

SPECIAL TERMS AND CONDITIONS (STC: 07-2024)**1. Conflict of Interest**

Contractor needs to be aware of the following provisions regarding current or former State employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

A. Current State Employees (Pub. Cont. Code Section 10410):

- 1) No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent Contractor with any State agency to provide goods or services.

B. Former State Employees (Pub. Cont. Code Section 10411):

- 1) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency.
- 2) For the 12-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving State service.

C. If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void (Pub. Cont. Code Section 10420).

D. Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time, and payment for per diem (Pub. Cont, Code Section 10430(e)).

2. Prohibition from Bidding

This Agreement is subject to the provisions of Public Contract Code Section 10365.5, which states: "No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, goods or supplies, or any other related action which is required, suggested or otherwise deemed appropriate in the end product of the original consulting services contract."

3. Additional Provisions

This Agreement is subject to the provisions of Public Contract Code Section 10371.

4. Settlement of Disputes

- A. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by Agreement shall be decided by the Caltrans Contract Officer, who may consider any written or verbal evidence submitted by the Contractor. The decision of the Caltrans Contract Officer, issued in writing, shall be Caltrans' final decision on the dispute.
- B. Neither the pendency of a dispute nor its consideration by the Caltrans Contract Officer will excuse the Contractor from full and timely performance in accordance with the terms of the Agreement.

5. Termination

- A. If, after award and execution of the Agreement, the Contractor's performance is unsatisfactory, the Agreement may be terminated for default. Additionally, the Contractor may be liable to Caltrans for damages including the difference between the Contractor's original bid price and the actual cost of

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- B. performing the work by another Contractor. Default is defined as the Contractor failing to perform services required by the Agreement in a satisfactory manner.
- C. Caltrans reserves the right to terminate this Agreement without cause upon 30 days written notice to the Contractor or immediately in the event of default or material breach by the Contractor.
- D. The State may terminate this Agreement immediately for good cause. The term "good cause" may be defined as "impossibility of performance" or "frustration of purpose", but does not include material breach, default, or termination without cause. In this instance, the Agreement termination shall be effective as of the date indicated on the State's notification to the Contractor.
- E. In the event that the total Agreement amount is expended prior to the expiration date, Caltrans may, at its discretion, terminate this Agreement with 30 days' notice to Contractor.

6. Retention of Records/Audits

For the purpose of determining compliance with Government Code Section 8546.7, the Contractor and Subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. Caltrans, the State Auditor, Federal Highway Administration (FHWA), or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to Contractor's books, records, and documents that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

7. Subcontractors

The Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted.

8. Disabled Veterans Business Enterprise (DVBE) Participation (Without Goals)

Caltrans has established no goals for the DVBE participation for this Agreement. However, the Contractor shall be fully informed respecting the California Public Contract Code Section 10115 et seq., which is incorporated by reference. Contractor is urged to obtain DVBE Subcontractor participation should clearly defined portions of the work become available.

9. Laws to be Observed

Contractor shall keep fully informed of all existing and future laws, including: State and Federal, county and municipal ordinances and regulations including but not limited to Senate Bill 1383 of 2016 Title 14, CCR, General Provisions section 18981.2, Public Resources Code sections 42652 et. seq., and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work. Contractor shall at all times observe and comply with and shall cause all agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Agreement. Contractor shall protect and indemnify the State of California and all officers and employees thereof connected with the work against any claim, injury, or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by Contractor, its Subcontractor(s), or an employee(s). If any discrepancy or inconsistency is discovered in the plans, drawings, specification, or

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Agreement for the work in relation to any such law, ordinance, regulation, order, or decree, Contractor shall immediately report the same to Caltrans Contract Manager in writing.

10. Specific Legal References

Any reference to specific statutes, regulations, or other legal authority in this Agreement shall not relieve the Contractor from the responsibility of complying with all existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Agreement.

11. Equipment Indemnification

- A. The Contractor shall indemnify Caltrans for any claims against Caltrans for loss or damage to the Contractor's property or equipment during its use under this Agreement and shall at the Contractor's own expense maintain such fire, theft, liability or other insurance as deemed necessary for this protection. The Contractor assumes all responsibility which may be imposed by law for property damage or personal injuries caused by defective equipment furnished under this Agreement or by operations of the Contractor or the Contractor's employees under this Agreement.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this clause.

12. Force Majeure

Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure". As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of God such as earthquakes, floods, and other natural disasters such that performance is impossible.

13. Employment of Undocumented Workers

By signing this Agreement, the Contractor swears or affirms that it has not, in the preceding five years, been convicted of violating a State or Federal law relative to the employment of undocumented workers.

14. Insurance—General Requirements

- A. Deductible: Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
- B. Coverage Term: Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the Caltrans Contract Manager at least 10 days prior to the expiration of the insurance. Any new insurance must continue to comply with the original terms of this Agreement.
- C. Policy Cancellation or Termination and Notice of Non-Renewal: Contractor shall provide, to the Caltrans Contract Manager within five (5) business days, following receipt by Contractor, a copy of any cancellation or non-renewal of insurance required by this Agreement. In the event Contractor fails to keep, in effect at all times, the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- D. Primary Clause: Any required insurance contained in this Agreement shall be primary, and not
- E. excess or contributory, to any other insurance carried by the State.
- F. Inadequate Insurance: Inadequate or lack of insurance does not negate the Contractor's obligations under this Agreement.
- G. Endorsements: Any required endorsements requested by the State must be physically attached to all

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requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

- H. Insurance Carrier Required Rating: All insurance companies must carry a rating acceptable to the Department of General Services, Office of Risk and Insurance Management (ORIM). If the Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. Department of General Services, ORIM Website: <https://www.dgs.ca.gov/ORIM>.
- I. Contractor shall include all of its Subcontractors as insureds under Contractor's insurance or supply evidence of insurance to the State equal to the policies, coverages, and limits required of Contractor.
- J. The State will not be responsible for any premiums or assessments on the policy.

15. Insurance Requirements**A. Commercial General Liability**

- 1) Contractor shall maintain general liability for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must include:

Caltrans, State of California, its officers, agents, employees and servants are included as additional insured but only with respect to work performed under this Agreement.

- 2) This endorsement must be supplied under form acceptable to the Department of General Services, Office of Risk and Insurance Management.

B. Workers' Compensation and Employer's Liability

Contractor shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. When work is performed on State owned or controlled property the workers' compensation policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided to the Caltrans Contract Manager.

C. Pollution Liability (if applicable to the work performed)

Contractor shall maintain Pollution Liability covering the Contractor's liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

D. Satisfying a Self-Insured Retention (SIR)

All insurance required by this Agreement must allow, but not require, the State to pay any SIR and/or act as the Contractor's agent in satisfying any SIR. The choice to pay any SIR and/or act as the Contractor's agent in satisfying any SIR is at the State's discretion. If the State chooses to pay any SIR and/or act as the Contractor's agent in satisfying any SIR, the Contractor shall reimburse the State for the same.

E. Available Coverages/Limits

In the event the insurance coverages obtained by the Contractor is broader in scope than, and/or the limits are higher than, those required under the Agreement, all such broader coverage and/or higher limits available to the Contractor shall also be available and applicable to the State.

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- A. The Contractor shall be properly licensed in accordance with the laws of the State of California and shall possess an active license issued by the California Contractors State Licensing Board (CSLB) that is appropriate for the work being performed.
- B. The Contractor shall be an individual or firm licensed to do business in California and shall obtain at its expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.
- C. If Contractor is located within the State of California, the Contractor must have a business license from the city/county in which it is headquartered, however, if Contractor is a corporation, a copy of its incorporation documents/letter from the Secretary of State's Office may substitute for a business license. If Contractor is located outside the State of California, Contractor must provide a current copy of its business license or incorporation papers for its State of residence showing that the Contractor is in good standing with their State to Caltrans.
- D. In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, Contractor agrees to provide Caltrans a copy of the renewed license(s) and/or permit(s) within 30 days following the expiration date. In the event the Contractor fails to keep in effect at all times all required license(s) and permit(s), Caltrans may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

17. Licensed Contractor Standards for Quality of Work

- A. Licensed Contractors must observe professional standards for quality of work or the California CSLB will invoke disciplinary action.
- B. Notice is hereby given that certain actions by a Contractor, including, but not limited to the following, constitute grounds for disciplinary action by the CSLB once Caltrans has notified the license board of all violations:
 - 1) A willful departure from plans and specifications or disregard of trade standards for good and workmanlike construction in any material respect that might prejudice Caltrans, owner of the property upon which you perform work (Bus. and Prof. Code Section 7109).
 - 2) The failure to observe and comply with all of the applicable labor laws (Bus. and Prof. Code Section 7110).
 - 3) Material failure to complete this Agreement (Bus. and Prof. Code Section 7113).
- C. Should Caltrans determine that the work or materials provided vary materially from the specifications, or, that defective work when completed was not performed in a workmanlike manner, then the Contractor warrants that it shall perform all necessary repairs, replacement and corrections needed to restore the property according to the Agreement plans and specifications, all at no further or additional cost to Caltrans.

18. Prohibition of Delinquent Taxpayers

Public Contract Code Section 10295.4 prohibits the State from entering into an Agreement for goods or services with any taxpayer, whose name appears on either list maintained by the State Board of Equalization or the Franchise Tax Board pursuant to Revenue and Taxation Code Sections 7063 and

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19195, respectively, of the 500 largest tax delinquencies. Public Contract Code Section 10295.4 provides no exceptions to these prohibitions.

19. Debarment and Suspension Certification

- A. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
- 1) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
 - 2) has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - 3) does not have a proposed debarment pending; and
 - 4) has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to Caltrans. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

20. Interfacing with Pedestrian Vehicular Traffic

Pursuant to the authority contained in the California Vehicle Code Section 591, Caltrans has determined that within such areas as are within the limits of the project and are open to public traffic, the Contractor shall comply with all of the requirements set forth in the California Vehicle Code, Divisions 11, 12, 13, 14 and 15. The Contractor shall take all necessary precautions for safe operations of the Contractor's equipment and the protection of the public from injury and damage from such property.

21. Motor Carrier Permit Requirements (If applicable)

- A. Contractor must have a valid Motor Carrier Permit(s) (MCP) issued from the Department of Motor Vehicles (DMV) for its services as a Motor Carrier of Property under this Agreement. Contractor shall pay any required fees necessary to obtain and maintain in good standing the required MCP(s).
- B. The MCP(s) required for the Contractor's Motor Carriers of Property under California Vehicle Code Sections 34601 and 34620 shall be on file with the Contractor for the duration of this Agreement. Upon request of the Caltrans Contract Manager or his/her designee, the Contractor must immediately provide to Caltrans a copy of the required MCP(s).

22. Consultant Contractor's Rights and Obligations

Contractor is advised that, for consulting services only, the provisions of Public Contract Code Sections 10335 through 10381 pertaining to the duties, obligations, and rights of a consultant service Contractor are applicable to this Agreement.

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When reports and/or meetings are required as part of this Agreement, the following shall apply:

- A. The Contractor shall submit progress reports at least once a month to allow the Contract Manager to determine if the Contractor is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so that remedies can be developed.
- B. The Contractor shall meet with the Caltrans Contract Manager as needed to discuss progress on the Agreement.
- C. Prior to completion of the Agreement, the Contractor shall hold a final meeting with the Caltrans Contract Manager to present findings, conclusions and recommendations and shall submit a comprehensive final report on the project.
- D. Any document or written report prepared as a requirement of this Contract shall contain, in a separate section preceding the main body of the document, a list of all Contracts and subcontracts (including dollar amounts) relating to the preparation of those documents or reports if the combined costs for work by non- employees of the Contractor exceed \$5,000.

24. Publication—Part A:

Publication Part A is to this Agreement when a Publishable Report is a part of this Agreement.

- A. The Contractor shall not copyright any deliverable(s) developed and funded under this Agreement.
- B. The Contractor shall have the right to publish any and all information, conclusions and developments (except that which is designated as **CONFIDENTIAL** by the State) resulting from work conducted under this Agreement.
- C. Any publication by Contractor shall give proper credit to the State. All publications shall bear an appropriate inscription acknowledging the State's copyright ownership to the Work and Deliverable(s) (including but not limited to, all reports, design materials, advertisements, training materials, writings, articles, computer programs, inventions and any documentation related to the Agreement) consisting of a "c" in a circle followed by the four- digit year in which the Work or Deliverable was produced, followed by the words "California Department of Transportation. All rights reserved."
- D. The Contractor shall submit to the State any materials released for publication simultaneously with submission to the publisher for the purpose of comment and review by the State with respect to the presence of patentable, confidential, and/or proprietary subject matter within the materials released for publication.
- E. The State will take all reasonable steps to have United States Patent Applications, or other appropriate protection of intellectual property, filed prior to the time the information, conclusions or developments are published or otherwise made available to the public.
- F. The Contractor agrees to keep confidential any proprietary information supplied to it by

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the State during the course of the Agreement and designated in writing as “CONFIDENTIAL”. Such information will not be included in any published material without the prior written approval of the parties.

- G. All publications shall contain the following disclaimer in a separate section preceding the main body of the document:

“The contents of this report reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State of California or the Federal Highway Administration. This publication does not constitute a standard, specification or regulation.”

25. Publication—Part B:

Publications Part B is applicable to this Agreement when materials, written products, or documents other than “publishable reports” are part of this Agreement.

- A. The Contractor shall not copyright the training course materials or written report developed and funded from this Agreement.
- B. The training course materials/written product/report funded from this agreement shall become the property of the State, and all publication use rights are reserved to the State.
- C. The written product or title pages of the report/course outline shall bear an appropriate description acknowledging the source of funds used to produce the report/document/training course and materials.
- D. The course outline/written product/report shall contain the following disclaimer in a separate section preceding the main body of the document:

"The contents of this training course/documentation/report reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State of California or the Federal Highway Administration. This course outline/document/report does not constitute a standard, specification, or regulation."

26. Confidentiality of Data

- A. All financial, statistical, personal, technical, or other data and information relative to Caltrans’ operations, which is designated confidential by Caltrans and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing held by Caltrans relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- C. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or Caltrans’ actions on the same, except to Caltrans’ staff, Contractor’s own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.

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- D. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by Caltrans and receipt of Caltrans' written permission.
- E. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than Caltrans.
- F. Any subcontract, entered into as a result of this Agreement, shall contain all of the provisions of this Section.

27. State-Owned Data–Integrity and Security

The Agreement (and the services and work product produced under the Agreement) must be in compliance with this Exhibit (Security and Privacy General Provisions) to ensure the confidentiality, security, privacy, integrity, and availability of information assets, data, and systems.

Contractor agrees to protect all California Department of Transportation (Caltrans) information by implementing all controls and procedures necessary to comply with the provisions of this Exhibit and all State mandated data security and privacy requirements provided in the California State Administrative Manual (SAM), the State Contract Manual (SCM), all data security and privacy standards of the National Institute of Standards and Technology (NIST), all Federal Information Processing Standards (FIPS), all California State law (including, but not limited to, Government Code §11015.5 and §11019.9, the California Information Practices Act (IPA), the California Consumer Privacy Act (CCPA) and Civil Code §1978 et seq), and all promulgated or published State of California and Caltrans regulations and policies relating to data security and privacy. Contractor further agrees to implement the minimum administrative, physical, and technical safeguards described in this Agreement. Contractor also further agrees to respond to Caltrans surveys and inquiries regarding compliance with the terms and conditions of this agreement. Contractor shall protect Caltrans Data in accordance with this Exhibit for as long as the Contractor is in possession of, maintaining, or accessing Caltrans Data. Contractor shall ensure that all subcontractors and third parties with whom Contractor works comply with this Agreement and agree in writing to adhere to the provisions of this Agreement.

1. DEFINITIONS

For purposes of this Exhibit, the following definitions shall apply:

- A. Contractor shall generally refer to the "Contractor" as identified in this Agreement.
- B. Data shall mean a representation of facts, concepts, or instructions in a formalized manner suitable for communication, interpretation, or processing by humans or by automated means.
- C. Caltrans Data shall refer to Data owned by Caltrans.
- D. Confidential Information means any and all nonpublic information relating to the current and future operations and services of Caltrans, including but not limited to, planning, specifications, concepts, technical information, techniques, drawings, sketches, models, know-how, data, databases, electronic information, emails, processes, designs, photographs, apparatus, equipment, specifications, software programs, source code, software documentation, manuals, and formulae. The parties further agree that Confidential Information shall also include information received by Recipient prior to the execution of this Agreement and that would otherwise qualify as Confidential Information as provided herein. Confidential Information does

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not include information that (a) is lawfully within the public domain other than through disclosure or default by the Recipient; (b) was lawfully obtained from a third party who was legally in possession of the information, and who is authorized in writing by Caltrans to disclose it; (c) was independently developed by Recipient without the use of the Confidential Information, or any derivative works, and without the use of knowledge learned from accessing the Confidential Information; or (d) is subject to the requirements of the California Public Records Act ("CPRA") or otherwise required to be disclosed by order of a court, administrative agency or other governmental body with competent jurisdiction provided that Recipient notifies Caltrans within three (3) business days of receipt of such an order so that Caltrans may, in its sole discretion, seek a protective order from a court of competent jurisdiction preventing or restricting disclosure.

- E. Personal information shall have the meaning established by California law (including without limitation the IPA) and administrative manuals (including without limitation the SAM and SCM).
- F. Sensitive information shall have the meaning established by California law (including without limitation the IPA) and administrative manuals (including without limitation the SAM and SCM).
- G. Personnel shall refer to any Contractor employees, volunteers, sub-contractors and third parties commissioned, employed by, or otherwise engaged by Contractor to perform work under this Agreement.
- H. Systems shall refer to workstations, laptops, servers, applications, network, and other information processing components.
- I. Users shall refer to any Contractor personnel with access to Caltrans Data.

2. ADMINISTRATIVE SAFEGUARDS**A. DATA OWNERSHIP**

Caltrans Data provided under this Agreement shall be the sole and exclusive property of Caltrans. Confidential, sensitive, and personal information should not be disclosed to any third-party and it requires special precautions to protect from loss and unauthorized use, disclosure, modification, or destruction. This information must not be shared without the written permission from an authorized representative of Caltrans.

Contractor agrees that it is responsible to protect the confidentiality of information in their custody as provided by this Agreement and to ensure such information is disclosed to only those parties to whom disclosure is permitted under this Agreement.

Contractor shall have a non-exclusive right to use and process the Caltrans Data for only the purposes stated in this Agreement. This right shall be revoked immediately upon termination of this Agreement. Disclosure of the Caltrans Data does not transfer ownership of information to the Contractor or any third party.

B. USE OF INFORMATION

Contractor acknowledges and agrees that the information furnished or secured pursuant to this Agreement shall be used only for the purposes described in this Agreement, and Contractor agrees to implement its own policies and procedures to ensure that the confidentiality of said information is maintained in accordance with the provisions of this Agreement.

Contractor further agrees that information obtained under this Agreement shall not be reproduced, copied, published, sold, or released in original or any other form for any purpose other than the purposes set forth in this Agreement. Only the Caltrans Data that is required to

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perform purposes of this Agreement may be processed, stored, or transmitted by Contractor. Contractor shall not use any Caltrans Data that identifies any natural person for any purpose that is not set forth in this Agreement, including for testing, training, or research.

C. STATEMENT OF CONFIDENTIALITY AND REQUIREMENTS

Caltrans Data may be exempt from disclosure under the provisions of federal and state laws. Contractor understands and acknowledges that under California Penal Code §502, it is a public offense to knowingly and without permission alter, damage, delete, destroy, copy, or otherwise use any Caltrans Data. Such action can be prosecuted civilly or criminally, and it is punishable by fine and/or imprisonment.

Contractor shall ensure that all users sign a confidentiality statement, attesting to the fact that he/she is aware of the confidential nature of the Caltrans Data and that there are penalties for unauthorized disclosure of the Caltrans Data under applicable federal and state law. Copies of signed confidentiality statements must be made available to the Caltrans Information Security Office upon request.

D. INFORMATION SECURITY AND PRIVACY AWARENESS TRAINING

Contractor shall ensure that all persons that process or have contact with Caltrans Data will take information security and privacy awareness training prior to accessing and/or using such information, and annually thereafter. Information security and privacy awareness training must contain instructional components such as, but not limited to, information about the confidential nature of information, laws and regulations protecting the confidentiality of information, user responsibility for protecting the information, and the consequences and legal liability of unauthorized use, access, or disclosure of said information. Upon request, the Contractor must provide the Caltrans Chief Information Security Officer (CISO) or Privacy Officer with a copy of its information security and privacy awareness training components and certification of its annual information security and privacy awareness training completion.

E. EMPLOYEE ACCESS TO INFORMATION

Contractor agrees that the Caltrans Data shall be kept in the strictest confidence and made available to only authorized personnel on a “need-to-know” business basis, and only for the purposes authorized under this Agreement. The term “need-to-know” refers to those authorized persons who need specific information to perform their official duties in connection with the purposes described in the Agreement.

Contractor shall maintain records of all authorized users and the authorization level of access granted to the information access and/or used under this Agreement with the purpose described in this Agreement.

F. CYBER RISK ASSESSMENT

A Cyber Risk Assessment (CRA) must be conducted every two years on all systems which input, process, store or transmit Caltrans Data, or sooner if there is a significant change to the system or environment. The risk assessment must meet requirements provided by SAM 5305.7; and if Contractor cannot meet this requirement, Caltrans may require a CRA be conducted by Caltrans or a third party at Contractor’s expense. Risk assessment results must be provided to the Caltrans CISO upon request. If the risk assessment reveals risks or vulnerabilities, Caltrans will request in writing that the risks and vulnerabilities be corrected within a reasonable period of time set by Caltrans; and, if such risks and vulnerabilities are not corrected within the period of time set by Caltrans, Caltrans may immediately terminate the Agreement at no cost.

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Contractor shall immediately notify the Caltrans CISO or their Designee of any actual or suspected security event involving Caltrans Data that is accessed or obtained under this Agreement. Contractor shall cooperate fully with Caltrans to comply with the incident reporting requirements to which Caltrans is subject, including without limitation the requirements described in Civil Code section 1798.29 and SAM section 5340.4, as amended.

Contractor shall thoroughly investigate all unauthorized or suspected unauthorized access, use, and/or disclosure of Caltrans Data subject to this Agreement. Caltrans reserves the right to participate in the investigation of any information security incident involving its data; Caltrans may conduct its own independent investigation, possibly including Caltrans authorized vendors in such investigation; and the Contractor shall cooperate fully in such investigations.

In addition, Contractor shall provide a preliminary report within three (3) working days of discovery of any breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as any pertinent preliminary information. In addition, the Contractor shall then provide a full written report of the investigation to the Caltrans CISO and Privacy Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on the measures that were taken to halt and/or contain the improper use or disclosure of the data, the measures to identify the source, method or process used to obtain improper use or disclosure of the data, and the measures to identify the parties who were involved in the improper use or disclosure of the data.

Caltrans reserves the right to take corrective action at any time.

H. BREACH OR DISCLOSURE OF CALTRANS DATA

Disclosure of any Caltrans Data to any person or entity that is not specifically authorized in this Agreement is strictly prohibited. Personnel assigned to work with Caltrans confidential information shall not publish, disclose, reveal, share, or divulge to any person or entity any of the confidential information provided under this Agreement, except as authorized by the provisions of this Agreement or required by law.

Contractor shall immediately notify the Caltrans contract manager in writing of any actual or attempted violations of security of Caltrans Data, including lost or stolen computing devices, files, or portable electronic storage media containing Caltrans Data.

Contractor shall advise the Caltrans CISO in writing of vulnerabilities that may present a threat to the security of Caltrans Data and of specific means of protecting that Caltrans Data.

Contractor shall notify Caltrans immediately by telephone call and email upon the discovery of breach of security of personal information, sensitive information, or confidential information (PSCI) when such data is, or is reasonably believed to be, acquired by an unauthorized person, or within two hours by email of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of State data in violation of this Agreement, this provision, the law, or potential loss of confidential data affecting this Agreement. In the event of a breach caused by the Contractor, upon the written request of Caltrans, and after Caltrans approves the content of the notifications (as described below), the Contractor shall be responsible for sending out any and all notifications to individuals whose personal information is breached as defined in the Civil Code section 1798.29 and SAM section 5340.4. Contractor shall bear all costs and expenses associated with sending out any such notices and will strictly comply with the

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requirements of Civil Code section 1798.29. In the event Contractor fails to send out the requisite notices, Caltrans in its sole discretion may notify all affected individuals, and Contractor shall bear all costs and expenses arising from any notifications sent out by Caltrans.

The Caltrans CISO and Legal Office shall review the content of any and all notifications and written approval must be obtained before notification can be made under this Agreement.

Caltrans shall not be held liable for any breach of Contractor systems that results in the release of any information provided by Caltrans and/or Contractor's breach of this Agreement.

Contractor agrees to indemnify and hold harmless Caltrans, its officers, and representatives from and against any liability, losses, costs, damages, or expenses (including but not limited to

attorney fees) resulting from any claims arising from the performance of this Agreement, including but not limited to any and all liability, damages, costs, expenses, or attorney fees resulting from a breach of security of the system as defined in the California IPA unless such damages are determined to be the direct result of the gross negligence or willful misconduct of Caltrans, its officers, employees, or representatives. If consumer protective services, such as credit monitoring, are deemed appropriate by Caltrans due to the data breach, all costs associated with such services shall be paid by Contractor.

3. DEPARTMENT POLICIES

Contractor must review the standards, manuals, and other references set forth in this Exhibit, and ensure that their operations comply with the standards, manuals, and other references, as amended from time to time. For general guidance on Caltrans Information Security policies, refer to SIMM 5300-B Foundational Framework.

By virtue of signing this contract, Contractor agrees to and agrees to adhere to Caltrans terms, covenants and conditions set forth in this Security Exhibit, including by reference the documents set forth in the security section of <https://dot.ca.gov/programs/procurement-and-contracts/contractor-resources>, and to be responsible for its breaches of these terms, covenants, and conditions.

A. ACCESS CONTROL

Contractor shall ensure information in all forms, such as, but not limited to CDs, DVDs, USB flash drives, or other removable media must be stored in areas that are physically secure and free from access by unauthorized persons as described in this Agreement.

Contractor shall ensure that computer monitors, printers, hard copy printouts, or any other forms of information accessed or obtained under the performance of this Agreement cannot be viewed by unauthorized persons as described in the Agreement.

Contractor shall adhere to all access management protocols including the use of industry-standard multi-factor authentication solutions.

B. SUPERVISION OF DATA

Caltrans Data in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk, or office. "Unattended" means that information is not being observed by an employee authorized to access the information. Caltrans Data in paper form shall not be left unattended at any time in transportation vehicles (including planes) and shall not be checked as baggage on commercial airplanes.

Contractor shall maintain confidentiality of all Caltrans Data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of Caltrans Data assets to State purposes only.

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Visitors to areas where Caltrans Data is contained shall be escorted and Caltrans Data shall be kept out of sight while visitors are in the area.

D. REMOVAL OF DATA

Caltrans Data must not be removed from the premises of the Contractor without express written permission by Caltrans. Contractor shall not transfer Caltrans Data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s) including State Administrative Manual (SAM) section 5335.1.

4. TECHNICAL SAFEGUARDS**A. DATA RETENTION AND DESTRUCTION**

Caltrans Data may be retained only to the extent that it is necessary to perform the required business purposes of this Agreement. All data received by the Contractor under this Agreement and any data created, copied, attributed to data received shall be destroyed when no longer needed for the purposes of this Agreement for which they were obtained, or within 30 calendar days of termination of this Agreement. Data must be destroyed in accordance with the requirements specified by NIST Special Publication (SP) 800-88, Guidelines for Media Sanitization, and other promulgated or published State of California and Caltrans regulations and policies, as amended or superseded.

B. ENCRYPTION

Confidential, sensitive, or personal information shall be encrypted in accordance with Federal Information Processing Standards 140-2 (or most current version), Security Requirements for Cryptographic Modules, and other promulgated or published State of California and Caltrans regulations and policies, as amended or superseded.

The data encryption used by Contractor shall use government-certified Advanced Encryption Standard (AES) cipher algorithms with a 256-bit or better encryption key with cryptographic technology that has been tested and approved against exacting standards, meeting FIPS 140-2 level 2 Security Requirements for Cryptographic Modules or better.

Contractor shall encrypt all Caltrans Data stored on portable computing devices and portable electronic storage media to protect Caltrans Data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and unused disk space.

Contractor shall encrypt all Caltrans Data at rest if there is a reasonable likelihood that data storage media may be lost, stolen, or copied, such as when transferring to offsite backup storage.

Contractor shall encrypt, as described above, all Caltrans Data transmitted from one computing device or storage medium to another when traversing an open, public, or other unprotected network (such as the Internet).

C. DATA AT REST AND IN TRANSIT

All Caltrans Data at rest and in transit must be encrypted in accordance with the security and privacy provisions specified within this Agreement.

D. ENDPOINT PROTECTION

All workstations, laptops and other systems that input, process, store, or transmit Caltrans Data

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must install and actively use endpoint protection with automatic updates scheduled at least daily. Contractor shall install and maintain current anti-virus software and endpoint protection, security patches, and upgrades on all computing devices used during the agreement.

Contractor shall ensure that it shall apply anti-malware controls to the services to help avoid malicious software gaining unauthorized access to state data, including malicious software originating from public networks. Such controls shall always equal or exceed the controls consistent with the industry standards for such data, but in no event less than the controls that contractor applies to its own internal corporate electronic data of like character.

E. VULNERABILITY MANAGEMENT

Systems which input, process, store, or transmit Caltrans Data must be scanned for vulnerabilities at least on a monthly basis, and at any time when new vulnerabilities that potentially affect the system are identified and reported. Vulnerabilities by severity must be remediated within the following timeframe:

- 1) Critical (3 business days or less)
- 2) High (21 days)
- 3) Medium (60 days)
- 4) Low (90 days)

The CISO must be notified within 24 hours if critical vulnerabilities cannot be remediated within the required timeframe.

Note: vulnerability severity ratings referenced above must follow the NIST scoring system (<https://nvd.nist.gov/vuln-metrics/cvss>).

F. INTRUSION DETECTION

All systems which store, process, or transmit Caltrans Data that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

G. WARNING BANNERS

All systems which input, process, store, or transmit Caltrans Data must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.

H. IDENTIFICATION

All users accessing Caltrans Data must be issued unique user identification.

I. MULTI FACTOR AUTHENTICATION

Multi factor authentication must be enabled for all users.

J. PASSWORD CONTROLS

Passwords must be a minimum of 15 characters and must be composed of a minimum one character each from the following four groups:

- 1) Upper case letters (A-Z)
- 2) Lower case letters (a-z)

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3) Arabic numerals (0-9)

4) Non-alphanumeric characters (punctuation symbols)

Passwords must be changed at least every 120 days.

K. USER ACCOUNTS

User accounts must be immediately disabled or deleted upon personnel termination or a change in assigned duties which no longer require access to Caltrans Data.

L. SESSION LOCK

Systems must not be left unattended and logged on. Systems must be configured to prevent access by initiating a session lock after no more than 10 minutes of inactivity. Session locks must be retained until the user reestablishes access using established identification and authentication procedures.

M. CHANGE CONTROL

Contractor shall notify Caltrans 30 days prior of any changes to systems, hardware, software, applications, file structure, data, or record layout which input, process, store, or transmit Caltrans Data. Caltrans shall notify the Contractor of any changes to Caltrans systems, hardware, software, applications, file structure, data, or record layout which input, process, store, or transmit information in the performance of this Agreement at the discretion of Caltrans.

N. AUDITING

Contractor shall maintain an audit trail and record data access of authorized users and the authorization level of access granted to information based on job function. Said logs must be made available to Caltrans upon request. Contractor shall allow audits or inspections by individuals authorized by Caltrans at the Contractor premises during regular business hours, with seven (7) business days prior notice for purposes of determining compliance with the terms of this Agreement.

O. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

Contractor shall agree in writing that all material that is marked or identified in writing as proprietary and furnished hereunder by Caltrans to Contractor are provided for the Contractor's exclusive use for the purposes of this contract only. All such proprietary data shall remain the property of the State. Contractor agrees to take all reasonable steps to ensure that such proprietary data are not disclosed to others, without prior written consent of the State, subject to California public records act, or other lawful process (e.g., in response to a subpoena), and to review such steps (at commercially reasonable intervals) to ensure the proprietary data is not disclosed.

Contractor will ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

Contractor agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to proprietary materials to satisfy its obligations in this contract with respect to use, copying, modification, protection and security of proprietary materials and data, subject to the California Public Records Act and other applicable law.

P. CLOUD SERVICES

The applicable Cloud Computing General Provisions and Cloud Computing Special Provisions

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(hereafter referred to as, the “State Cloud Computing Provisions”) are incorporated by reference.

Compliance with SAM section 4983 and SIMM 5315-B Cloud Security Standard must be followed by the Contractor.

Q. REMOTE ACCESS

Any remote access to Caltrans Data or systems shall be transmitted and executed only over an encrypted method that is approved in writing by Caltrans. All remote access shall be limited to minimum necessary and least privilege principles. Remote Access shall meet security standards as defined in SAM 5360.1 and SIMM 5360-A.

R. OUT OF COUNTRY STORAGE AND REMOTE ACCESS

Caltrans Data cannot be stored or accessed by Caltrans employees, agents, representatives, or contractors located outside the United States of America (U.S.) “Outside the U.S.” means outside the geographical boundaries of the United States, the United States territories, embassies, or military installations. Furthermore, Caltrans Data may not be received, processed, stored, transmitted, or disposed of by information technology (IT) systems located outside the U.S. All contractor data centers utilized as part of this contract must be located within the U.S., and all Caltrans Data must be located within the U.S. For reference, see California State Administrative Manual (SAM) Section 4983.1 (#15) -Out of country requirements.

Contractors may receive specific provisional access under the terms of this contract provided they submit the following data and abide by the following provisions: they submit the data to, and they received written approval by, the Contract Manager, Deputy Director of Administration or the District Deputy Director of Administration and State CISO:

1) Required Contractor Information

- a) First and Last Names of all contractors working outside the U.S.
- b) Start and end date of the outside of U.S. access.
- c) Terms and conditions for the outside of U.S. data breach responsibilities of the Contractor.
- d) Terms covering Contractor handling of Caltrans Data
- e) Name(s) of all Caltrans system(s), network zones and applications the Contractor will have access to from outside the U.S.
- f) All capabilities the Contractor will have to Caltrans applications (user account provisioning, data modification, etc.)
- g) Third-party Cyber Risk Assessment conducted by a vendor selected by Caltrans at Contractor's expense.

2) Data Type, Classification and Use

- a) Classification of data the Contractor be able to access on from outside the U.S.
- b) If the Contractor will have access to confidential, sensitive, or personal data from outside of the U.S. the following additional information is required:
 1. Will the Contractor have access to production data or synthetic (obfuscated) data?

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2. If the Contractor will have access to Caltrans Data from outside the U.S. list the specific types of data the contractor will be able to access (SSNs, Credit Cards, Names and Addresses, etc.)
3. Names and Addresses, etc.)
4. Will the Contractor be able to modify Caltrans Data from outside the U.S.?
5. Name(s) of Caltrans Program Manager(s) responsible for ensuring proper handling of Caltrans Data by the Contractor.

c) Why the service cannot be offered from within the U.S.?

S. HARDWARE AND SOFTWARE REQUIREMENTS

Contractor must use State issued equipment to access the Caltrans network and systems or use remote connectivity solutions provided by Caltrans IT.

T. MATERIAL RETURN/DESTRUCTION

Contractor shall warrant that all materials provided by Caltrans will be returned promptly after use and that all copies or derivations of the materials will be physically and/or electronically destroyed. Contractor shall meet the standards as set forth in NIST 800-88 for destruction of data. All personal, sensitive, and confidential information shall be wiped from systems when the data is no longer necessary. The wipe method shall conform to Department of Defense standards for data destruction. Contractor will include with all returned materials, a letter attesting to the complete return of materials, and documentation evidencing the destruction of copies and derivations. Failure to so comply will subject the Contractor to liability, both criminal and civil, including all damages to the State and third parties. Contractor authorizes the State to inspect and verify the above. Any data that Contractor is legally required to maintain after contract termination is to be disclosed to Caltrans prior to contract initiation and again at contract termination.

COMPLIANCE WITH LAWS, REGULATIONS AND POLICIES

Contractor will comply with all federal and state laws, regulations and policies that are enacted, promulgated, or published and that govern the subject matter of this Agreement.

U. CONTACT INFORMATION

Direct security and privacy communications to the below referenced Caltrans staff. Caltrans reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

Caltrans Contract Manager	Caltrans Privacy Officer	Caltrans Chief Information Security Officer (CISO)
See the agreement for State Contract Manager information	Privacy Officer California Department of Transportation 1120 N Street Sacramento, CA 95814 Email: karl.kopper@dot.ca.gov Telephone: (916) 654-2225	Chief Information Security Officer California Department of Transportation 1120 N Street Sacramento, CA 95814 Email: karl.kopper@dot.ca.gov Telephone: (916) 654-2225

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DGS Cloud Computing – Software as a Service (SaaS) General Provisions

DGS Cloud Computing Services Special Provisions

DGS Cloud Computing Contract Checklist

SAM sections 4800 through 5900 et. seq.

SIMM 5300-B Information Security Foundational Framework

SIMM 5315-B Cloud Security Standard

SIMM 140 Cloud Security Guide

Caltrans Policies, Procedures and Practices (available through Caltrans Contract Manager)

Websites:

<https://www.dgs.ca.gov>

<https://cdt.ca.gov/policy/simm>

<https://www.nist.gov/>

28. Executive Order N-12-23 – Generative Artificial Intelligence (GenAI) Technology Use and Reporting

- A. During the term of the contract, Contractor must notify the State in writing if their services or any work under this contract includes, or makes available, any previously unreported GenAI technology, including GenAI from third parties or subcontractors. Contractor shall immediately complete the GenAI Reporting and Factsheet (STD 1000) to notify the State of any new or previously unreported GenAI technology. At the direction of the State, Contractor shall discontinue the use of any new or previously undisclosed GenAI technology that materially impacts functionality, risk or contract performance, until use of such GenAI technology has been approved by the State.
- B. Failure to disclose GenAI use to the State and submit the GenAI Reporting and Factsheet (STD 1000) may be considered a breach of the contract by the State at its sole discretion and the State may consider such failure to disclose GenAI and/or failure to submit the GenAI Reporting and Factsheet (STD 1000) as grounds for the immediate termination of the contract. The State is entitled to seek any and all relief it may be entitled to as a result of such non-disclosure.
- C. The State reserves the right to amend the contract, without additional cost, to incorporate GenAI Special Provisions into the contract at its sole discretion and/or or terminate any contract that presents an unacceptable level of risk to the State.

29. Ownership of Proprietary Property

For the purposes of this section (**Ownership of Proprietary Property**) of Contract (**Enter Agreement Number**) (herein after referred to as “this Agreement”) the following definitions shall apply:

Work: As delineated of the Agreement.

Work Product: As defined as Deliverable of the Agreement, including, but not limited to, all Work and Deliverables conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six (6) months after the termination

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thereof, which relates to the Work commissioned or performed under this Agreement. "Work Product" includes all deliverables, inventions, innovations, improvements, or other works of authorship Contractor may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret, or other legal protection.

30. Ownership of Work Product and Rights

- A. Ownership of Work Product: Except in regard to Pre-existing Works, all Work Product derived by the Work Performed by the Contractor, its employees, or by any of the Contractor's Subcontractor's employees under this Agreement, shall be owned by Caltrans and shall be considered to be works made for hire by the Contractor's Subcontractor for Caltrans. Caltrans shall own all United States and international copyrights in the Work Product. As such, all Work Product shall contain, in a conspicuous place, a copyright designation consisting of a "c" in a circle followed by the four-digit year in which the Work Product was produced, followed by the words "California Department of Transportation." For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California Department of Transportation.
- B. Vesting of Copyright Rights: Contractor, its employees, or any of Contractor's Subcontractor's employees agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to Caltrans, its successors and assigns, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Contractor's Subcontractor from Caltrans. From time to time upon Caltrans request, the Contractor's Subcontractor and/or its employees shall confirm such assignments by execution and delivery of such assignments, confirmations or assignment, or other written instruments as Caltrans may request. Caltrans, its successors and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for Work Product. Contractor hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.

31. Inventions

- A. Vesting of Patent Rights: The Contractor, its employees, and any Contractor's Subcontractor hereby agrees to assign to Caltrans, its successors, and assigns, all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority there under, and the same shall become and remain Caltrans' property regardless of whether such protection is sought. The Contractor, its employees and Contractor's Subcontractor shall promptly make a complete written disclosure to Caltrans of each invention not otherwise clearly disclosed to Caltrans in the pertinent Work Product, specifically pointing out features or concepts that the Contractor, its employees and Contractor's Subcontractor believes to be new or different. The Contractor, its employees and Contractor's Subcontractor shall, upon Caltrans' request and at Caltrans' expense, cause patent applications to be filed thereon, through solicitors designated by Caltrans, and shall sign all such applications over to Caltrans, its successors, and assigns. The Contractor, its employees and Contractor's Subcontractor shall give Caltrans and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or

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documents as Caltrans may consider necessary or appropriate to carry out the intent on this Agreement.

- B. **Agency:** In the event that Caltrans is unable for any **reason** whatsoever to secure the Contractor's, its employees', and/or Contractor's Subcontractor's signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), Contractor, its employees, and Contractor's Subcontractor hereby irrevocably designates and appoints Caltrans and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on Contractor, its employees and Contractor's Subcontractor's behalf and stead, to execute and file such applications and to do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks or patents thereon with the same legal force and effect as if executed by Contractor, its employees and/or Contractor's Subcontractor. Caltrans shall have no obligations to file any copyright, trademark or patent applications.
- C. **Avoidance of Infringement:** In performing services under this Agreement, Contractor and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor or its employees becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor or its employees shall immediately notify Caltrans in writing.
- D. **Pre-Existing Works and License:** Contractor acknowledges that all Work Product shall be the sole and exclusive property of Caltrans, except that any pre-existing works created by Contractor and third parties outside of the Agreement but utilized in connection with the Agreement (the "Pre-existing Works") shall continue to be owned by Contractor or such parties. Contractor agrees to notify Caltrans in writing of any Pre-existing Works used in connection with any Work Product produced under this Agreement and hereby grants to Caltrans a non- exclusive, perpetual, royalty free license to utilize the Pre-existing Works in connection with the Work Product

32. Confidential Information

- A. Except as otherwise permitted under this Agreement, the Recipient will not disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. Except in connection with the computer software programs licensed by Contractor to Caltrans ("Licensed Software") and any software provided with the Licensed Software, the non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of 10 years after Recipient's receipt of that item. However, Caltrans's obligations to maintain both the Licensed Software and any software provided with the Licensed Software as confidential will survive in perpetuity. Notwithstanding the foregoing, this Section is not intended to prevent a Recipient from using Residual Knowledge, subject to any Intellectual Property Rights of the Discloser. "Recipient" means the party receiving Confidential Information of the Discloser. "Discloser" means the party providing Confidential Information to the Recipient. "Residual Knowledge" means ideas, concepts, know-how or techniques related to the Discloser's technology and Confidential Information that are retained in the unaided memories of the Recipient who had rightful access to Confidential Information.

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- B. Notwithstanding the foregoing, in the event that a court or other governmental authority of competent jurisdiction issues an order, subpoena, or other lawful process requiring the disclosure of the Confidential Information, Caltrans shall notify Contractor immediately upon receipt thereof to facilitate Contractor efforts to prevent such disclosure, or otherwise preserve the confidentiality of the Confidential Information. Caltrans shall not be in violation of the Agreement if (a) Caltrans notifies the Contractor that a third party seeks to obtain the Confidential Information pursuant to a court order and Contractor fails to obtain relief from said court order before the date that Caltrans is required to disclose the Confidential Information, (b) Caltrans notifies the Contractor that a third party seeks to obtain the Confidential Information under right provided by law (such as the California Public Records Act) and Contractor takes no legal action to prevent the disclosure within 30 days from the day of said notice, or (c) Contractor notifies Caltrans that Contractor will take no legal action to maintain the confidentiality of the Confidential Information or does not object to the disclosure of the Confidential Information.

33. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

In addition to and not a limitation of the Contractor's indemnification obligations contained elsewhere in this Agreement, the Contractor hereby assumes all risks of the consequences of exposure of Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind or origin. Contractor also agrees to take all appropriate safety precautions to prevent any such exposure to Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. Contractor also agrees to indemnify and hold harmless Caltrans, the State of California, and each and all of their officers, agents and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, Contractor also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of Caltrans, the State of California, and/or any of their officers, agents and/or employees.

34. Mandatory Organic Waste Recycling

It is understood and agreed that pursuant to Public Resources Code Section 42649.8 et. seq, if Contractor generates four (4) cubic yards or more of organic waste or commercial solid waste per week the contractor shall arrange for organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling. Contractor shall provide proof of compliance, i.e., organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling, upon request from the Caltrans Contract Manager.

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No Contractor or Subcontractor may be awarded a janitorial services Agreement unless registered with the Labor Commissioner's Office pursuant to Labor Code Sections 1420-1434.

36. ADA Compliance

All entities that provide electronic or information technology or related services that will be posted online by the California Department of Transportation must be in compliance with Government Code Sections 7405 and 11135 and the Web Content Accessibility Guidelines (WCAG) 2.0 or subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success. All entities will respond to and resolve any complaints/deficiencies regarding accessibility brought to their attention.

37. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order [N-6-22](#) (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law unless the contract has been Federalized (i.e. there is federal participation in any phase). The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.