction that may lead to a payment from the state. Each state agency requires a completed, signed, and dated STD 204 on file; therefore, it is possible for you to receive this form from multiple state agencies with which you do business.

Payees who do not wish to complete the STD 204 may elect not to do business with the state. If the payee does not complete the STD 204 and the required payee data is not otherwise provided, payment may be reduced for federal and state backup withholding. Amounts reported on Information Returns (Form 1099) are in accordance with the Internal Revenue Code (IRC) and the California Revenue and Taxation Code (R&TC).

**Section 1 – Payee Information**

**Name** – Enter the name that appears on the payee's federal tax return. The name provided shall be the tax liable party and is subject to IRS TIN matching (when applicable).

- Sole Proprietor/Individual/Revocable Trusts – enter the name shown on your federal tax return.
- Single Member Limited Liability Companies (LLCs) that is disregarded as an entity separate from its owner for federal tax purposes - enter the name of the individual or business entity that is tax liable for the business in section 1. Enter the DBA, LLC name, trade, or fictitious name under Business Name.
- Note: for the State of California tax purposes, a Single Member LLC is not disregarded from its owner, even if they may be disregarded at the Federal level.
- Partnerships, Estates/Trusts, or Corporations – enter the entity name as shown on the entity's federal tax return. The name provided in Section 1 must match to the TIN provided in section 3. Enter any DBA, trade, or fictitious business names under Business Name.

**Business Name** – Enter the business name, DBA name, trade or fictitious name, or disregarded LLC name.

**Mailing Address** – The mailing address is the address where the payee will receive information returns. Use form STD 205, Payee Data Record Supplement to provide a remittance address if different from the mailing address for information returns, or make subsequent changes to the remittance address.

**Section 2 – Entity Type**

If the Payee in Section 1 is a(n)...	THEN Select the Box for...
Individual • Sole Proprietorship • Grantor (Revocable Living) Trust disregarded for federal tax purposes	Sole Proprietor/Individual
Limited Liability Company (LLC) owned by an individual and is disregarded for federal tax purposes	Single Member LLC-owned by an individual
Partnerships • Limited Liability Partnerships (LLP) • and, LLC treated as a Partnership	Partnerships
Estate • Trust (other than disregarded Grantor Trust)	Estate or Trust
Corporation that is medical in nature (e.g., medical and healthcare services, physician care, nursery care, dentistry, etc.) • LLC that is to be taxed like a Corporation and is medical in nature	Corporation-Medical
Corporation that is legal in nature (e.g., services of attorneys, arbitrators, notary publics involving legal or law related matters, etc.) • LLC that is to be taxed like a Corporation and is legal in nature	Corporation-Legal
Corporation that qualifies for an Exempt status, including 501(c) 3 and domestic non-profit corporations.	Corporation-Exempt
Corporation that does not meet the qualifications of any of the other corporation types listed above • LLC that is to be taxed as a Corporation and does not meet any of the other corporation types listed above	Corporation-All Other

**Section 3 – Tax Identification Number**

The State of California requires that all parties entering into business transactions that may lead to payment(s) from the state provide their Taxpayer Identification Number (TIN). The TIN is required by R&TC sections 18646 and 18661 to facilitate tax compliance enforcement activities and preparation of Form 1099 and other information returns as required by the IRC section 6109(a) and R&TC section 18662 and its regulations.

**Section 4 – Payee Residency Status****Are you a California resident or nonresident?**

- A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.
- A partnership is considered a resident partnership if it has a permanent place of business in California.
- An estate is a resident if the decedent was a California resident at time of death.
- A trust is a resident if at least one trustee is a California resident.
  - o For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.

For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below:

Withholding Services and Compliance Section: 1-888-792-4900  
For hearing impaired with TDD, call: 1-800-822-6268

E-mail address: [wscs.gen@ftb.ca.gov](mailto:wscs.gen@ftb.ca.gov)  
Website: [www.ftb.ca.gov](http://www.ftb.ca.gov)

**Section 5 – Certification**

Provide the name, title, email address, signature, and telephone number of individual completing this form and date completed. In the event that a SSN or ITIN is provided, the individual identified as the tax liable party must certify the form. Note: the signee may differ from the tax liable party in this situation if the signee can provide a power of attorney documented for the individual.

**Section 6 – Paying State Agency**

This section must be completed by the state agency/department requesting the STD 204.

**Privacy Statement**

Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, state, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it. It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and state law imposes noncompliance penalties of up to \$20,000. You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the state agency(ies) with which you transact that business.

All questions should be referred to the requesting state agency listed on the bottom front of this form.

## EVENT ID 0000028998 - CUSTOMER REFERENCE FORM

Customer references may be contacted for verification. Please fill in electronically or print legibly.

<b>Contractor's Name (Bidder):</b>	<i>AHEAD, Inc. dba Kovarus, Inc. in CA</i>
<b>Agency Name (Bidder's Customer):</b>	<i>Franchise Tax Board</i>
<b>Customer Contact Name and Title (Bidder's Customer):</b>	<i>Sashi Prasad, Enterprise Storage Manager</i>
<b>Customer Phone Number:</b>	<i>916.845.5695 cell: 916.640.9105</i>
<b>Customer E Mail Address:</b>	<i>Sashi.prasad@ftb.ca.gov</i>

Order Information (all ordering information must be within the last five (5) years)

<b>Order Date(s):</b>	<i>10/27/2022</i>
<b>Dollar amount of Order(s):</b>	<i>\$7,066,312.79</i>
<b>Products/Services Provided (similar product to that of Enterprise Technology including the sale, distribution, installation and/or related professional services:</b>	<i>Dell Brocade Fibre-Channel Switches, Dell PowerStore, Dell DataDomain, Dell Avamar Backups, Installation Services</i>

**Ratings:** Please summarize contractor performance and circle the number in the right column which best corresponds to the performance rating for each question.

Please follow the rating guidelines below for description of rating scale:

<b>Rating Guidelines and Description of Rating Scale</b>	
<b>Exceptional (5)</b>	Best-in-class performance. Performance met all contract requirements and exceeded several to the customer's benefit. No issues were encountered.
<b>Very Good (4)</b>	Performance met all contract requirements and exceeded some to the customer's benefit. There were a few minor issues, which were negligible.
<b>Satisfactory (3)</b>	Performance met contract requirements. There were some minor issues, and corrective actions taken by the contractor were acceptable.
<b>Marginal (2)</b>	Performance did not meet the contractual requirements. There were issues, some of a serious nature, for which corrective action was only somewhat effective.
<b>Unsatisfactory (1)</b>	Performance did not meet contractual requirements. There were serious issues and the contractor's corrective actions were ineffective.

<b>Factors Rated</b>	<b>Questions</b>	<b>Comments (continue on additional sheets if desired)</b>	<b>Rating</b>
----------------------	------------------	--	---------------

<b>Timeliness</b>	1. How would you rate the Contractor's ability to deliver on time throughout all your locations?	<i>We have never experienced any delays or difficulties with Kovarus/AHEAD on procurements.</i>	① ② ③ ④ ●
	2. How would you rate the Contractor's customer service for project management and assistance requests?	<i>The team has over 20 years experience working with us. Customer service is and always has been the best we work with. Project Managers varied a little but always came prepared and know our processes.</i>	① ② ③ ④ ● Select One
<b>Contract Management</b>	3. How would you rate the experience of the Contractor in managing large accounts/purchase orders?	<i>It has always been a seamless process since they work with us a great deal.</i>	① ② ③ ④ ● Select One
<b>Quality</b>	4. How would you rate the quality of the Contractor's value-added services (i.e. installation, training, and/or warranty repair services)?	<i>Excellent. They are knowledgeable across the datacenter stack and guide us in a number of areas. They even know how to work through our User Acceptance Testing and Security validation process.</i>	① ② ③ ④ ● Select One
<b>Customer Satisfaction</b>	5. How would you rate your level of overall satisfaction with the Contractor?	<i>Superior across the board. They are very consistent in quality and delivery to the FTB organization.</i>	① ② ③ ④ ● Select One

Rater's Signature: \_\_\_\_\_



Date: 02/26/2024

**DELL EMC  
Converged Systems**

**Department of General Services - Procurement Division**  
**Event ID: 0000028998, Enterprise Technology**  
**Attachment 1 - Pricing Worksheet, 11/1/2023**

**Bidder:** Ahead, Inc., dba Kovarus, Inc. in CA

Sub-Categories	MSRP/List Price	Percentage off MSRP	Contract Price
Hardware	\$500,000.00	46%	\$270,000.00
Software	\$250,000.00	46%	\$135,000.00
Accessories	\$50,000.00	45%	\$27,500.00
Installation Services	\$200,000.00	15%	\$170,000.00
Professional Services	\$350,000.00	25%	\$262,500.00
Warranty/Support	\$150,000.00	10%	\$135,000.00
			<b>\$1,000,000.00</b>

**DELL EMC**  
**Hyper-Converged Systems**

**Department of General Services - Procurement Division**  
**Event ID: 0000028998, Enterprise Technology**  
**Attachment 1 - Pricing Worksheet, 11/1/2023**

**Bidder:** Ahead, Inc., dba Kovarus, Inc. in CA

Sub-Categories	MSRP/List Price	Percentage off MSRP	Contract Price
Hardware	\$500,000.00	57%	\$215,000.00
Software	\$250,000.00	57%	\$107,500.00
Accessories	\$50,000.00	12%	\$44,000.00
Installation Services	\$200,000.00	15%	\$170,000.00
Professional Services	\$350,000.00	25%	\$262,500.00
Warranty/Support	\$150,000.00	10%	\$135,000.00
			<b>\$934,000.00</b>



# DELL EMC Networking

## Department of General Services - Procurement Division Event ID: 0000028998, Enterprise Technology Attachment 1 - Pricing Worksheet, 11/1/2023

Bidder: **Ahead, Inc., dba Kovarus, Inc. in CA**

Categories:	Data Center Networking			Campus Networking		
	MSRP/List Price	Percentage off MSRP	Contract Price	MSRP/List Price	Percentage off MSRP	Contract Price
Sub-Categories						
Hardware	\$90,000.00	58%	\$37,800.00	\$125,000.00	58%	\$52,500.00
Software	\$45,000.00	47%	\$23,850.00	\$62,500.00	47%	\$33,125.00
Accessories	\$9,500.00	65%	\$3,325.00	\$12,500.00	65%	\$4,375.00
Installation Services	\$35,000.00	15%	\$29,750.00	\$50,000.00	15%	\$42,500.00
Professional Services	\$55,000.00	25%	\$41,250.00	\$87,500.00	25%	\$65,625.00
Warranty/Support	\$10,500.00	10%	\$9,450.00	\$37,500.00	10%	\$33,750.00
			\$145,425.00			\$231,875.00



**DELL EMC**  
**Storage Area Network (SAN) Fabric**

**Department of General Services - Procurement Division**  
**Event ID: 0000028998, Enterprise Technology**  
**Attachment 1 - Pricing Worksheet, 11/1/2023**

Bidder: **Ahead, Inc., dba Kovarus, Inc. in CA**

Sub-Categories	MSRP/List Price	Percentage off MSRP	Contract Price
Hardware	\$210,000.00	64%	\$75,600.00
Software	\$85,000.00	48%	\$44,200.00
Accessories	\$15,000.00	64%	\$5,400.00
Installation Services	\$50,000.00	15%	\$42,500.00
Professional Services	\$100,000.00	15%	\$85,000.00
Warranty/Support	\$40,000.00	10%	\$36,000.00
			<b>\$288,700.00</b>

**DELL EMC  
Servers**

**Department of General Services - Procurement Division**  
**Event ID: 0000028998, Enterprise Technology**  
**Attachment 1 - Pricing Worksheet, 11/1/2023**

**Bidder:** Ahead, Inc., dba Kovarus, Inc. in CA

Categories:	x86					
	Rack		Blade		Tower	
	Sub-Categories	MSRP/List Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price
	Hardware	\$500,000.00	52%	\$240,000.00	52%	\$240,000.00
	Software	\$250,000.00	52%	\$120,000.00	52%	\$120,000.00
	Accessories	\$50,000.00	63%	\$18,500.00	63%	\$18,500.00
	Installation Services	\$200,000.00	10%	\$180,000.00	10%	\$180,000.00
	Professional Services	\$350,000.00	30%	\$245,000.00	30%	\$245,000.00
	Warranty/Support	\$150,000.00	10%	\$135,000.00	10%	\$135,000.00
				<b>\$938,500.00</b>		<b>\$938,500.00</b>

**DELL EMC  
Storage**

**Department of General Services - Procurement Division**

Event ID: 000028998, Enterprise Technology

**\*Attachment 1 - Pricing Worksheet, 12/1/2023 Addendum #5\***

Bidder: **Althead, Inc., dba Kovarus, Inc. in CA**

SAN Storage (HDD/Hybrid)												All-Flash Array (AFA)*											
Categories:				ENTRY				MID				ENTRY				MID				Tape			
Sub-Categories	MSRP/List Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price						
Hardware	\$500,000.00	55%	\$225,000.00	63%	\$185,000.00	63%	\$185,000.00	63%	\$185,000.00	63%	\$185,000.00	63%	\$185,000.00	63%	\$185,000.00	63%	\$185,000.00						
Software	\$250,000.00	55%	\$112,500.00	63%	\$92,500.00	63%	\$92,500.00	63%	\$92,500.00	63%	\$92,500.00	63%	\$92,500.00	63%	\$92,500.00	63%	\$92,500.00						
Accessories	\$50,000.00	66%	\$17,000.00	63%	\$18,500.00	63%	\$18,500.00	63%	\$18,500.00	63%	\$18,500.00	63%	\$18,500.00	63%	\$18,500.00	63%	\$18,500.00						
Installation Services	\$200,000.00	45%	\$110,000.00	15%	\$170,000.00	15%	\$170,000.00	15%	\$170,000.00	15%	\$170,000.00	15%	\$170,000.00	15%	\$170,000.00	15%	\$170,000.00						
Professional Services	\$350,000.00	30%	\$245,000.00	30%	\$245,000.00	30%	\$245,000.00	30%	\$245,000.00	30%	\$245,000.00	30%	\$245,000.00	30%	\$245,000.00	50%	\$175,000.00						
Warranty/Support	\$150,000.00	10%	\$135,000.00	10%	\$135,000.00	10%	\$135,000.00	10%	\$135,000.00	10%	\$135,000.00	10%	\$135,000.00	10%	\$135,000.00	10%	\$135,000.00						
			\$844,500.00		\$846,000.00		\$846,000.00		\$846,000.00		\$846,000.00		\$846,000.00		\$846,000.00		\$776,000.00						

\*All Flash Array (AFA) includes NVMe and SCM if available

**ACRONYM DEFINITIONS**

HDD = Hard Disk Drive  
 SAN = Storage Area Network  
 NAS = Network Attached Storage  
 SCM = Storage Class Memory  
 NVMe = Non-Volatile Memory Express

Department of General Service  
Event ID: 0000028998, Enterprise

**\*Attachment 1 - Pricing Works**

Sub-Categories	MSRP/List Price	Software Defined Storage (SDS)		Object Storage Array		NAS/FILE		Data Backup & Recovery	
		Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price	Percentage off MSRP	Contract Price
Hardware	\$500,000.00	60%	\$200,000.00	50%	\$250,000.00	60%	\$200,000.00	55%	\$225,000.00
Software	\$250,000.00	60%	\$100,000.00	50%	\$125,000.00	60%	\$100,000.00	55%	\$112,500.00
Accessories	\$50,000.00	65%	\$17,500.00	40%	\$30,000.00	60%	\$20,000.00	60%	\$20,000.00
Installation Services	\$200,000.00	15%	\$170,000.00	10%	\$180,000.00	15%	\$170,000.00	15%	\$170,000.00
Professional Services	\$350,000.00	50%	\$175,000.00	30%	\$245,000.00	30%	\$245,000.00	15%	\$297,500.00
Warranty/Support	\$150,000.00	10%	\$135,000.00	10%	\$135,000.00	10%	\$135,000.00	10%	\$135,000.00
			<b>\$797,500.00</b>		<b>\$965,000.00</b>		<b>\$870,000.00</b>		<b>\$960,000.00</b>

\* All Flash Array (AFA) includes NVMe and SCM if available

**ACRONYM DEFINITIONS**

HDD = Hard Disk Drive  
SAN = Storage Area Network  
NAS = Network Attached Storage  
SCM = Storage Class Memory  
NVMe = Non-Volatile Memory Express

**DELL EMC  
Product Group Totals**

**Department of General Services - Procurement Division**  
**Event ID: 0000028998, Enterprise Technology**  
**Attachment 1 - Pricing Worksheet, 11/1/2023**

**Bidder:** Ahead, Inc., dba Kovarus, Inc. in CA

PRODUCT GROUP	TOTAL \$
Converged Systems	\$1,000,000.00
Hyper-Converged System	\$934,000.00
Networking	\$377,300.00
SAN Fabric	\$288,700.00
Servers	\$2,815,500.00
Storage	\$7,751,000.00
<b>GRAND TOTAL</b>	<b>\$13,166,500.00</b>

## Gigamon Networking

### Department of General Services - Procurement Division Event ID: 0000028998, Enterprise Technology Attachment 1 - Pricing Worksheet, 11/1/2023

Bidder: **Ahead, Inc., dba Kovarus, Inc. in CA**

Categories:	Data Center Networking			Campus Networking		
	MSRP/List Price	Percentage off MSRP	Contract Price	MSRP/List Price	Percentage off MSRP	Contract Price
Sub-Categories						
Hardware	\$90,000.00	10%	\$81,000.00	\$125,000.00	10%	\$112,500.00
Software	\$45,000.00	15%	\$38,250.00	\$62,500.00	15%	\$53,125.00
Accessories	\$9,500.00	12%	\$8,360.00	\$12,500.00	12%	\$11,000.00
Installation Services	\$35,000.00	10%	\$31,500.00	\$50,000.00	10%	\$45,000.00
Professional Services	\$55,000.00	20%	\$44,000.00	\$87,500.00	20%	\$70,000.00
Warranty/Support	\$10,500.00	10%	\$9,450.00	\$37,500.00	10%	\$33,750.00
			<b>\$212,560.00</b>			<b>\$325,375.00</b>



**PALO ALTO NETWORKS**  
**Networking Group**

**Department of General Services - Procurement Division**  
**Event ID: 0000028998, Enterprise Technology**  
**Attachment 1 - Pricing Worksheet, 11/1/2023**

Bidder: **Ahead, Inc., dba Kovarus, Inc. in CA**

Sub-Categories	MSRP/List Price	Percentage off MSRP	Contract Price
Hardware	\$115,000.00	25%	\$86,250.00
Software	\$54,000.00	15%	\$45,900.00
Accessories	\$10,500.00	0%	\$10,500.00
Installation Services	\$42,000.00	0%	\$42,000.00
Professional Services	\$66,000.00	0%	\$66,000.00
Warranty/Support	\$12,500.00	10%	\$11,250.00
			<b>\$261,900.00</b>

Department of General Services, Procurement Division

Statewide Contract 1-24-70-19-19

Attachment A - Contract Pricing

Effective Date: October 1, 2024

Contractor: Ahead, Inc., dba Kovarus, Inc. in CA

OEM: DELL/EMC

<http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf>

GROUP: CONVERGED SYSTEMS		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	1G	46%
Software:	2G	46%
Accessories:	3G	45%
Installation Services:	4G	15%
Professional Services:	5G	25%
Warranty/Support:	6G	10%
GROUP: HYPER-CONVERGED SYSTEMS		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	11G	57%
Software:	12G	57%
Accessories:	13G	12%
Installation Services:	14G	15%
Professional Services:	15G	25%
Warranty/Support:	16G	10%
GROUP: NETWORKING		
Category - Data Center		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	21G	58%
Software:	22G	47%
Accessories:	23G	65%
Installation Services:	24G	15%
Professional Services:	25G	25%
Warranty/Support:	26G	10%

Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	31G	58%
Software:	32G	47%
Accessories:	33G	65%
Installation Services:	34G	15%
Professional Services:	35G	25%
Warranty/Support:	36G	10%
<b>GROUP: SAN FABRIC</b>		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	41G	64%
Software:	42G	48%
Accessories:	43G	64%
Installation Services:	44G	15%
Professional Services:	45G	15%
Warranty/Support:	46G	10%
<b>GROUP: SERVERS</b>		
<b>Category - x86 Rack</b>		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	51G	52%
Software:	52G	52%
Accessories:	53G	63%
Installation Services:	54G	10%
Professional Services:	55G	30%
Warranty/Support:	56G	10%
<b>Category - x86 Blade</b>		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	61G	52%
Software:	62G	52%
Accessories:	63G	63%
Installation Services:	64G	10%
Professional Services:	65G	30%
Warranty/Support:	66G	10%

Category - x86 Tower		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	71G	52%
Software:	72G	52%
Accessories:	73G	63%
Installation Services:	74G	10%
Professional Services:	75G	30%
Warranty/Support:	76G	10%
GROUP: STORAGE		
Category - Storage Area Network (SAN) Storage (HDD/Hybrid) - Entry		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	81G	55%
Software:	82G	55%
Accessories:	83G	66%
Installation Services:	84G	45%
Professional Services:	85G	30%
Warranty/Support:	86G	10%
Category - Storage Area Network (SAN) Storage (Hard Disk Drive (HDD)/Hybrid)) - Mid		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	91G	63%
Software:	92G	63%
Accessories:	93G	63%
Installation Services:	94G	15%
Professional Services:	95G	30%
Warranty/Support:	96G	10%
Category - All-Flash Array (AFA)* - Entry		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	101G	63%
Software:	102G	63%
Accessories:	103G	63%
Installation Services:	104G	15%
Professional Services:	105G	30%
Warranty/Support:	106G	10%

Category - All-Flash Array (AFA)* - Mid		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	111G	63%
Software:	112G	63%
Accessories:	113g	63%
Installation Services:	114G	15%
Professional Services:	115G	30%
Warranty/Support:	116G	10%
Category - Tape		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	121G	63%
Software:	122G	63%
Accessories:	123G	63%
Installation Services:	124G	15%
Professional Services:	125G	50%
Warranty/Support:	126G	10%
Category - Software Defined Storage (SDS)		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	131G	60%
Software:	132G	60%
Accessories:	133G	65%
Installation Services:	134G	15%
Professional Services:	135G	50%
Warranty/Support:	136G	10%
Category - Object Storage Array (OSA)		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	141G	50%
Software:	142G	50%
Accessories:	143G	40%
Installation Services:	144G	10%
Professional Services:	145G	30%
Warranty/Support:	146G	10%

Category - Network Attached Storage (NAS)/File		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	151G	60%
Software:	152G	60%
Accessories:	153G	60%
Installation Services:	154G	15%
Professional Services:	155G	30%
Warranty/Support:	156G	10%
Category - Data Backup & Recovery		
Sub-Category	Segment ID (Contract Line Item #)	Discount-Off MSRP
Hardware:	161G	55%
Software:	162G	55%
Accessories:	163G	60%
Installation Services:	164G	15%
Professional Services:	165G	15%
Warranty/Support:	166G	10%

\*All Flash Array (AFA) includes NVMe and Storage class memory (SCM) if available

End of page



## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

1. **Definitions:** Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.
- a) **“Acceptance Tests”** means those tests performed during the Performance period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
  - b) **“Application Program”** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
  - c) **“Attachment”** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer that is not connected by the Contractor.
  - d) **“Business entity”** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
  - e) **“Buyer”** means the State’s authorized contracting official.
  - f) **“Commercial Hardware”** means Hardware developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
  - g) **“Commercial Software”** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
  - h) **“Contract”** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
  - i) **“Custom Software”** means Software that does not meet the definition of Commercial Software.
  - j) **“Contractor”** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with “supplier”, “vendor” or other similar term.
  - k) **“Data Processing Subsystem”** means a complement of Contractor furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor supplied power and/or signal

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

cables, e.g., direct access controller and drives, a cluster of terminals with their controller, etc.

- l) **“Data Processing System (System)”** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
- m) **“Deliverables”** means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g., reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
- n) **“Designated CPU(s)”** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific “Designated CPU(s)” are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
- o) **“Documentation”** means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
- p) **“Equipment”** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any).
- q) **“Equipment Failure”** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment’s intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment’s intended functions shall be deemed to be an Equipment Failure.
- r) **“Facility Readiness Date”** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
- s) **“Goods”** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- t) **“Hardware”** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- u) **“Installation Date”** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
- v) **“Information Technology”** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- w) **“Machine”** means an individual unit of Data Processing System or Subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- x) **“Machine Alteration”** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- y) **“Maintenance Diagnostic Routines”** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- z) **“Manufacturing Materials”** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- aa) **“Mean Time Between Failure (MTBF)”** means the average expected or observed time between consecutive failures in a System or component.
- bb) **“Mean Time to Repair (MTTR)”** means the average expected or observed time required to repair a System or component and return it to normal operation.
- cc) **“Operating Software”** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- dd) **“Operational Use Time”** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- ee) **“Period of Maintenance Coverage”** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **“Preventive Maintenance”** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **“Principal Period of Maintenance”** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **“Programming Aids”** means Contractor-supplied programs and routines executable on the Contractor’s Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base

DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

management systems, and utility routines (tape-to-disk routines, disk-to-print routines, etc.).

- ii) **“Program Product”** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **“Remedial Maintenance”** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **“Software”** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- ll) **“Software Failure”** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **“State”** means the government of the State of California, its employees, and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- nn) **“System”** means the complete collection of Hardware, Software, and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) **“U.S. Intellectual Property Rights”** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

### 2. CONTRACT FORMATION:

- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor’s bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor’s quotation or proposal is deemed a firm offer and this Contract document is the State’s acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.

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



## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
  - a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage, or liability by reason of the Contractors violation of this provision.
  - b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
  - d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
  - e) To the extent that this Contract falls within the scope of Government Code Section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any

DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

arrangement with any third-party which might abridge any rights of the State under this Contract.

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

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

**10. WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

**11. ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications, or provisions which constitute this Contract, the following order of precedence shall apply:

- a) These General Provisions – Information Technology (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) Other Special Provisions;
- d) Statement of Work, including any specifications incorporated by reference herein;
- e) Cost worksheets; and
- f) All other attachments incorporated in the Contract by reference.



DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

### 12. PACKING AND SHIPMENT:

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

### 13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

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

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

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

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

**16. INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:

- a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of the Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
- f) Unless otherwise specified in the Statement of Work, title to Equipment shall remain with the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.

### 17. SAMPLES:

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

### 18. WARRANTY:

- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.
- c) Unless otherwise specified in the Statement of Work:
  - i. The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
  - ii. The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by the Contractor, or (C) misuse by the State.
  - iii. Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third-party, Contractor, to the extent it is legally able to do so,

DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

will pass through any such third-party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.

- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and the Contractor's sole obligation will be limited to:
  - i. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
  - ii. should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on the Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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

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



## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

### 21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to affect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation thereof.
- b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
- c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO THE CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

### 22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
  - i. Stop work as specified in the Notice of Termination.
  - ii. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
  - iii. Terminate all subcontracts to the extent they relate to the work terminated.
  - iv. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.
- c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.

DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

**GENERAL PROVISIONS – INFORMATION TECHNOLOGY**

- d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
- e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
  - i. The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
  - ii. The total of:
    - A. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
    - B. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
    - C. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

**23. TERMINATION FOR DEFAULT:**

- a) The State may, subject to the clause titled “Force Majeure” and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
  - i. Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
  - ii. Make progress, so that the lack of progress endangers performance of this Contract; or
  - iii. Perform any of the other provisions of this Contract.
- b) The State’s right to terminate this Contract under sub-section a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State’s cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third-



## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.

- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
  - i. completed Deliverables,
  - ii. partially completed Deliverables, and,
  - iii. subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract and are subject to the clause titled "Limitation of Liability."

**24. FORCE MAJEURE:** Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
  - b) Acts of the federal or State government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

### 25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event any Deliverables furnished, or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- b) In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor.

### 26. LIMITATION OF LIABILITY:

- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that the Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations"; (ii) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third-party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third-party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that the Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that the Contractor's liability for such damages arises out of sub- section b)(i), b)(ii), or b)(iv) above.

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

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

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

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

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
- 32. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the state and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract or is rightfully obtained from third parties.
- 35. NEWS RELEASES:** Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.



## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

### 36. DOCUMENTATION:

- a) The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract, then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on the Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

### 37. RIGHTS IN WORK PRODUCT:

- a) All inventions, discoveries, intellectual property, technical communications, and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including the Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be the Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
- b) Software and other materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with the Contractor's or its affiliates' ownership of Pre-Existing Materials.
- c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights, and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors,

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

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

**38. SOFTWARE LICENSE:** Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").

- a) The State may use the Software Products in the conduct of its own business, and any division thereof.
- b) The license granted above authorizes the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.
- c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
- d) Acceptance of Commercial Software (including third-party Software) and Custom Software will be governed by the terms and conditions of this Contract.

**39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:**

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



DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

### 40. RIGHT TO COPY OR MODIFY:

- a) Any Software Product provided by the Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any time without prior written consent of the Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.
- b) The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of the Contract.

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

### 42. ENCRYPTION/CPU ID AUTHORIZATION CODES:

- a) When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the Contractor will provide all codes to the State with delivery of the Software.
- b) In case of inoperative CPU, the Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.
- c) When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, the Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

### 43. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

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

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

- i. The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - ii. The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other Deliverables acquired from the

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

Contractor under this Contract impractical, the State

shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such

Deliverables and refund any sums the State has paid the Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - i. The combination or utilization of Deliverables furnished hereunder with Equipment, Software, or devices not made or furnished by the Contractor; or,
  - ii. The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
  - iii. The modification initiated by the State, or a third-party at the State's direction, of any Deliverable furnished hereunder; or
  - iv. The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation, or maintenance of computer Software in violation of copyright laws.

### 44. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the contracting Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the contracting

DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- b) Department Director or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the Department of General Services, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting Department 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, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies.
- b) Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 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 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in subsection a) above. The Department Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention. The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- e) The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

### 45. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically



DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

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

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

**47. FOLLOW-ON CONTRACTS:**

- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
  - i. will not be awarded a subsequent Contract to supply the service or system, or



DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and

- ii. will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) “Technical Consulting and Direction” means services for which the Contractor received compensation from the State and includes:
  - i. development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
  - ii. development or design of test requirements;
  - iii. evaluation of test data;
  - iv. direction of or evaluation of another Contractor;
  - v. provision of formal recommendations regarding the acquisition of Information Technology products or services; or
  - vi. provisions of formal recommendations regarding any of the above. For purposes of this Section, “affiliates” are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State’s best interest. Except as prohibited by law, the restrictions of this Section will not apply:
  - i. to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
  - ii. where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor’s own products.
- d) The restrictions set forth in this Section are in addition to conflict-of-interest restrictions imposed on public Contractors by California law (“Conflict Laws”). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

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

**49. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

### **50. NONDISCRIMINATION CLAUSE:**

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

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

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

- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and

DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.

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

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

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

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

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

### 55. SWEATFREE CODE OF CONDUCT:

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

**56. RECYCLED CONTENT REQUIREMENTS:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material (as defined in the Public Contract Code (PCC) Section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).

**57. CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.



DGS PD-401

(REVISED AND EFFECTIVE 6/21/22)

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

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

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

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

**61. EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1 and is eligible to contract with the State.

**62. DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code Section 10295.3.

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

- a) If for this Contract the Contractor made a commitment to achieve small business participation, then the Department requires the Contractor upon completion of this Contract (or within such other time period as may be specified elsewhere in this Contract) to report the actual percentage of small business participation that was achieved. (Govt. Code § 14841)
- b) If for this Contract the Contractor made a commitment to achieve the disabled veteran business enterprise (DVBE) participation goal, then, pursuant to Mil. & Vets. Code § 999.5(d), upon completion of this Contract, the Department requires the Contractor to certify using the Prime Contractor's Certification – DVBE Subcontracting Report (STD 817), all of the following:
  - i. the total amount the prime Contractor received under the Contract;
  - ii. the name, address, Contract number and certification ID number of the DVBE(s) that participated in the performance of this Contract;
  - iii. the amount and percentage of work the prime Contractor committed to provide to one or more DVBE(s) under the requirements of the Contract and the total payment each DVBE received from the prime Contractor;
  - iv. that all payments under the Contract have been made to the DVBE(s); and
  - v. the actual percentage of DVBE participation that was achieved. Upon request, the prime Contractor shall provide proof of payment for the work.



## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

If for this Contract the Contractor made a commitment to achieve the DVBE participation goal, the Department will withhold \$10,000 from the final payment, or the full final payment if less than \$10,000, until the Contractor complies with the certification requirements above. A Contractor that fails to comply with the certification requirement shall, after written notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of written notice, the prime contractor refuses to comply with the certification requirements, the Department shall permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. (Mil. & Vets. Code § 999.7)

A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841)

Contractor agrees to comply with the rules, regulations, ordinances, and statutes that apply to the DVBE program as defined in Section 999 of the Mil. & Vets. Code, including, but not limited to, the requirements of Section 999.5(d). (PCC Code § 10230)

**64. LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).).

**65. EXECUTIVE ORDER N-6-22-RUSSIA SANCTIONS:** The Contractor shall comply with Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.