

**STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES
COOPERATIVE AGREEMENT – SUPPLEMENT 7
CONTRACT NO. 7-16-70-36; 7-16-70-37
SOFTWARE VAR (NASPO VALUEPOINT)**

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Frederic A. Miller 5/6/21
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

**COOPERATIVE AGREEMENT
 USER INSTRUCTIONS
 NON-MANDATORY
 Supplement 7**

Effective Date: 04/02/2021

<i>TITLE</i>	<i>DESCRIPTION</i>
TITLE/DESCRIPTION:	Software VAR (NASPO ValuePoint)
CONTRACT NUMBERS:	7-16-70-36 SHI International, Corp. 7-16-70-37 CDW Government LLC
CONTRACT TERM:	VARIOUS through 01/07/2022
CONTRACT CATEGORY:	IT Goods
MAXIMUM ORDER LIMIT:	State Agencies: \$1,500,000 (See section 6.E) Local Governmental Agencies: Unlimited
FOR USE BY:	State and Local Governmental Agencies (See Section 2)
STATE CONTRACT ADMINISTRATOR:	Julie Matthews (916) 375-4612 Julie.Matthews@dgs.ca.gov

Ordering Agencies are instructed to carefully review these User Instructions in their entirety. For questions, please contact the State Contract Administrator and reference the "Title/Description" and/or Contract Number listed above. Changes to this document will be issued through a User Instructions Supplement.

Notice to State Agencies: Products and/or services under the Software publishers identified in the pricing submission sheet are NOT available if the products and/or services are currently available under the Software Licensing Program (SLP). This restriction does not apply to local governmental agencies.

ORIGINAL ON FILE
Julie Matthews, State Contract Administrator

SUMMARY OF CHANGES

Supplement Number	Description/Sections	Supplement Effective Date
7	<p>Supplement 7 replaces and supersedes previous User Instructions version. Revisions include:</p> <ul style="list-style-type: none">• <u>Cover Page</u> – Updated Contract Term End date to 1/7/2022.• <u>Section 3 (Contract Term)</u> – Updated Contract Term End date to 1/7/2022.• <u>Attachment A</u> – Updated Term End date to 1/7/2022 for both agreements (7-16-70-36 and 7-16-70-37)	4/02/2021

To obtain copies of previous User Instructions, please contact the State Contract Administrator listed in Section 4 (Contract Administrators).

Table of Contents

USER INSTRUCTIONS	4
1. SCOPE AND OVERVIEW	4
2. CONTRACT AVAILABILITY	4
A. State Agencies	4
B. Local Governmental Agencies.....	4
3. CONTRACT TERM.....	4
4. CONTRACT ADMINISTRATOR	5
5. CONTRACT INFORMATION.....	5
A. Lead State Agreement (NASPO ValuePoint Base Contract).....	5
B. California Cooperative Agreements (Participating Addendum Documents)	5
C. Available Products and Services	5
D. Restricted/Disallowed Products and Services	6
E. Contractor Pricing.....	6
F. Small Business/Disabled Veteran Business Enterprise Participation	6
6. CONTRACT USAGE/RULES	6
A. Adherence to Applicable Laws (State Agencies Only)	6
B. Purchase Authority (State Agencies Only)	6
C. California Seller's Permit (State Agencies Only)	7
D. DGS Administrative Fee	7
E. Order Limits/Dollar Thresholds (State Agencies Only)	7
F. Civil Rights Certification (orders \$100,000 or above) (State Agencies Only).....	7
G. Iran Contracting Act Certification (orders over \$1 million) (State Agencies Only). 7	
7. ORDERING PROCEDURES	7
A. Contractor Selection Process	7
B. Purchase Order Form and Execution	8
8. INVOICING AND PAYMENT	9
A. Payment Terms	9
B. Payee Data Record	9
C. CAL-Card	9
9. PROBLEM RESOLUTION/CONTRACTOR PERFORMANCE	9
 ATTACHMENT A – Contractor Information.....	 10

USER INSTRUCTIONS

1. SCOPE AND OVERVIEW

The Department of General Services, Procurement Division (DGS-PD) has established California Participating Addendum (hereafter referred to as “California Cooperative Agreement” or “Cooperative Agreement”) with individual Contractors (as noted on page 1) for use of the NASPO ValuePoint Software VAR Master Agreements executed by the State of Arizona.

These Cooperative Agreements provide state and local governmental agencies the opportunity to acquire products and services in accordance with the instructions provided herein and the terms and conditions outlined in the individual Cooperative Agreements. Attachment A identifies specific Cooperative Agreement information by Contractor.

Note: Unless otherwise specified within this document, the term “Ordering Agencies” will refer to all state agencies and local governmental agencies eligible to utilize these agreements. Ordering and usage instructions exclusive to state or local governmental agencies shall be identified within each section.

2. CONTRACT AVAILABILITY

A. State Agencies

- 1) Use of these agreements is non-mandatory for State of California agencies.
- 2) State agencies are restricted from using these agreements for products and services available on Software Licensing Program (SLP). See Section 5.C (Available Products and Services) and 5.D (Restricted/Disallowed Products and Services) for more information.

B. Local Governmental Agencies

- 1) Use of these agreements is optional for local governmental agencies.
- 2) Local governmental agencies are defined as any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds.
- 3) Each local governmental agency shall determine whether use of these agreements is consistent with its procurement policies and regulations.

3. CONTRACT TERM

The term for these California Cooperative Agreements is from the date of the State’s approval through January 7, 2022, or upon termination by the State, whichever occurs first. See Attachment A for individual agreement start and expiration dates.

Note: Orders placed under these contracts shall be executed on or before the expiration date of the Cooperative Agreement. Delivery of products or completion of services may be after the Cooperative Agreement expiration date.

4. CONTRACT ADMINISTRATOR

A. DGS-PD and the Contractor(s) have assigned contract administrators as single points of contact for problem resolution and related contract issues.

B. The State Contract Administrator for these agreements is:

Administrator Information	State Contract Administrator
Name:	Julie Matthews
Telephone:	(916) 375-4612
Email:	Julie.Matthews@dgs.ca.gov
Address:	DGS, Procurement Division Attn: Julie Matthews 707 Third Street, 2nd Floor, MS 2-202 West Sacramento, CA 95605

C. Contractor Contract Administrator contact information is outlined in Attachment A.

5. CONTRACT INFORMATION

A. Lead State Agreement (NASPO ValuePoint Base Contract)

The California Cooperative Agreements are based on some or all of the products, services and prices from the NASPO ValuePoint Software VAR agreements issued by the State of Arizona. Copies of the Arizona NASPO ValuePoint agreements are available on the [NASPO ValuePoint Software VAR website](https://www.naspovaluepoint.org/portfolio/software-var-2016-2021) (<https://www.naspovaluepoint.org/portfolio/software-var-2016-2021>).

B. California Cooperative Agreements (Participating Addendum Documents)

California Cooperative Agreements, price lists and related documents are posted in [Cal eProcure](https://caleprocure.ca.gov/pages/LPASearch/lpa-search.aspx) (<https://caleprocure.ca.gov/pages/LPASearch/lpa-search.aspx>). Direct links to each agreement in Cal eProcure are found in Attachment A.

C. Available Products and Services

The California Cooperative Agreements are limited to the purchase and warranty of software, software maintenance and technical support that is NOT currently available under the Software Licensing Program (SLP).

Prior to purchasing under these Cooperative Agreements, state agencies must:

- Check the [DGS-PD SLP website](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Software-Licensing-Program) (<https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Acquisitions/Software-Licensing-Program>); and/or
- [Contact SLP](mailto:slp@dgs.ca.gov) (slp@dgs.ca.gov)

D. Restricted/Disallowed Products and Services

- 1) Consulting
- 2) Configuration/Customization of software
- 3) Installation
- 4) Training
- 5) Cloud products/services

E. Contractor Pricing

Pricing is based on a Reseller Cost formula [Reseller Cost + (Reseller Cost x Markup/Down)]. Price Lists for each contractor are posted on Cal eProcure. Links to each Contractor’s Cal eProcure website are identified in Attachment A.

F. Small Business/Disabled Veteran Business Enterprise Participation

There is no California-certified Small Business (SB) or Disabled Veteran Business Enterprise (DVBE) participation for these Cooperative Agreements.

6. CONTRACT USAGE/RULES

A. Adherence to Applicable Laws (State Agencies Only)

State agencies must adhere to all applicable State laws, regulations, policies, best practices, and purchase authority requirements (e.g. California Codes, Code of Regulations, State Administrative Manual, Management Memos, and State Contracting Manual).

B. Purchase Authority (State Agencies Only)

The acquisition method and type for these agreements are:

Acquisition Method	Acquisition Type
Cooperative Agreements (requiring further competition within the category)	IT Goods/Services

Prior to executing subscription agreements, state agencies must have been granted purchasing authority by DGS-PD for the use of the acquisition method and type

listed above. For more information, contact the DGS-PD Purchasing Authority Management Section at pams@dgs.ca.gov.

C. California Seller's Permit (State Agencies Only)

California Seller's Permit information for each Contractor is identified in Attachment A. Prior to placing orders under these agreements, state agencies should verify that permits are currently valid on [California Department of Tax and Fee Administration \(CDTFA\) website](http://www.cdtfa.ca.gov/) (www.cdtfa.ca.gov/). State agencies must adhere to the file documentation required in the State Contracting Manual Volume, as applicable.

D. DGS Administrative Fee

Ordering agencies will not be charged the DGS Administrative fee nor will they be invoiced by the Contractors for use of these agreements.

E. Order Limits/Dollar Thresholds (State Agencies Only)

State agencies may execute orders, including amendments, up to the maximum order limit listed on page 1, unless otherwise specified by their approved delegated purchasing authority. Each State agency's purchasing authority is listed by acquisition method and type on their Purchasing Authority Approval Letter (PAAL).

Pursuant to Public Contract Code Section 10329, willfully splitting a single purchasing transaction into a series of transactions for the purpose of evading bidding requirements or to circumvent ordering limits is prohibited.

F. Civil Rights Certification (orders \$100,000 or above) (State Agencies Only)

Contractors have a signed California Civil Rights Laws Certification on file with the DGS-PD.

G. Iran Contracting Act Certification (orders over \$1 million) (State Agencies Only)

Contractors have a signed Iran Contracting Act Certification on file with the DGS-PD. Prior to award, State Ordering Agency must check the "Entities Prohibited from Contracting with Public Entities in California per the Iranian Contracting Act, 2010 List" posted by DGS to confirm awardee is not listed as an ineligible business.

7. ORDERING PROCEDURES

A. Contractor Selection Process

1) State Agencies

State agencies electing to use these agreements must select a Contractor using the Best Value Request for Offer (RFO) process outlined below:

- a) *Develop RFO* – Ordering Agency will develop a RFO which includes the following information, at a minimum:
 - All relevant Ordering Agency contact information necessary for the Contractor to respond to the RFO;
 - A detailed list of the software, maintenance and technical support requested; and
 - Bidder Declaration (GSPD 05-105)
- b) *Solicit Offers* – Ordering Agency shall solicit offers from a minimum of two Contractors.
 - If multiple Contractors are solicited and less than two offers are received, the Ordering Agency must document their file with the reasons why the other Contractors solicited did not respond with an offer.
 - Orders valued less than \$10,000 may be executed without obtaining multiple offers if fair and reasonable pricing has been established and documented within the procurement file.
- c) *Determine Best Value* – Ordering Agency will review all responsive offers and select a Contractor based on best value, with cost as one of the criteria.
- d) *Document Results* – Ordering Agency must document the results of the best value RFO process within the procurement file including, but not limited to, Contractors that were contacted, recap of their offers, how the selection was made and criteria for determining “best value”. Ordering Agencies have the option to use the Best Value Determination Worksheet (available in the State Contracting Manual) or the agency’s own form to document the results.
- e) *Issue Purchase Order* – Ordering Agency will issue purchase order document to the selected Contractor in accordance with Section 7.B (Purchase Order Form).

2) Local Governmental Agencies

Local governmental agencies may use the contractor selection process described in Section 7.A.1 above or other process in accordance with their procurement policies and regulations.

B. Purchase Order Form and Execution

All Ordering Agency purchase order documents executed under these agreements must contain the applicable California Cooperative Agreement number as shown in Attachment A.

1) State Agencies

- a) *STD 65 Purchase Documents* – State Agencies not transacting in FI\$Cal must use the Purchasing Authority Purchase Order (STD 65) for purchase execution. An electronic version of the STD 65 is available at the [DGS-PD website](https://www.dgs.ca.gov/PD/Forms) (<https://www.dgs.ca.gov/PD/Forms>).

b) *FI\$Cal Purchase Documents* – State agencies transacting in FI\$Cal will follow the FI\$Cal procurement and contracting procedures.

2) Local Governmental Agencies

Local governmental agencies may use their own purchase order document in lieu of the State's purchase order form.

8. INVOICING AND PAYMENT

A. Payment Terms

Payment terms for these agreements are net forty-five (45) days. Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927, et seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than forty-five (45) days after the date of acceptance of goods, performance of services, or receipt of an undisputed invoice, whichever is later.

B. Payee Data Record

State Ordering Agencies not transacting in FI\$Cal, must obtain a copy of the Payee Data Record (STD 204) in order to process payments. State Ordering Agencies forward a copy of the STD 204 to their Accounting office(s). Without the STD 204, payment may be unnecessarily delayed.

C. CAL-Card

State agencies may use the CAL-Card for the payment of invoices. Use of the CAL-Card requires the execution of a purchase order document as referenced in Section 7.B (Purchase Order Form) and must include all required documentation applicable to the purchase.

CAL-Card is a payment mechanism, not a procurement approach and, therefore, does not relieve state agencies from adhering to all procurement laws, regulations, policies, procedures, and best practices, including those discussed in the State Contracting Manual. This includes but is not limited to the application of all sales and use tax laws, rules and policies as applicable to the purchase.

9. PROBLEM RESOLUTION/CONTRACTOR PERFORMANCE

Ordering agencies should first attempt to resolve complaints, issues or disputes informally with the Contractor. If the issue or dispute cannot be resolved by the Ordering Agency, the issue may be elevated to the DGS-PD State Contract Administrator.

ATTACHMENT A – Contractor Information

Item	Agreement Detail
Cooperative Agreement	7-16-70-36
Contractor Name	SHI International, Corp.
Term	10/12/2016 through 01/07/2022
Link to Cal eProcure	Cal eProcure 7-16-70-36 webpage
Lead State Agreement	Arizona NASPO ValuePoint Master Agreement #ADSPO16-130651
Product/Service Categories	Software, Maintenance and Technical Support
Sellers' Permit Number	99377422 (See Section 6.C)
CAL-Card Accepted	Yes (See Section 8.C)
SB/DVBE Certification	None
Contract Administrator Contact Information	David Pereira Phone: (925) 719-7345 Email: david_pereira@shi.com Alison Turner Phone: 425-974-5997 Email: alison_turner@shi.com
Ordering Address	SHI International, Corp. 290 Davidson Avenue Somerset, NJ 08873
Ordering Email	david_pereira@shi.com
Ordering Fax	N/A
Ordering Contact	David Pereira (925) 719-7345
Authorized Resellers	N/A

COOPERATIVE AGREEMENT USER INSTRUCTIONS
Software VAR

Attachment A, continued

Item	Agreement Detail
Cooperative Agreement	7-16-70-37
Contractor Name	CDW Government LLC
Term	10/12/2016 through 01/07/2022
Link to Cal eProcure	Cal eProcure 7-16-70-37 webpage
Lead State Agreement	Arizona NASPO ValuePoint Master Agreement #ADSPO16-130652
Product/Service Categories	Software, Maintenance and Technical Support
Sellers' Permit Number	101346422 (See Section 6.C)
CAL-Card Accepted	Yes (See Section 8.C)
SB/DVBE Certification	None
Contract Administrator Contact Information	Jason Schwartz Phone: (800) 808-4239 Email: jasons@cdw.com
Ordering Address	CDW Government LLC 230 N. Milwaukee Ave. Vernon Hills, IL 60061
Ordering Email	jasons@cdw.com
Ordering Fax	N/A
Ordering Contact	Jason Schwartz (800) 808-4239
Authorized Resellers	N/A

STATE OF CALIFORNIA
PARTICIPATING ADDENDUM NO. 7-16-70-37
SOFTWARE VAR
ARIZONA NASPO ValuePoint Master Agreement No. ADSPO16-130652
CDW GOVERNMENT LLC (Contractor)

This Participating Addendum Number 7-16-70-37 is entered into between the State of California, Department of General Services (hereafter referred to as "State" or "DGS") and CDW Government LLC (hereafter referred to as "Contractor") under the lead State of Arizona NASPO ValuePoint Master Price Agreement Number ADSPO16-130652.

1. Scope

- A. This Participating Addendum covers the purchase of Software, Maintenance and Technical Support under the Arizona NASPO ValuePoint Master Price Agreement Number ADSPO16-130652. The NASPO ValuePoint Master Agreement is hereby incorporated by reference.
- B. This Participating Addendum is available for use by California state agencies and political subdivisions/local governments. For the purposes of this agreement, a political subdivision/local government is defined as any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds.
- C. Each political subdivision/local government is to make its own determination whether this Participating Addendum and the Arizona NASPO ValuePoint Master Agreement are consistent with its procurement policies and regulations.

2. Term

- A. The term of this Participating Addendum shall begin upon signature approval by the State and will end April 7, 2018, or upon termination by the State, whichever occurs first.
- B. Lead State amendments to extend the NASPO ValuePoint Master Agreement term date are not automatically incorporated into this Participating Addendum. Extension(s) to the term of this Participating Addendum will be through a written amendment upon mutual agreement between the State and the Contractor.

3. Incorporation of Documents

Terms and conditions of the following exhibits are hereby incorporated and made a part of this Participating Addendum:

- State Information Technology (IT) General Provisions GSPD401IT, effective 09/05/14 (12 pages)

4. Order of Precedence

In the event of any inconsistency between the articles, attachments, or provisions which constitute this agreement, the following descending order of precedence shall apply:

- A. California Participating Addendum Number 7-16-70-37
- B. Arizona NASPO VALUEPOINT Master Price Agreement Number ADSP016-130652

5. Available Products and Services

This contract is limited to the purchase and warranty of software, software maintenance and technical support that is not currently available under the Software Licensing Program (SLP). Prior to purchasing under this Participating Addendum, state agencies must check the DGS PD SLP website at: <http://www.dgs.ca.gov/pd/Programs/Leveraged/SLP/SLPPublishers.aspx>

6. Productive Use Requirements

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

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

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

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

<u>Cost</u>	<u>Prior Operation</u>
More than \$100,000	8 months
\$10,000 up to \$100,000	4 months
Less than \$10,000	1 month

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

<u>Cost</u>	<u>Prior Operation</u>
More than \$100,000	6 months
\$10,000 up to \$100,000	4 months
Less than \$10,000	1 month

7. The following product/service offerings are prohibited under this Participating Addendum.

- A. Hardware
- B. Consulting
- C. Configuration/Customization of software
- D. Installation
- E. Training
- F. Cloud products/services

8. Maximum Order Limit

Orders placed under this Participating Addendum have a maximum limit of \$250,000.

9. Percentage of Reseller Cost

Contractor shall submit a reference document that identifies the percentage of Reseller Cost for each software publisher (manufacturer) offered under this Participating Addendum. On high volume single orders, Resellers are to negotiate to reduce Reseller Cost, to pass on savings to the State. All Resellers are to honor all quotes for thirty (30) days. If it is known that a price increase will occur during the thirty (30) calendar days following the quote, the Resellers may provide two quotes, based upon the date the order is received.

10. Software Maintenance Renewals

Maintenance renewals for software product purchases shall be fixed at the agencies' prior applicable rates (or lower), with a 0% uplift (no up-lift) and no additional increases, fees or charges added, for the duration of this PA.

11. Delivery

30 days after receipt of order, or as negotiated between agency and Contractor and included in the purchase order.

12. Shipping

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

13. Ordering Agency Responsibilities

- A. State department and political subdivision/local government use of this Participating Addendum is optional.

- B. A User Instructions guide will be prepared and administered by the State Contract Administrator.
- C. Ordering agencies must follow the Contractor Selection and Request for Offer (RFO) process outlined within the User Instructions guide prior to executing orders against this Participating Addendum.

14. Contractor Responsibilities

Contractor must respond to the ordering agency's RFO to be eligible to receive a Purchase Order under this Participating Addendum.

15. Invoicing

The State Participating Addendum Number and Ordering Agency Purchase Order Number shall appear on each purchase order and invoice for all purchases placed under this Participating Addendum.

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

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

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable. The company name on the Participating Addendum, purchase order and invoice must match or the State Controller's Office will not approve payment.

16. Usage Reporting

- A. Contractor shall submit usage reports on a quarterly basis to the State Contract Administrator for all California entity purchases using the report template provided by the state.
- B. The report is due even when there is no activity.
- C. The report shall be an Excel spreadsheet transmitted electronically to the DGS mailbox at PDCooperatives@dgs.ca.gov.
- D. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected reports within five business days of the date of written notification from the State.
- E. Tax must not be included in the report, even if it is on the purchase order.

F. Reports are due for each quarter as follows:

Reporting Period	Due Date
JUL 1 to SEP 30	OCT 31
OCT 1 to DEC 31	JAN 31
JAN 1 to MAR 31	APR 30
APR 1 to JUN 30	JUL 31

G. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of this contract.

H. Amendments for term extensions may be approved only if all due reports have been submitted to the State.

17. Administrative Fee

A. Contractor shall submit a check, payable to the State of California, remitted to the NASPO ValuePoint Payment Processing Unit for the calculated amount equal to one percent (0.01) of the sales for the quarterly period.

B. Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.

C. Administrative fee checks shall be submitted to:

State of California
Department of General Services, Procurement Division
Attention: Multiple Awards Program
707 3rd Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

D. The administrative fee shall not be included as an adjustment to Contractor's NASPO ValuePoint Master Price Agreement pricing.

E. The administrative fee shall not be invoiced or charged to the ordering agency.

F. Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a purchasing entity.

G. Administrative fee checks are due for each quarter as follows:

Reporting Period	Due Date
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JUL 1 to SEP 30	OCT 31
OCT 1 to DEC 31	JAN 31
JAN 1 to MAR 31	APR 30
APR 1 to JUN 30	JUL 31

H. Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of this contract.

18. Contract Management

A. The primary Contractor Contract Manager for this Participating Addendum shall be as follows:

Contractor: CDW Government LLC
Name: Jason Schwartz
Phone: 800-808-4239
E-Mail: JasonS@cdw.com
Address: 230 N. Milwaukee Ave.
Vernon Hills, IL 60061

B. Should the Contractor Contract Manager information change, the Contractor will provide written notice with the updated information to the State Contract Administrator no later than ten business days after the change.

C. The State Contract Administrator for this Participating Addendum shall be as follows:

Name: Steve Lower
Phone: (916) 375-4539
Fax: (916) 375-4663
E-Mail: Steve.lower@dgs.ca.gov
Address: State of California
Department of General Services
Procurement Division
707 Third Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

D. Should the State Contract Administrator information change, the State will provide written notice with the updated information to the Contractor Contract Manager no later than ten business days after the change.

19. Termination of Agreement

The State may terminate this Participating Addendum at any time upon 30 days prior written notice to the Contractor. Upon termination or other expiration of this Participating Addendum, each party will assist the other party in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

20. Amendment

No amendment or variation of the terms of this Participating Addendum shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Participating Addendum is binding on any of the parties.

21. Agreement

- A. This Participating Addendum and the Master Price Agreement together with its exhibits and/or amendments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Price Agreement, together with its exhibits and/or amendments, shall not be added to or incorporated into this Participating Addendum or the Master Price Agreement and its exhibits and/or amendments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Price Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.
- B. By signing below Contractor agrees to offer the same products/and or services as on the Arizona NASPO ValuePoint Master Price Agreement Number ADSP016-130652, at prices equal to or lower than the prices on that contract.
- C. IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

STATE OF CALIFORNIA

CDW Government LLC

By: 

By: 

Name: Jim Butler

Name: Tara K. Barbieri

Title: Deputy Director

Title: Director, Program Sales

Date: November 19, 2016

Date: 4 NOV 2016

Reviewed
By: CK

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 directly by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
 - l) "Data Processing System (System)" means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
 - m) "Deliverables" means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
 - n) "Designated CPU(s)" means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
 - o) "Documentation" means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
 - p) "Equipment" is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any).
 - q) "Equipment Failure" is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
 - r) "Facility Readiness Date" means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
 - s) "Goods" means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
 - t) "Hardware" usually refers to computer Equipment and is contrasted with Software. See also Equipment.
 - u) "Installation Date" means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
 - v) "Information Technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
 - w) "Machine" means an individual unit of a Data Processing System or Subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
 - x) "Machine Alteration" means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
 - y) "Maintenance Diagnostic Routines" means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
 - z) "Manufacturing Materials" means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
 - aa) "Mean Time Between Failure (MTBF)" means the average expected or observed time between consecutive failures in a System or component.
 - bb) "Mean Time to Repair (MTTR)" means the average expected or observed time required to repair a System or component and return it to normal operation.

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- 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 Aide" means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) "Program Product" means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) "Remedial Maintenance" means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) "Software" means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aide, Application Programs, and Program Products.
- ll) "Software Failure" means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) "State" means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- nn) "System" means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) "U.S. Intellectual Property Rights" means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
2. **CONTRACT FORMATION:**
- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) The Contractor will have sole control of the defense of any action on such claim, and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this Contract falls within the scope of Government Code Section 11136, the Contractor hereby agrees to respond to and resolve any complaint brought to

GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
- The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - 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:
- 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);
 - Contract form, i.e., Purchase Order STD 55, Standard Agreement STD 213, etc., and any amendments thereto;
 - Other Special Provisions;
 - Statement of Work, including any specifications incorporated by reference herein;
 - Cost worksheets; and
 - All other attachments incorporated in the Contract by reference.
12. **PACKING AND SHIPMENT:**
- 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:
 - show the number of the container and the total number of containers in the shipment; and
 - the number of the container in which the packing sheet has been enclosed.
 - 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.
 - 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.
- 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.
 - 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.
 - On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, the Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
14. **DELIVERY:** The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at the Contractor's expense or utilize any other rights available to the State at law or in equity.
15. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. The Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.
16. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:
- 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.

GENERAL PROVISIONS -- INFORMATION TECHNOLOGY

- 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 irrevocable, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
- f) Unless otherwise specified in the Statement of Work, title to Equipment shall remain with the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.
17. **SAMPLES:**
- a) Samples of Items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at the Contractor's expense.
18. **WARRANTY:**
- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection (a) begin upon 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, 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)(i) 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.
21. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:**

GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
- b) 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.
- 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 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.

GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- 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:
- Acts of God or of the public enemy, and
 - Acts of the federal or State government in either its sovereign or contractual capacity.
- If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.
25. **RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**
- 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.
 - 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.
 - 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").
 - The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefore.
26. **LIMITATION OF LIABILITY:**
- 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.
 - 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.
27. **CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- 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.
 - 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:
- The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
29. **INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number, release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

GENERAL PROVISIONS - INFORMATION TECHNOLOGY

30. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
31. **TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
32. **NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.
33. **CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
34. **CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.
35. **NEWS RELEASES:** Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
36. **DOCUMENTATION:**
- The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State 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.
 - 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:**
- 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.
 - 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.
 - The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
 - The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
 - This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.
38. **SOFTWARE LICENSE:** 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").
- The State may use the Software Products in the conduct of its own business, and any division thereof
 - 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.

GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- 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 insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

40. 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 an 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.

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

GENERAL PROVISIONS - INFORMATION TECHNOLOGY

infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid the Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- (i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
 - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
 - (iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or
 - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
- c) 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 State's liability. 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 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 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.

GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- 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 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 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 insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 8 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 10286.

52. **ASSIGNMENT OF ANTI-TRUST ACTIONS:**

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

- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall

GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- 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.
55. **SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b) The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).
56. **RECYCLED CONTENT REQUIREMENTS:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material (as defined in the Public Contract Code (PCC) Section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12166(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12206 (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 6 of Division 9 of the Family Code; and
 - b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
58. **AMERICANS WITH DISABILITIES ACT:** The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
59. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42480 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.

GENERAL PROVISIONS – INFORMATION TECHNOLOGY**63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**

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

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

**CALIFORNIA PARTICIPATING ADDENDUM
NASPO VALUEPOINT
SOFTWARE VAR
CDW GOVERNMENT LLC
7-16-70-37 AMENDMENT 1**

The parties hereto mutually agree to amend Participating Addendum No. 7-16-70-37 as follows:

The contract term is extended from April 7, 2018 to April 7, 2019.

All other terms and conditions of the original Participating Addendum and any amendments shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

State of California:

CDW Government LLC

By:



By:



for Name: Rhonda Smith

Name: Tara K. Barbieri

Title: Section Chief

Title: Director, Capture

Date: 4/10/2018

Date: 3/21/18

JD

**STATE OF CALIFORNIA
PARTICIPATING ADDENDUM NO. 7-16-70-37
AMENDMENT NO. 2**

Software VAR

Arizona NASPO ValuePoint Master Agreement No. ADSPO16-130652
CDW Government LLC (Contractor)

This Amendment 2 ("Amendment") for Participating Addendum Number 7-16-70-37 ("Participating Addendum") is entered into between the State of California, Department of General Services ("DGS" or "State") and CDW Government LLC ("Contractor"). The parties mutually agree to amend the Participating Addendum as follows:

1. Agreement is extended from April 7, 2019 to April 7, 2020. **Section 2. TERM, Subpart A** is revised to read as follows:

The term of this Participating Addendum shall begin upon signature approval by the State and end April 7, 2020, or upon termination, whichever occurs first.

2. **Section 18. CONTRACT MANAGEMENT, Subpart C** is amended to read as follows:

The State Contract Administrator for this Participating Addendum shall be as follows:

Name: Julie Matthews
Phone: (916) 375-4612
E-Mail: Julie.Matthews@dgs.ca.gov
Address: State of California
Department of General Services
Procurement Division
707 Third Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

All other terms and conditions of the Participating Addendum shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date of execution by both parties below.

STATE OF CALIFORNIA

Department of General Services

Agency Name

 3-15-19
Signature of Authorized Signer *Date Signed*

Patrick B. Mallow Manager
Printed Name and Title of Authorized Signer

707 Third Street
West Sacramento, CA 95605
Address

CONTRACTOR

CDW Government LLC

Contractor Name

 20 Feb 2019
Signature of Authorized Signer *Date Signed*

TARA K. Barbieri
Limbo, Capture
Printed Name and Title of Authorized Signer

230 N. Milwaukee Ave
Vernon Hills, IL 60061
Address

**STATE OF CALIFORNIA
PARTICIPATING ADDENDUM 7-16-70-37
AMENDMENT 3
SOFTWARE VAR**

Arizona NASPO ValuePoint Master Agreement No. ADSPO16-130652
CDW Government LLC (Contractor)

This Amendment 3 ("Amendment") for Participating Addendum Number 7-16-70-37 ("Participating Addendum") is entered into between the State of California, Department of General Services ("DGS" or "State") and CDW Government LLC ("Contractor"). The parties mutually agree to amend the Participating Addendum as follows:

1. Agreement is extended from April 7, 2020 to April 7, 2021. **Section 2. TERM, Subpart A** is revised to read as follows:

The term of this Participating Addendum shall begin upon signature approval by the State and end April 7, 2021, or upon termination, whichever occurs first.

2. **Section 8. MAXIMUM ORDER AMOUNT** is deleted in its entirety.

All other terms and conditions of the Participating Addendum shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date of execution by both parties below.

STATE OF CALIFORNIA

CONTRACTOR

Department of General Services

CDW Government LLC

Agency Name

Contractor Name

Stephanne A 3/19/2020

[Signature] 03-13-2020

Authorized Signature Date Signed

Authorized Signature Date Signed

Stephanne Lim / Mgr Supervisor

Director, Program Sales

Printed Name/Title of Person Signing

Printed Name/Title of Person Signing

707 Third Street
West Sacramento, CA 95605

Two Corporate Drive
Shelton, CT 06484

Address

Address

STATE OF CALIFORNIA
PARTICIPATING ADDENDUM 7-16-70-37
AMENDMENT 4
SOFTWARE VAR

Arizona NASPO ValuePoint Master Agreement Number ADSPO16-130652
CDW Government LLC (Contractor)

The parties mutually agree to amend Participating Addendum 7-16-70-37 as follows:

1. Agreement is extended from April 7, 2021 to January 7, 2022. **Section 2. TERM, Subpart A** is revised to read as follows:

The term of this Participating Addendum shall begin upon signature approval by the State and end January 7, 2022, or upon termination by the State, whichever occurs first.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date of execution by both parties below.

STATE OF CALIFORNIA

CONTRACTOR

Department of General Services

CDW Government LLC

Agency Name

Contractor Name



4/1/2021



March 30, 2021

Authorized Signature

Date Signed

Authorized Signature

Date Signed

Stephanne Lim, MAU2 Supervisor

Dario J. Bertocchi

Printed Name/Title of Person Signing

Printed Name/Title of Person Signing

707 Third Street
West Sacramento, CA 95605

230 N. Milwaukee Ave
Vernon Hills, IL 60061

Address

Address