

IFB STPD 15-001-C

Statement of Work, Appendix C

SPECIAL TERMS AND CONDITIONS – TELECOMMUNICATIONS

FOR CALNET 3

SUBCATEGORIES 10.1 and 10.2

SATELLITE SERVICES

07/15/2016

Addendum 5

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PO Box 1810

Rancho Cordova, CA 95741

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A. DEFINITIONS

Definitions specified in the Statement of Work Appendix A, Glossary (IFB-C SOW, Appendix A Glossary), shall be the definitions applicable to these Special Terms and Conditions.

B. PURPOSE

These Special Terms and Conditions - Telecommunications are part of the Contract entered into effective as of the Effective Date of the agreement between the State and Contractor.

C. WARRANTY OF GOODS AND SOFTWARE

The Contractor warrants all goods and software delivered under this Contract as follows:

- a) The warranties in this subsection a) begin upon delivery of the goods and software in question and end one (1) year thereafter. The Contractor warrants that the goods and software furnished hereunder that are procured and owned by the State or its customers will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Scope of Work), and the goods and software 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 Scope of Work directly or by reference, the Contractor will warrant that its goods and software 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 goods and software 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 master copy of the Software for comparison and correction.
- c) Unless otherwise specified in the Scope of Work:
 - (i) 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.
 - (ii) Where the Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, the Contractor will pass through any such warranties to the State and will

reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and 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.
- 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 goods and software; or
 - (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming goods and software 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 goods and software of equivalent capability, function, and performance. The payment obligation will not exceed the limits on the Contractor's liability set forth in the General Provisions – Telecommunications, Section 31, LIMITATION OF LIABILITY.
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE CONTRACTOR MAKES NO WARRANTIES OF GOODS OR SOFTWARE EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

D. WARRANTY OF SERVICES

The Contractor warrants all services delivered under this Contract as follows:

- a) Contractor warrants to the State that (i) service and service deliverables furnished hereunder will conform in all material respects to the requirements of this Contract, and (ii) the service and service deliverables furnished 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 or the Customer's Scope of Work directly or by reference, Contractor will warrant that its service and service deliverables furnished will conform in all material respects to the mutually agreed design specifications. The State's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.
- b) Contractor warrants that the service and service 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 United States patent, copyright, trade mark, trade secret, or other proprietary right ("Intellectual Property Right") of a third party. Without limiting the generality of the foregoing, if harmful code is present in any service and service deliverable, Contractor will use all commercially reasonable efforts, at no additional charge to the State, to eliminate and reduce the effects of such harmful

code, including restoration of any lost data using generally accepted data restoration methods.

- c) Contractor warrants that the services shall be performed, and all services, deliverables and other materials prepared and delivered, in a timely, professional, efficient, diligent and workman-like manner, in accordance with the highest recognized professional standards and practices of quality and integrity in the industry, by qualified personnel fully familiar with the technology and methodologies used in performing the service and service deliverables, and be fit for use as reasonably intended by the parties.
- d) Contractor represents and warrants that, as of the Effective Date of product/service acceptance, there is no outstanding or reasonably anticipated civil or criminal litigation, arbitrated matter, or other dispute, in any forum, to which Contractor or any of its Affiliates is a party that, if decided unfavorably to Contractor or its Affiliates, would reasonably be expected to preclude Contractor from entering into this Contract or have a material adverse effect on Contractor's ability to fulfill its obligations hereunder.
- e) To the extent that the services, systems, items, and other resources of the State and its other third party service providers with which they will interoperate are compatible with the standards that the State has specified for each Service and Service Category, as set forth in the Technical Requirements SOW (IFB-C SOW, Technical Requirements: 10.1 Voice and IFB-C SOW, Technical Requirements, 10.2 Data), Contractor represents and warrants (i) all equipment, networks, software and other resources utilized or provided by Contractor in connection with the services and service deliverables shall be successfully interfaced with, and shall be compatible with, the services, systems, items, and other resources of the State and its other third party service providers with which they will interoperate and (ii) none of the services, or service deliverables or other items provided to the State by Contractor shall be adversely affected by, or shall adversely affect, the State Resources or any services provided by any such third party service providers, in any material respect, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times, or otherwise.
- f) Contractor represents and warrants that: (i) it has conducted a full and complete analysis of the State's requirements as specified in this IFB STPD 15-001-C Contract; (ii) it has performed sufficient due diligence investigations regarding the scope and substance of the services and the service deliverables; (iii) it has received sufficient answers to all questions that it has presented to the State regarding the scope and substance of the services and the deliverables as well as the workings, capabilities, procedures, and capacities of the State's networks, equipment, hardware, and software associated with the provision of the services and service deliverables; and (iv) it is capable in all respects of providing the services and deliverables in accordance with this Contract. Contractor hereby waives and releases any and all claims that it now has or hereafter may have against the State based upon any inaccuracy or incompleteness of the information it has received with regard to the scope and substance of the services and the service deliverables, except where such information was willfully withheld or intentionally misrepresented by the State and where such claims are permitted under California law. Further, Contractor covenants that it shall not seek any judicial rescission, cancellation, termination, reformation, or modification of this Contract or any provision hereof, nor any adjustment in the charges to be paid for the service deliverables or services, based upon

any such inaccuracy or incompleteness of information except where such information was willfully withheld or intentionally misrepresented by the State.

- g) Contractor represents and warrants that Contractor, at Contractor's expense, shall (and shall cause all of its subcontractors to) maintain all equipment, systems, networks, and software operated or used in performance of its obligations hereunder so that they operate in accordance with the service levels and their respective specifications, including: (i) maintaining such items in good operating condition, subject to normal wear and tear, (ii) performing repairs and preventative maintenance in a timely manner and in accordance with the manufacturer's recommendations and requirements; and (iii) performing software maintenance in accordance with the applicable software supplier's recommendations and requirements.
- h) For any breach of the Contractor's commitments provided in this Section, the State's remedy and Contractor's obligation, shall include:
 - i. Re-performance, repair, or replacement of the nonconforming service deliverable (including without limitation an infringing service deliverable) or Service; or
 - ii. Should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming service 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 this subsection h).ii will not exceed the limits on Contractor's liability set forth in the General Provisions – Telecommunications, Section 31, LIMITATION OF LIABILITY; and/or
 - iii. The rights and remedies provided by the Service Level Agreements in the SOW.

E. PRICE GUARANTEE PERIOD

The Contractor shall guarantee all pricing must be at or below market value for the entire term of Contract agreement. Any adjustment or amendment to the original contract will not be effective unless a written amendment is approved by the State and the Contractor. The State will be given the immediate benefit of any decrease in the market, product set, or allowable discount.

F. INVOICES AND PAYMENTS

a) Invoices

All service taxes, fees, surcharges, and surcredits shall be separately identified on each invoice as applicable. In addition, each invoice shall be in the form specified by the State (including whether issued as a single, aggregate invoice or separate invoices for different services or entities) and shall (i) comply with all applicable legal, regulatory and accounting requirements, (ii) allow the State to validate volumes and charges, (iii) permit the State to chargeback internally, and (iv) meet the State's billing requirements in accordance with the Statement of Work. Invoices with a name other than that established in the original Contract (including approved subcontractors or Affiliates) cannot be paid prior to execution of a Contract Amendment. The data underlying each

invoice shall also be delivered to the State electronically in a form and format specified in the Statement of Work but also the format shall be compatible with all other applicable State's accounting systems as necessary.

b) Budget Contingency Clause

This contract is valid and enforceable only if: (a) sufficient funds are made available by the State Budget Act of the appropriate State Fiscal Year(s) covered by this Agreement for the purposes of this program; and/or (b) sufficient funds are made available to the State by the United States Government for the Fiscal Year(s) covered by this contract for the purposes of this program.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State other than as contained herein, or offer an Agreement amendment to Contractor to reflect the reduced amount.

c) Recoup Cost Clause

For purpose and clarity and avoidance of confusion under this contract, the State is granted the limited right to resell services contemplated herein to a) other State of California governmental entities and b) other municipal or local governments within the State of California. The State shall be authorized to establish a fee-based access to applications, data, documentation or services provided under this contract, provided that the fees are established on a cost recovery basis and not for profit.

d) Acceptance Payments

Acceptance procedures to initiate payments will be as set forth in the Customer's Scope of Work and/or Ordering Documents. The State shall be deemed to have accepted each service either (i) upon its issuance of written notice of such acceptance or (ii) thirty (30) days after the Installation Date or acceptance testing period (collectively Acceptance), unless otherwise stated in the Scope of Work or at or before the time the State gives Contractor written notice of rejection or requests additional time. No payment will be due before Acceptance thereof, except to the extent required by progress payment terms and/or progress payment requirements in the Scope of Work, if applicable. Any notice of rejection will explain how the deliverable or service fails to substantially conform to the functional and performance specifications of the Statement of Work and Customer's Scope of Work. Contractor will, upon receipt of such notice, investigate the reported deficiency and exercise reasonable best efforts to remedy it promptly. The State, in its sole discretion, will have the option to re-perform the acceptance test. If the Contractor is unable to remedy the deficiency within thirty (30) days of notice of rejection, the State shall have the option of terminating for default the portion of the Contract that relates to such deliverable or service, or terminating this Contract in its entirety for default; and/or the State or Customer shall have the option of terminating the service order or accepting substitute deliverables or service.

G. EXISTING EQUIPMENT

Contractor agrees to accommodate the State and its customers that currently utilize existing equipment specific to the Contractor. The Contractor's replacement agreement with the

proposed services shall accommodate by (a) supporting the use of such existing customer equipment at no cost to the State or Customers during Transition, or (b) modifying or replacing such existing equipment at no cost to the State or Customers during Transition. Any replacement or modification to existing equipment shall require approval from the State or the affected Customer and shall be of similar or better quality that will function the same as, or better than, the existing equipment.

H. PRICING AND SERVICE REVIEW

For the purpose of maintaining competitiveness throughout the Term, Contractor agrees to a joint review of its pricing and service functionality at the State's request, to ensure the State and its Customers will receive cost-competitive and technologically competitive services. The State shall notify the Contractor in writing of any pricing adjustments and service related issues as a result of the analysis. The Contractor shall have 15 days to confirm and respond to the State's request for pricing reductions or other service related changes. The effective date for the mutually agreed rate(s) shall be 15 days from written notification by the State. Once an amendment has been issued, the Contractor shall issue rebates or billing credits back to the effective date of the new rate(s). Contractor agrees that requests for amendments to this Contract to reduce statewide rates may be submitted throughout the term.

I. SERVICE COSTS

Any Contractor's list of Service and Product descriptions accepted by the State shall correlate the Service to the associated Contract rates as applicable under this Contract. All costs will include all monthly recurring and usage charges, volume discounts, and non-recurring charges as applicable. Listed pricing will include all elements necessary to configure an instance of working Service (planning, application design, engineering, testing, wiring, termination, installation, and training). Any no-cost items will be clearly identified and any Service elements without associated pricing will be considered no charge items.

J. "MOST FAVORED NATION" STATUS

Contractor agrees to give the State and Authorized Users of this Contract "Most Favored Nation" status, in that Contractor agrees that no other similarly situated public customer of Contractor or any of its Affiliates will receive rates for a substantially similar service, or suite of services, offered under substantially similar terms and conditions that are lower than the statewide rates provided hereunder when the volume of business from the other public customer is equal to or less than the volume of business the State delivers under this Contract. Contractor agrees to promptly bring to State's attention instances in which other public customers of Contractor or any of its Affiliates may receive lower rates for substantially similar services. For comparison purpose, all rates used for comparison shall not include administrative fees equivalent to those of General Provisions – Telecommunications, Section 69, ADMINISTRATIVE FEE, or Special Terms and Conditions, Section U, SERVICE TAXES, FEES, SURCHARGES, AND SURCREDITS. If Contractor or its Affiliates offer lower rates to any other public customer for the same or a substantially similar service, or suite of services, offered under substantially similar terms and conditions, Contractor shall adjust the State's rates prospectively to match or beat such rates. If Contractor offers a bundled package of deliverables and/or services under substantially similar terms and conditions to other public Customers at a rate lower than the rate(s) charged to the State for such deliverables and/or services provided under this

Contract, the State reserves the right to amend the Contract to add a similarly bundled package of deliverables and/or services at such lower rate. At the end of each Contract year, an executive level officer with authority to represent the Contractor shall certify in writing to the State that Contractor has complied with this provision. If Contractor is not in compliance with this Section, Contractor and the State shall make adjustments and/or payment as necessary and described in General Provisions - Telecommunications, Section 59, PERFORMANCE DEFICIENCY CHARGES, and/or Special Terms and Conditions – Telecommunications, Section G, PRICING AND SERVICE REVIEW, as applicable. Nothing herein shall be construed to require Contractor to offer provision or sell services in a manner that conflict with applicable laws or regulations.

K. REPORTS, DATA AND INVENTORY

Contractor shall provide all reports required by this Contract or otherwise requested by the State. Upon the State's request, at intervals and for any reason related to the Contract and services provided under the Contract, during the Term of the Contract, Contractor shall: (a) provide to the State all data and documentation and all other information as requested by the State; and (b) Contractor shall provide to the State a complete and accurate inventory of all deliverables, requirements, and services provided under the Contract, including software, data, equipment, materials, third party licenses, third party leases, and third party contracts used to provide the services, as well as the location thereof, entities serviced under this Contract by such items, and such other information regarding such items as the State requests. The export data formats and storage media type will be defined by the State.

L. BENCHMARKING

Beginning twelve (12) months after the Effective Date and no more frequently than annually thereafter until any termination or expiration, the State may engage an independent third party (a "Benchmarking Process"), to benchmark Service(s), suite(s) of services, Service Level Agreements, and/or the charges hereunder. Benchmarking shall not apply to Individual Case Basis (ICB) pricing or to Individual Price Reductions (IPR). The cost for such benchmarking shall be shared and mutually agreed upon, in writing, by the State and Contractor. The selection of the Benchmarking Process shall be made by the State, subject to Contractor's approval, such approval not to be unreasonably withheld. In addition to the annual benchmarking activity, the State shall have the right to engage, at the State's own expense, a Benchmarking Process to conduct additional benchmarking activities prior to any termination or expiration of the Contract, provided that each such additional benchmarking activity is conducted no sooner than six (6) months after the annual benchmarking activity. The State and Contractor will discuss and determine in advance the scope, methodology, relative comparisons and execution for each benchmarking process (the "**Benchmarking Process**"). Each Benchmarking Process will be conducted, and the results documented, by the Benchmarking Process in a commercially reasonable manner and in accordance with the applicable Benchmarking Process. The State and Contractor will review the results of each benchmark and determine if such benchmark results show that the charges for the benchmarked Service(s) are less favorable than the most favorable of the prices charged by any other service provider examined by the Benchmarking Process for similarly situated service(s) or a similar suite of services (the "**Benchmarking Standard**"). In comparing charges, the charges under this Contract shall be considered exclusive of the Administrative Fee. If the benchmark results show a variance between the charges for the benchmarked Service(s) charged by Contractor hereunder and the Benchmarking Standard by greater than five

percent (5%), then Contractor shall reduce its charges hereunder such that Contractor's total charges for the benchmarked Service(s) are within five percent (5%) of the Benchmarking Standard. Notwithstanding the foregoing, Special Terms and Conditions - Telecommunications, Section J, "MOST FAVORED NATION" STATUS, the parties agree that in no event shall the results of a benchmarking result in the increase of Contractor's charges.

M. DE MINIMIS DELIVERABLE OR SERVICES REQUEST

At any time during the term, if the State determines that such deliverables or services requested were not provided with the required items/services for the deliverable or service to perform in accordance with the intended specification and parties cannot agree as to whether such deliverables or services are included as part of the deliverables and services offered by the Contractor and the financial impact on Contractor of satisfying such request is less than Twenty-Five Thousand Dollars (\$25,000.00) and to the extent that the cumulative and aggregate amount of all such deliverables or services provided does not result in a financial impact on Contractor in excess of the General Provisions – Telecommunications, Section 31, LIMITATION OF LIABILITY, during any contract year, such failure to agree shall (1) not be deemed a disagreement; (2) such request shall be deemed a request for services; and (3) all such services, products, or resources shall be provided to the State by Contractor at no cost in accordance with the terms of this Contract.

N. MIGRATION-OUT

- a) Term Migration-Out shall be synonymous with Disentanglement. The Migration-Out shall begin on the earlier of the following dates, as applicable, the "Migration-Out Commencement Date": (1) as elected by the State, up to sixty (60) calendar days prior to the end of the term of the Category Contract that the State has not elected to extend pursuant to General Provisions – Telecommunications, Section 85, OFFER; TERM, or has already extended fully as permitted under this Section; or (2) the date a Notice of Termination is delivered pursuant to General Provisions – Telecommunications, Section 26, TERMINATION FOR THE CONVENIENCE OF THE STATE, or General Provisions – Telecommunications, Section 27, TERMINATION FOR DEFAULT; or (3) the State's election pursuant to General Provisions – Telecommunications, Section 66, NON-EXCLUSIVE AGREEMENT, to obtain any portion, component, subset or all of the services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, including other Category Contractors, or to provide the same to itself. Contractor shall provide Migration-Out services until it has completed the obligations of this Section.

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

- b) Subject to the performance by the State and any subsequent provider of services similar to the services of all actions reasonably expected of each party in connection with the conversion, at the request of the State, the Contractor shall cooperate fully with the State and third parties and shall take all actions requested by the State or as necessary to

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

- c) If the State determines that Contractor has not complied, or is unlikely to comply, with Migration-Out requirements identified in the Migration-Out Plan, and such non-compliance was a direct result of Contractor, subcontractor or supplier, and not due to any third party or situations outside the control of Contractor, the State may give written notice to Contractor of non-compliance. After such notice, Contractor shall provide to the State all necessary additional Contractor personnel to accelerate performance as may be required or necessary to timely achieve compliance or, if Contractor has already failed to comply, achieve compliance within a re-adjusted time frame established by the State. Contractor shall have seven (7) calendar days, or longer if agreed to by the State in writing, to achieve compliance.
- d) All Migration-Out Services performed by Contractor during the conversion shall be performed by Contractor at no additional cost to the State beyond what the State would pay for the services.
- e) Contractor shall provide to the State all State data and documentation and other information reasonably requested by the State in connection with the conversion that is sufficient to enable the State, or another reasonably competent service provider, to fully assume the provision of any terminated services. Except as Contractor is otherwise required to retain such data under this Contract or by law, Contractor shall destroy all copies of State data not turned over to the State.

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

- f) To the extent applicable to the services provided by Contractor hereunder, Contractor shall provide to the State as complete and accurate an inventory as is reasonably practicable of all software, data, equipment, materials, third party licenses, third party leases, and third party contracts used to provide the services, as well as the location thereof, entities serviced under this Contract by such items, and such other information regarding such items as the State reasonably requests and is necessary for Migration-Out of services.
- g) Effective as of the date of termination, Contractor shall use commercially reasonable efforts to convey to the State (or its designee) such physical assets as the State may, in its sole discretion, select from among those assets that are onsite CPE and substructure not already fully paid for by the State and used by Contractor solely in or for the provision of services to the State, excluding those assets expressly agreed upon by the parties in writing from time to time, at a price consisting of the aggregate net book value

of such selected assets at that time, less the amount(s) already paid by the State for such assets.

- h) Effective as of the date of notice of termination, Contractor, at its expense, shall use commercially reasonable efforts to convey or assign to the State (or its designee) such leases, licenses, and other contracts as the State may, in its sole discretion, select from among those directly associated with the use of properties, software, or other goods or services by Contractor that were specifically obtained, licensed or purchased in order for the State to obtain services.

Notwithstanding anything to the contrary in this Contract, Contractor shall be responsible for the satisfaction and performance of all obligations (including all financial obligations) under any such leases, licenses, and other contracts that may be assigned or conveyed to the State (or its designee) with respect to periods prior to the date of any such conveyance or assignment.

- i) Except as otherwise provided herein, Contractor shall use commercially reasonable efforts to assign or license to the State (or its designee) whatever rights Contractor possesses at the time of Migration-Out with regard to software, materials and other items that are needed in order to allow the State (or its designee) to continue to perform and receive the benefit of the services. To the extent allowed by the applicable owner or licensor and to the extent the following are accessible by Contractor, Contractor shall provide the State with a full and complete copy of each such item that constitutes software, in such forms and media as reasonably requested by the State, together with all object code, source code, and then-available documentation thereto.

O. INDIVIDUAL PRICE REDUCTIONS (IPR)

Contractor may enter into negotiations with Authorized Users resulting in an Individual Price Reductions (IPR). IPRs can result in a price reduction only or price reduction for a limited duration commitment. At no time will any other Contract term and condition be modified. IPRs commitments shall not exceed the term of this Contract. Refer to IFB-C SOW Business Requirements: Section C.7.

P. PROVISIONING OF DELIVERABLES AND SERVICES

State and Authorized Users may order Deliverables and Services under this Contract by issuing the appropriate Ordering Document form(s) in accordance with the CALNET 3 User Instructions. Contractor will not commence provisioning Deliverables or Services for a given State or non-State Agency until Contractor receives a complete, signed, accepted, and accurate Form 20 (IFB-C Part 1 General Instructions: Attachment 3, STD FORM 20, Telecommunications Service Request). The STD 20 may be accompanied by an Authorization to Order (ATO) (IFB-C Part 1 General Instructions: Attachment 4), a STD 65, Purchasing Authority Purchase Order, and/or a Work Authorization as applicable.

Q. INDIVIDUAL CASE BASIS (ICB) PRICING

The State recognizes there may be instances where the Contractor cannot anticipate or establish a specific cost for a service that is unique because of issues such as complexity, facility availability, special construction, or other service provisioning requirements. The

State will consider the use of Individual Case Based (ICB) pricing only in specific situations and under the parameters detailed below:

- a) ICB Pricing is a Customer-specific pricing methodology based on the following components:
 - i. Capital investment required by Contractor. It includes the pro-rata share of existing capital and new incremental capital dedicated to the opportunity.
 - ii. Related expense to provide the service. It includes expenses such as installation, repair, billing, monitoring, ongoing maintenance and other business and operating expenses.
- b) Contractor shall provide the CALNET 3 Contract Management and Oversight office (CMO) a detailed description of its ICB Pricing methodology, an itemized Scope of Work and list of all cost components as part of the documentation required for approval. The Scope of Work shall contain only the elements contained in the ICB and its Product Description or Feature Description listed in the Contract. The Scope of Work shall not include any elements not contained in the ICB and its Product Description or Feature Description listed in the Contract.
- c) ICB Prices will only be offered if the prices are determined by Contractor and the CALNET 3 CMO to be financially feasible and in the interest of the Customer. In the event a Customer requests Service that Contractor deems financially unfeasible, Contractor will provide the rationale for its decision and discuss other potential Service options with CALNET 3 CMO before advising the Customer of the unavailability of ICB Prices.
- d) Contractor must receive written approval from the CALNET 3 CMO prior to implementation of any ICB.
- e) Authorized users may not sign up for ICB Pricing that extends beyond the Term of this Contract, including any extension period(s).
- f) All Services with ICB Pricing shall be identified in a separate "ICB" Table in Catalog A and Catalog B for each service.
- g) CALNET 3 CMO may request that the Contractor evaluate an ICB Pricing opportunity for a Customer.
- h) CALNET 3 CMO may request further explanation of ICB Pricing presented to or implemented for Customers.
- i) ICB Pricing must adhere to all CPUC decisions and guidelines and other appropriate regulatory guidelines as applicable.
- j) In the event that a Customer elects to terminate Service(s) subject to ICB Pricing for reasons other than (1) a Contractor default, or (2) circumstances outside such Customer's reasonable control, such Customer shall be liable to Contractor for any unrecovered amortized capital costs originally identified in the approved ICB Pricing documentation, calculated using Generally Accepted Accounting Principles.

R. SEVERABILITY/SURVIVAL CLAUSE

Contracts awarded as a result of IFB-15-001-C shall automatically incorporate by reference all of the General Provisions – Telecommunications contract terms and conditions of the Contractor's Prequalified Multiple Award Contract (PMAC) awarded as a result of the State's CALNET 3 Request for Qualifications Proposal (RFQP 12-001). The PMAC General Provisions shall apply through the duration of the PMAC awards (and beyond as specified in the Statement of Work or Customer's Scope of Work), and shall survive the expiration of the Contractor's PMAC when the Contractor's PMAC terminates prior to the termination of the contracts awarded and/or extended from this contract.

S. LIMITATION OF MODIFICATIONS TO PMAC BY SPECIAL TERMS AND CONDITIONS

To the extent that these Special Terms and Conditions modify the Contractor's PMAC General Provisions as may be allowed in those General Provisions, such modifications shall only apply to the Subcategory contracts awarded as a result of IFB-15-001-C.

T. CONTRACT EFFECTIVE TERM

Awarded contracts signed by the Contractor shall not become effective until signed by the California Department of Technology. An awarded contractor shall not begin implementation, i.e., selling services or accepting customer orders until the CALNET 3 CMO authorizes the Contractor in writing to do so, and naming a specific implementation start date for such activities. The CALNET 3 CMO reserves the right to delay a Contractor's implementation of sales and services of an awarded contract to the extent determined by the CALNET 3 CMO to be in the State's interest.

U. SERVICE TAXES, FEES, SURCHARGES, AND SURCREDITS

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

The Contractor shall notify the CALNET 3 CMO in writing within 30 days after the release of any law, resolution or order that imposes or allows any new service taxes, fees, surcharges, and surcredits that the Contractor intends to impose upon the end users of the Service. Such notices shall use Exhibit 9 provided in Part 2 of IFB 15-001-C.

The CALNET 3 CMO reserves the right to verify, and if necessary challenge the Contractor and the applicable regulatory authority, the application by the Contractor of service taxes, fees, surcharges, and surcredits. Should the CALNET 3 CMO consider the application of such items to be inappropriate, the CALNET 3 CMO and Contractor shall meet and confer regarding the applicability of such items. If thereafter a dispute exists regarding the proper application of such items, the parties may resolve such disputes in accordance with General Provisions – Telecommunications, Section 46, DISPUTES. Either party may seek guidance or clarification from the applicable regulatory authority regarding the appropriate application

of such items. If the application of such items is deemed inappropriate by the regulatory authority, the Contractor shall cease and/or revise the application of such items and, if appropriate, issue retroactive credits to the impacted Customer(s).

Applicable service taxes, fees, surcharges, or surcredits will not be included in Service pricing but will be listed in appropriate pricing attachments to this Contract. Contractor shall place the submitted information on its CALNET 3 Public Website, and shall keep all such information current to include new items and ongoing changes to existing items with updates to be at a minimum quarterly on the first day of each January, April, July and October. All charges under this Contract are exclusive of applicable federal, state and local sales, use, excise, utility, and gross receipt taxes, other similar tax-like charges and surcharges. Contractor will provide the CALNET 3 CMO the exemption certificates that comply with the requirements of the Internal Revenue Code and Regulations (e.g., see Internal Revenue Regulations section 49.4253-11 and IRS Publication 510 or their current equivalent versions). Contractor agrees to exempt the State and all State Agencies from all federal taxes as of the date Contractor receives a duly authorized and valid exemption certificate. Contractor agrees, for the purpose of federal exemption, that the CALNET 3 CMO will act as the authorized agent for this Contract in submitting a single exemption request on behalf of all State agencies. The CALNET 3 CMO will make available the certification form to authorized local government users. Local government entities will be responsible for submitting exemption requests to Contractor.

State of California government entities are exempt from service taxes, fees, surcharges, or surcredits imposed by local government and political subdivision entities, as applicable. The Contractor shall not apply service taxes, fees or surcharges imposed by local governments and political subdivisions to the State as applicable. The State shall not be required to submit certificates of exemption in order to claim or confirm local government and political subdivision exemptions.