

# **Statewide Fingerprint Imaging System**

**SECTION X**

**CONTRACT**

Addendum 10 – 11/07/08

# RFP OSI 2046 CONTRACT

STATE OF CALIFORNIA

## STANDARD AGREEMENT

STD 213 (Rev 06/03)

AGREEMENT NUMBER
REGISTRATION NUMBER

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

STATE AGENCY'S NAME

Health and Human Services Agency/Office of Systems Integration

CONTRACTOR'S NAME

2. The term of this Agreement is: \_\_\_\_\_ through \_\_\_\_\_

3. The amount of this contract shall not exceed \_\_\_\_\_, consisting of \_\_\_\_\_ for the fixed price and volume dependent fixed rate tasks specified herein, plus \_\_\_\_\_ set aside for payment of work authorizations specifically authorized herein.

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

- |  |         |
|--|---------|
| Exhibit A – General Provisions – Information Technology - GSPD 401 IT  | X pages |
| Exhibit B – Special Terms and Conditions                               | X pages |
| Attachment 1 – Equipment List, Prices, Installation Dates, and Allied  | X pages |
| Attachment 2 – Contractor Rates  | X pages |
| Attachment 3 – Sample Change Request/Change Order (Work Authorization) | X pages |
| Attachment 4 – Federal Assurances - Nonconstruction Programs           | X pages |
| Exhibit C – RFP OSI 2046 – Sections III, V, VI                         | X pages |
| Exhibit D - Vendor's Proposal – Volume 1                               | X pages |

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>		<i>California Department of General Services Use Only</i>
<small>CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)</small>		
<small>BY (Authorized Signature)</small>	<small>DATE SIGNED (Do not type)</small>	
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small>		
<small>ADDRESS</small>		

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<b>STATE OF CALIFORNIA</b>	
AGENCY NAME <b>Health and Human Services Agency/Office of Systems Integration</b>	
BY <i>(Authorized Signature)</i>	DATE SIGNED <i>(Do not type)</i>
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS P.O. Box 138014 Sacramento, CA 95813-8014	

Exempt per:

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**Exhibit A**

**GENERAL PROVISIONS – INFORMATION TECHNOLOGY**

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**A. GENERAL PROVISIONS – GPSD 401 IT**



**Exhibit A****GENERAL PROVISIONS – INFORMATION TECHNOLOGY**

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work the following terms shall be given the meaning shown, unless context requires otherwise.
- a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
  - b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
  - c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
  - d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
  - e) **"Buyer"** means the State's authorized contracting official.
  - f) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
  - g) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
  - h) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
  - i) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
  - j) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
  - k) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.
  - l) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
  - m) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
  - n) **"Documentation"** means nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.
  - o) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).
  - p) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
  - q) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
  - r) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
  - s) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
  - t) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
  - u) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
  - v) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
  - w) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
  - x) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
  - y) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
  - z) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
  - aa) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
  - bb) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other

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- Contractor-supplied programs, and user programs to the Equipment.
- cc) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- dd) **"Performance Testing Period"** means a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Site License"** means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
- ll) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- mmm) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- nn) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- oo) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- pp) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
- 2. CONTRACT FORMATION:**
- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in paragraph a), above, Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
- 3. COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
- 4. SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
- 5. INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
- 6. APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
- 7. COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval

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- will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d) If this Contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
- 8. CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- 9. ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
- 10. WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
- 11. ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
- a) these General Provisions – Information Technology (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) information technology special provisions;
- d) statement of work, including any specifications incorporated by reference herein;
- e) all other attachments incorporated in the contract by reference; and
- f) all other attachments incorporated in the contract by reference.
- 12. PACKING AND SHIPMENT:**
- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
- i) show the number of the container and the total number of containers in the shipment; and
- ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.
- 13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.
- a) Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
- 14. DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.
- 15. SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.
- 16. INSPECTION, ACCEPTANCE AND REJECTION: Unless otherwise specified in the Statement of Work:**
- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender

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- to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
- 17. SAMPLES:**
- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.
- 18. WARRANTY:**
- a) The warranties in this Section 18 begin upon delivery of the upgraded SFIS system and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, 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) Contractor warrants that the whole Information Technology system provided pursuant to this Contract shall function, operate and perform in all facilities in full and complete conformity with the requirements of this Contract and Accepted designs, descriptions, and Specifications.
- c) Contractor shall perform all Services required pursuant to this Contract in a professional manner, with high quality, using best industry practices, and in accordance with the standards of the manufacturers of applicable System components.
- d) Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to intercept and retransmit Data, provide unauthorized use of Data or system resources, disrupt or 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 it is determined that harmful code may be present in any third party Software, including Commercial AFIS Software delivered hereunder, Contractor will, upon the State's request, have the Software repaired or replaced so as to meet the requirements of this subsection d).
- (i) 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 Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
- (ii) Where 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, 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 Contractor from, Contractor's warranty obligations set forth above.
- e) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- f) For any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
- (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
- (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e) (ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- g) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 19. SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be

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- grounds for termination of this Contract in accordance with the default provisions hereof.
- 20. INSURANCE:** For the period of this Contract, Contractor shall maintain commercial general liability insurance and workers' compensation insurance. For each insurance policy provided the minimum acceptable limit is one million dollars (\$1,000,000) per occurrence. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, the Contractor may be required to have the State shown as an "additional insured" on selected policies.
- 21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefore.
- b) STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
- c) The State agrees that if paragraph a) above is invoked, and provided that the legislature authorizes SFIS post termination expenditures, the State agrees to pay Contractor for close down costs related to the termination but not for lost profits. In any event, the Contractor shall not be paid for services performed after the effective date of termination.
- 22. TERMINATION FOR THE CONVENIENCE OF THE STATE:**
- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- (i) Stop work as specified in the Notice of Termination.
  - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
  - (iii) Terminate all subcontracts to the extent they relate to the work terminated.
  - (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.
- c) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
- (i) The Contract price for Deliverables or services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges; and
  - (ii) The total of:
    - A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
    - B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
    - C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
  - d) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.
- 23. TERMINATION FOR DEFAULT:**
- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
- i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
  - ii) Make progress, so that the lack of progress endangers performance of this Contract; or perform any of the other provisions of this Contract
- b) ~~The State's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than thirty (30) days, unless the Statement of Work calls for a shorter period.~~
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
- (i) completed Deliverables,
  - (ii) partially completed Deliverables, and,
  - (iii) subject to—provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement

**Deleted:** Perform any of the other provisions of this Contract.¶

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of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

- f) If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

**24. FORCE MAJEURE**

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

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

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

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

**26. LIMITATION OF LIABILITY:**

- a) Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price.
- b) The foregoing limitation of liability shall not apply (i) to claims arising under provisions herein calling for indemnification for

third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (ii) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.

- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for liquidated damages as specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of subsection b)(i), or b)(ii) above.

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

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

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

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

**29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order

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- number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
- 32. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods except equipment provided for maintenance may be recycled or refurbished.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties. Contractor shall report to the State all unauthorized access to, damage to, loss, destruction, or unauthorized disclosure of State confidential information. The provisions of this entire Paragraph 34, Confidentiality of Data, shall remain in effect following the termination or expiration of this Contract.
- 35. NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
- 36. DOCUMENTATION**
- a) The Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.
- 37. RIGHTS IN WORK PRODUCT:**
- a) Ownership of copyright and all other intellectual property rights and know-how in the Deliverables created, developed, produced or generated by the Contractor in its performance of the services provided pursuant to this Contract, including without limitation, any services performed prior to the effective date of the Contract, (the Work Product) shall immediately vest in and remain with the State, subject to any licenses reserved by the federal government as required pursuant to federal law.
- b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order, including specifically, but not limited to, the Motorola commercial off-the-shelf Automated Fingerprint Imaging System (AFIS) and Dynamic Link Libraries ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials. The Contractor shall grant to the State, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable license to display, perform, modify and create derivative works, and distribute the Pre-Existing Materials for non-commercial purposes and to the extent necessary to operate SFIS in accordance with the SFIS Project System Design Document. Notwithstanding anything to the contrary in this Contract, Contractor will not be required to provide to the State, the source code to the automated Fingerprint Imaging System (AFIS) used in this Contract, and that State agrees not to reverse engineer, disassemble, peel component, deep link, decompile, reprogram, or otherwise attempt to recreate the source code, or to allow or enable third parties to do so.
- c) Pursuant to Title 45 of the U.S. Code of Federal Regulations, Section 95.617, and notwithstanding any other provisions of these General Provisions or this Contract, the U.S. federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes (Government Purpose Rights), any software modifications, and documentation developed pursuant to this Contract. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any federal government purpose (a project or activity funded by the federal government) and to authorize the use, modification, reproduction, performance, release, display, creation of

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derivative works from, and disclose the Work Product for any federal government purpose. Recipients of the Work Product for federal government purposes may include, without limitation, State Contractors, California local government, the U.S. federal government, and the State and local governments of other states. This provision does not apply to software enhancements to the AFIS system or Dynamic Link Libraries created by its owner in the ordinary course of its business.

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

**38. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA**

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

**39. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**

- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold or leased to the State by Contractor, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a).

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 39a) will be conditional upon the following:

- i) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- ii) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement

of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the State in procuring substitute Deliverables or Software. If, in the sole opinion of the State, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.
- d) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - (i) The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or
  - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
  - (iii) The modification by the State of the Equipment furnished hereunder or of the Software; or
  - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
- e) Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

- 40. EXAMINATION AND AUDIT:** Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract, provided, however, that except as otherwise required by federal or state law or regulation, any audits required under this contract shall not encompass access, nor will Contractor provide access to Contractor's internal cost records including profit and loss statements and other underlying costs of this nature. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a



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similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.

**41. DISPUTES:**

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for Information Technology Goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

**42. STOP WORK:**

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- (i) Cancel the Stop Work Order; or
  - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof

expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

- (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
  - (ii) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

**43. FOLLOW-ON CONTRACTS:**

- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
  - (ii) will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
  - (ii) development or design of test requirements;
  - (iii) evaluation of test data;
  - (iv) direction of or evaluation of another Contractor;
  - (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
  - (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
- (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or

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- (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.
- 44. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
- 45. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 46. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 47. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
- 48. ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- (i) the assignee has not been injured thereby, or
  - (ii) the assignee declines to file a court action for the cause of action.
- 49. DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
- (i) the dangers of drug abuse in the workplace;
  - (ii) the person's or organization's policy of maintaining a drug-free workplace;
  - (iii) any available counseling, rehabilitation and employee assistance programs; and
  - (iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
- (i) will receive a copy of the company's drug-free policy statement; and
  - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 50. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not

**Exhibit A**  
**GENERAL PROVISIONS – INFORMATION TECHNOLOGY**

limit the generality of warranty obligations set forth elsewhere herein.

**51. SWEATFREE CODE OF CONDUCT:**

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

**52. RECYCLING:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).

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

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support

enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

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

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

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

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

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**Exhibit B**  
**Special Terms and Conditions**

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**B SPECIAL TERMS AND CONDITIONS**

1. Entire section intentionally deleted.

2. Definitions

The definitions for this Contract are found in Section I, Introduction and Overview of Requirements, of RFP OSI 2046, in the General Provisions – Information Technology, GSPD-401IT Revised Solely for RFP-OSI 2046 (Effective 04/12/2007), and as specified throughout this Contract.

3. Term of Contract

The term of this Contract shall begin on the Execution Date and continue for five (5) years thereafter, unless terminated earlier as provided herein. The State reserves the option to extend the term for one (1) additional period of three (3) years, upon one hundred and eighty (180) days prior notice to contractor of its intent to extend this contract. Any extension of the term of this contract is effective upon the State's sending a contract amendment to the contractor for signature.

4. Entire section intentionally deleted.

5. Statement of Work

Contractor shall fully perform, complete, and deliver all work, deliverables, goods, and services specified in Section III, Current System; Section V, Administrative Requirements; and Section VI, Statement of Work, of RFP OSI 2046, and as specified herein excluding those obligations that are the responsibility of the State or the State's contractors, vendors or agents other than Contractor.

The above referenced Section III, Current System; Section V, Administrative Requirements; and Section VI, Statement of Work, of RFP OSI 2046 are incorporated into and made a part of this Contract as though fully set forth herein.

6. Establish Project Control and Reporting System

Throughout the term of this Contract, under the direction of the State Project Manager or designee, Contractor shall provide full project management and control of functions for the SFIS activities including, but not limited to:

- Management of Contractor technical staff;
- Planning and direction for SFIS operations and maintenance and internal assessments and reviews of SFIS;
- Evaluation of SFIS operation and status reporting;
- Incorporation of required software and/or software modifications;

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- SFIS Security and routine Security Analysis;
- Technical design and issue resolution;
- System Hardware acquisition, installation, and maintenance;
- Application of requisite technical and management skills and techniques to ensure high quality, effective project deliverables;
- Transition-In of quality assurance programs and procedures to ensure that proper project management controls exist and are in use;
- Transition-out of system operation transfer to State or designee; and
- Provide routine and realistic assessments of system development progress.

7. Personal Services

A. Provide Competent Personnel

Contractor shall provide to the State throughout the term of this contract the personnel identified in the Staffing Plan currently in effect.

B. Control and Supervision by Contractor

Contractor personnel that provide services to the State pursuant to this Contract shall at all times be under the control, management, and supervision of the Contractor.

C. Personnel

Contractor's Key Staff positions are identified in the Staffing Plan. During the term of this Contract, Contractor shall not make changes in the assignment of such Key Staff without the prior written approval of the State Project Manager. In the event a replacement of Key Staff is required, Contractor shall provide the State Project Manager with a copy of the proposed replacement candidate's resume and allow the State Project Manager the opportunity to interview and approve the candidate. The State Project Manager may request that the Contractor replace Key Staff and shall advise the Contractor in writing of the basis for the request. In such event, Contractor shall use reasonable efforts to provide a proposed replacement candidate within thirty (30) days of the date the requested reassignment is made by the State.

- (1) The State recognizes that resignation and other events may cause Contractor staff assigned to SFIS to no longer be available to work on SFIS. If this occurs, Contractor shall provide written notice to the State at least twenty (20) business days prior to staff's scheduled departure, if known in advance.

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8. Responsibilities of the State

The State is responsible for providing information, data, documentation, and test data as specified in the RFP and any assistance reasonably necessary to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in RFP OSI 2046, applicable Change Orders and this Contract. More specifically, the State is responsible for providing the Wide Area Network, and the installation, and maintenance of all communication media (telephone lines, modems, etc.) necessary for the remote transmission of data and not otherwise required to be provided by Contractor.

9. Change Orders (Work Authorization)

The State Project Manager may, at any time, by written Change Order (otherwise known as a Work Authorization), approve changes within the scope of this Contract if the State Project Manager determines that such changes are necessary to the successful accomplishment of the general scope of work of this Contract, or in the event work required by this Contract is no longer required or other changes in this Contract must be made. In such event, the procedures contained in this Contract Section 9 shall apply.

Contractor shall not make any changes, provide services or perform any work not required herein or affecting SFIS in any manner except through a Change Order with the State. Contractor shall not make any changes to Pre-Existing Materials, as defined in Exhibit A, Paragraph 37. Rights in Work Product, where the State or Contractor cannot obtain Motorola's approval to modify or create derivative works from such Pre-Existing Materials. Contractor shall not enter into any Change Orders or contracts with third parties that affect SFIS in any manner.

- A. For changes requested by the State Project Manager, or for changes suggested by the Contractor, the Contractor shall prepare a Change Order in accordance with the sample attached as Attachment C, Sample Change Request/Change Order.
- B. Each Change Order shall contain a detailed statement of the purpose, objective or goals to be undertaken and the work to be performed by the Contractor, the job classification or approximate skill level, and names if known, of the personnel to be made available by the Contractor, an identification of all significant material to be developed by the Contractor and delivered to the State, an identification of all significant materials to be delivered by the State to the Contractor, an estimated time schedule for the provision of these services by the Contractor, and completion (Acceptance) criteria for the work to be performed.
- C. Subject to other provisions of this Contract requiring a minimum level of Change Order work to be performed by Contractor each month as part of the

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fixed transaction costs paid by the State each month to Contractor (but in no event shall such level of Change Order work exceed the work that can be reasonably performed by two full-time engineers and associated support staff), Contractor will submit with a Change Order a work cost estimate for approval by the State. Contractor shall base prices for Change Orders on a reasonable number of Staff hours multiplied by the Per Hour Charge for such Staff from Exhibit B, Contractor Rates, plus any other reasonable costs to be incurred to effect the change at a fair and reasonable price. Contractor will be paid for work under a Change Order upon Acceptance by the State Project Manager of the Deliverable(s) which are the subject of the Change Order based upon actual time and materials utilized to perform the authorized work but no more than the original work cost estimate approved by the State. Contractor shall not charge the State for preparing any analysis or other documents necessary to evaluate and implement a Change Order.

- D. All Change Orders must be in writing and signed by the State Project Manager prior to Contractor beginning work. Upon execution of the Change Order, each such Change Order shall be incorporated into and become a part of this Contract and the terms and conditions of this Contract shall apply to all such Change Orders. In no event shall a Change Order be deemed to be a separate contract.
- E. The State has the right to require Contractor to stop or suspend work on a Change Order by prior written Notice in accordance with the Stop Work provisions of this Contract.
- F. If Contractor refuses to perform or fails to complete a Change Order executed pursuant to this Section 9, Contractor shall be in material breach of this Contract and the State shall have the right to terminate this Contract for Default pursuant to the procedures for Default as provided herein.

10. Invoicing and Payment for Services

A. Payment

Payment shall not be due until receipt of a true and correct invoice for a completed and accepted Service, Deliverable or Change Order. An invoice for a Service, Deliverable or Change Order that is received by the State before Acceptance of that Service, Deliverable or Change Order by the State is in dispute as provided in Government Code section 927 et seq. and shall not be due and payable by the State until Acceptance by the State of the Service, Deliverable, or Change Order which is the subject of the invoice.

B. Invoices

Invoices shall be submitted the month following the month in which the charges are incurred. Work shall be paid at the applicable Contract rate at

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the time the work is performed. Invoices shall be in a format acceptable to the State and shall not be submitted more frequently than monthly. All invoices submitted must meet with the approval of the State Project manager or his or her designee prior to payment. Invoices shall be submitted to:

OSI Accounting Department  
P.O. Box 138014  
Sacramento, CA 95813-8014

**C. Withholds**

(1) Amounts due to the State under this Contract as damages or deductions may be withheld by the State from the money payable to the Contractor pursuant to this contract. The State shall notify the Contractor in writing of any claim for liquidated or actual damages or deductions pursuant to this provision at least thirty (30) working days prior to the date the State withholds such sums from money payable to the Contractor.

(2) Entire section intentionally deleted.

**D. Credits and Right to Set Off**

Amounts due the State under this Contract from Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted, credited or off-set by the State from any money payable to Contractor pursuant to this Contract. Any such amounts due the State under this Contract may be applied against Contractor's invoices with appropriate information attached, upon giving of thirty (30) days prior Notice by the State to the Contractor.

**E. Additional Charges for Maintenance**

If additional charges for maintenance outside the Period of Maintenance Coverage are applicable, the work will be done pursuant to a Change Order and at the rates for such work as contained in Attachment 2.

**F. Workstations Payments**

Charges for workstations accrue beginning the first (1<sup>st</sup>) day of the successfully completed acceptance testing period for each workstation, but in any event not before the completion of the Transition-In Period. All costs incurred during the transition-in period shall be included in the transaction costs, and are not separately chargeable to the State.

Equipment accountability will be by contract number, workstation model number, serial number, and physical location and cost broken down by equipment cost, sales tax, and any specific charges to a piece of equipment. Software accountability will be by contract number, product name, physical



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location, serial number of the equipment on which it is installed, and cost. Personal Services accountability will be by description and cost. Transaction accountability will be by the number of add transactions processed. Additional descriptors may be mutually agreed upon by the State and the Contractor.

11. Subcontractors

- A. Contractor may, with prior written permission from the State Project Manager, enter into subcontracts with third-parties for performance of any part of Contractor's duties and obligations. Any permission to subcontract may be rescinded by the State for reasonable cause. Subcontractors identified in Contractor's Proposal shall be deemed to have prior written permission. Contractor is responsible and liable for the proper performance and the quality of any work performed by any and all subcontractors. In addition, Contractor's use of any subcontractors shall not cause the loss of any warranty from Contractor or any software manufacturer or provider. The State reserves the right to reject and refuse admission to any worksites to Contractor or subcontractor personnel whose workmanship, in the reasonable judgment of the State, is deemed to be substandard. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the State for any breach in the performance of Contractor's duties. Any Subcontractor must submit to the State proof from the Franchise Tax Board that there are no delinquent taxes or a tax clearance certificate showing that any and all delinquent taxes have been paid. Subcontracts permitted by the State shall be subject to all applicable requirements of this contract.
- B. Contractor agrees that any subcontract resulting from its performance under the terms and conditions of this Contract shall include a provision that the Subcontractor shall abide by the applicable terms and conditions hereof, as well as any applicable Federal and State laws, and applicable rules and regulations that have been or may hereafter be established. Any contract between Contractor and its subcontractors shall require the Subcontractors to adhere to the same performance standards required of Contractor. Subcontractors must be qualified to perform the work for which their services are obtained and to work on any Equipment.

12. Equipment (Hardware and Operating Software)

- A. Installation and Delivery Dates

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- (1) Except as otherwise provided herein, the Contractor shall provide and install all equipment listed in Attachment A, Equipment List, Prices, Installation dates, and Allied Information, in the Transition-In Plan or Technology Refreshment Plan, or individual equipment order ready for use on or before the Installation Dates specified in the attachment, applicable plan or order. All equipment installations shall be performed on State and county workdays except as specifically agreed to by the State.
- (2) Installation Dates may be changed by mutual written consent of the Contractor Project Manager and the State Project Manager by changing the Transition-In Plan, Technology Refreshment Plan, or in the individual equipment orders. However, consent of the Contractor is not required if, prior to the Installation Date, the State defers, in writing, the installation of any machine. A new Installation Date will be established by mutual written agreement. Such unilateral deferment shall not exceed one hundred and eighty (180) days, except by mutual written agreement.
- (3) The State shall have the option of canceling any order that has not been delivered. The State shall provide the Contractor notice of such cancellation in writing in advance of the scheduled Installation Date.
- (4) The State will have applicable central and local sites prepared for equipment installation on or before the Facility Readiness Date specified in the Transition-In Plan or Technology Refreshment Plan, or in the individual equipment order, in accordance with the Contractor's written site preparation specifications.
- (5) The State shall coordinate Contractor access to all applicable sites for installation of the equipment required under this contract on the dates and times agreed upon by the parties.
- (6) At Contract initiation and as required as part of any technology refresh, the Contractor shall install all required equipment and make such equipment operational in conformance with the manufacturer's specifications at each State and County location identified by the State. In addition, Contractor shall provide with each piece of equipment appropriate documentation to support the equipment. Upon completion of equipment installation, Contractor shall certify in writing to the State that the equipment has been properly installed and is operating according to specifications and in compliance with Contract Requirements. Upon the receipt of the above certification, the State will accept control of the equipment for the purpose of validating its installation and performance.

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(7) Notwithstanding certification by the Contractor that the equipment has been installed and is ready for use, the equipment shall not be deemed installed within the terms of this Contract until such installation is confirmed by the State through testing prescribed by the solicitation document or by performance of other suitable tests determined by the State as being adequate for this purpose. If the test is successfully completed, the equipment shall be deemed installed and ready for use as of the date of the Contractor's certification. The State shall notify the Contractor in writing, within five (5) working days of testing being successfully completed, that the State concurs that the equipment was installed and has been accepted by the State.

If the equipment fails testing, the Contractor shall be notified immediately of the failure, with written confirmation from the State to follow within five (5) working days from the date of first Notice of failure. Control of the equipment shall immediately be returned to the Contractor. The equipment shall not be deemed to be installed until the Contractor re-certifies such installation and the above-described testing process by the State is successfully completed and the equipment is accepted by the State. The Installation Date for accepted equipment shall then be the date of such re-certification.

(8) Where the State has requested equipment for State installation, the Contractor shall deliver such equipment to the specified State or county site, for installation by the State or their designee. The Contractor must provide detailed appropriate visual aid support documentation that will enable the State to properly install the equipment. The installation of equipment by the State will be performed by State employees or subcontractors who have training and experience in equipment installation. If the equipment arrives at the installation location no less than five (5) working days prior to the Installation Date, the equipment shall be deemed to have been installed by the State on or before the Installation Date, irrespective of whether or not the State is actually successful in installing the equipment. The State shall confirm such installation to the Contractor in accordance with the procedures set forth in Paragraph 12.A.(7) above. If, however, the State is unable to install the equipment or to certify that the equipment has been properly installed and is operational, the State may request installation to be accomplished by the Contractor whereupon the contract requirements for installation and certification by the Contractor shall apply. For Contractor installation pursuant to this paragraph the Contractor may charge the agreed upon installation charge as specified in Attachment B.

**B. Site Preparation**

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- (1) If the equipment to be installed by Contractor requires special site preparations, Contractor shall provide site preparation specifications for equipment within a reasonable time upon request by the State. These specifications shall be in such detail as to ensure that equipment, if installed according to these specifications, shall operate environmentally efficiently, and function properly.
- (2) The State will prepare a remote (e.g., county and State office) site plan showing the location of each item of equipment and detailing the associated electrical power and environmental control facilities in each State and county office. The Contractor shall review the State's remote site plan and determine whether any site modifications may be required to properly install the remote site equipment provided under the contract. Contractor shall be permitted access, subject to the security restrictions at these sites, for this purpose.
- (3) The Contractor shall prepare the Central Site plan, subject to State review and approval, showing the location of all space required for people and each item of equipment, and detailing the associated electrical power and environmental control facilities. The Contractor will be permitted access, subject to the security restrictions at the Central Site, for this purpose.
- (4) The State shall cause the sites to be prepared in accordance with the Contractor's State accepted site preparation specifications on or before the Facility Readiness Date specified in the Transition-In Plan, the Technology Refreshment Plan or, subsequently, in the individual orders.
- (5) Any equipment failures which are directly attributable to incomplete or erroneous site specifications having been provided by the Contractor and which require correction by modifying the equipment site and that involve additional expense shall be made at the expense of the Contractor, to the extent that such costs would not have been incurred had the complete and/or correct specifications been initially provided by Contractor.
- (6) If any site alterations discussed above cause a delay in the equipment installation, the Contractor and the State shall adjust equipment delivery and installation dates accordingly.
- (7) Any equipment failure or installation delay due to the State's failure to prepare sites in accordance with specifications as defined in the **System Operation and Support Plan**, shall not be deemed to be the fault of Contractor, and Contractor shall not be liable for withholds, liquidated damages, set offs, or other damages due to such equipment or installation failure resulting from the State's delay.

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13. Use of Equipment

Equipment under this contract may be operated at any time and for any length of time at the convenience of the State and county, exclusive of time required for preventive and remedial maintenance.

14. Installation, Relocation, and Return of Equipment

A. Installation

When installation is performed by the Contractor, the Contractor shall be required to unpack and set the equipment in place ready for use as directed, instruct agency personnel in its use, and remove all dunnage from State premises at the agreed upon charges in Attachment A, Equipment List, Prices, Installations, and Allied Information.

B. Relocation of Leased Equipment

- (1) Except in an emergency, equipment leased under this contract shall not be moved from the location in which installed, unless the Contractor has been notified that the move is to be made pursuant to this Section 14(B).
- (2) Upon prior written notification to the Contractor identifying a new location, equipment may be transferred from one (1) location to another in a suitably constructed van. If the State elects to have the Contractor move the equipment, the State will give the Contractor at least seven (7) working days prior written notice of the intended move date. The Contractor shall then, on the appointed date, move the equipment, reconnect it, and return it to operational status.
- (3) The State will reimburse the Contractor for all transportation, transit risk insurance, rigging, packing, unpacking, and drayage charges for equipment relocation at the agreed upon rates contained in Attachment A, Equipment List, Prices, Installations, and Allied Information. However, Contractor shall be responsible for any loss of damage to the equipment during any equipment move.
- (4) On the appointed move date, Contractor shall disconnect affected equipment, physically relocate it, re-connect it, and as appropriate certify that the applicable equipment has been installed and is ready for use.
- (5) Relocation of equipment by the Contractor at the State's request shall be at State expense, pursuant to this Section 14(B).
- (6) At the State's option, Contractor may be required to assist in relocating State purchased equipment pursuant to the above terms.

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C. Return of Leased Equipment

- (1) Within five (5) working days after the date of discontinuance of the lease or rental of some or all of the equipment provided under this Contract or at Contract Termination, the Contractor shall contact the State Project Manager to schedule a date and time to remove the identified equipment. The Contractor will remove only those pieces of equipment identified by a serial number whose lease or rental term has expired unless equipment substitutions are authorized in writing by the State Project Manager. In any event, Contractor shall remove equipment within thirty (30) days from the date of discontinuance, expiration of the lease term, or termination for each piece of equipment, as identified by its serial number, whose lease or rental term has expired.
- (2) The State Project Manager or designee will notify the Contractor in writing that the equipment is ready for de-installation on specific date(s) and time(s). The Contractor will remove the designated equipment and destroy all data on the hard drives pursuant to State requirements for the destruction of confidential records and data. The Contractor will then certify to the State that the data has been destroyed in compliance with procedures governing destruction of confidential data.

D. Equipment Due to Emergency

The Contractor shall make every reasonable effort to assist the State in procuring use of equipment compatible with that provided under this contract to meet emergencies at the request of the State.

E. Consumables

Lease charges do not include consumables necessary for the operation of the equipment except that the Contractor agrees to provide to the State, at no additional charge, all consumables needed for the proper maintenance and operation of Live Scan and video capture devices. Consumables provided by the State shall conform to the Contractor's published specifications, if any, for the equipment. If the Contractor does not publish specifications for consumables, the State shall be free to utilize any consumables that are advertised as appropriate for that piece of equipment.

F. Risk of Loss or Damage

- (1) The State shall have no risk of loss or damage to the equipment leased under this contract during periods of transportation, installation and during the time the equipment is in the possession of the State, except when such loss or damage is due to the fault or negligence of the State or County employees or contractors.

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(2) The State shall have no risk of loss or damage to the equipment purchased under this contract prior to installation except when such loss or damage is due to the fault or negligence of the State or County employees or contractors.

**G. Connection Points for Central Processor Evaluation Equipment**

If requested by the State, upon reasonable advance notice during normal business hours, the Contractor agrees to identify, on the Central Processor Evaluation Equipment supplied under this contract, all appropriate test points for connecting commercially available performance monitoring tools designed to measure system activity. The State agrees that it will not connect such a device unless the Contractor agrees that such a connection will not damage the equipment.

**H. Documentation**

At the State's request, the Contractor shall provide one (1) copy for each workstation, of all manuals and other printed materials, including updated versions thereto, which are useful and necessary to the State and counties in its use of the equipment or software provided. Additional copies may be purchased at Contractor's then current published prices.

**I. Restrictive Delivery Hours**

Contractor shall comply with delivery instructions that restrict deliveries to non-peak commute hours in specific locations, or require delivery within defined time frames due to site policies.

**J. Discontinued Equipment and Software**

In the event that equipment located at State and County locations is discontinued by the equipment or software manufacturer such that the manufacturer no longer provides maintenance support for the product, Contractor shall provide replacement items that are functionally equal to or better than the original items. It is expected that this obsolescence will have been anticipated and planned for in the SFIS Technology Refreshment Plan for the Contract year. These replacement items shall not increase the lease cost for equipment to the State.

This replacement requirement shall not apply to equipment installed within twelve (12) months of the discontinuance by manufacturer, in which case the parties will mutually agree on the timeframe for replacement.

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15. State Alterations and Attachments to Hardware and Software

- A. With the written consent of the Contractor the State may make alterations or install attachments to the equipment (to include additional software applications that may be run on the equipment) at the State's expense. The State shall assume full liability for any damages and/or degradation of equipment performance attributable to such alteration or attachment.
- B. If the alteration or attachment interferes with the normal and satisfactory maintenance of any of the machines in such a manner as to render maintenance impractical, the State will, upon written notice from the Contractor to that effect, remove the alteration or attachment and restore the machine to its normal condition.
- C. If an inspection by the Contractor is required to determine if the unaltered portion of the machine or system remains practical to maintain or that no safety hazard has been created, the State shall be so notified and a mutually agreeable inspection date will be scheduled. Charges for such inspection shall be paid by the State, at the Contractor's then in effect applicable labor rates.
- D. Repair of damage or increase in Contractor's service personnel time, attributable to the alteration or attachment will be billed to the State at the Contractor's applicable time and material rates then in effect.
- E. Upon the request of Contractor and at State expense, State alterations or attachments to Contractor equipment shall be removed and the equipment restored to its original configuration before the equipment is returned to the Contractor.
- F. Any reprogramming agreed to by the Contractor, which is required to accommodate such alterations, and/or attachments shall be accomplished at the State's expense.

16. Purchase Option for the State

The State retains the option to purchase any or all equipment, software, machines, devices, and special features leased by the State or provided by Contractor in the performance of this Contract. During the period of time the State leases equipment from the Contractor, either under this or any prior or subsequent contract, the Contractor may credit the State with a portion of the lease payments as Purchase Option Credits to be applied against the purchase price if the State exercises its purchase option. The accumulation of such credits, if applicable, shall be in accordance with the computations specified herein. The Contractor agrees that the State may, at any time following acceptance of the equipment and during the life of this contract, exercise its option and purchase any or all machines in accordance with the Terms and



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Conditions of this Agreement.

If the State purchases equipment from Contractor, title to the equipment, software, and each machine and any special features installed on the machine, shall remain with the Contractor and assigns, if any, until full purchase price, applicable taxes and interest charges, if any, are paid by the State, at which time title for each paid piece of equipment, software or machine will pass to the State.

Contractor's purchase prices for equipment shall be no greater than the maximum price paid by the State to Contractor for that equipment for the contract period. However, should a price decline be announced by the manufacturer after contract award, but prior to Contractor taking title to the equipment; and should Contractor be the recipient of this manufacturer's price decline; the price decline shall be passed on by Contractor in total to the State. Any interest, finance, or other charges based on the original bid contract price will be recomputed using the discounted price and the cost savings will also be passed on to the State in total.

17. Liquidated Damages

A. General

(1) Acknowledgement of Harm

The parties agree that any delay or failure by Contractor to timely perform its obligations by the dates in the Transition-In Plan, the Technology Refreshment Plan, in the individual orders or as specified in this contract, and in accordance with the Acceptance Criteria, Specifications, Performance Standards and other requirements in this Contract, will interfere with the proper and timely implementation and operation of the System and Services, to the loss and damage of the State. Further, State will incur costs to maintain the functions that would have otherwise have been performed by Contractor. The liquidated damages that may be assessed by the State as a result of Contractor's delay or failure to perform its obligations in accordance with the terms of this Contract are as described in this section. Liquidated damages will not be assessed if, as determined by the State, Contractor's delay or failure to perform its obligations was caused by factors beyond the control and without any material error or negligence of Contractor including Contractor's Staff or Subcontractors.

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(2) Payment of Liquidated Damages

For the amount of any such damages, the State shall have the right to reduce the amount of payment otherwise due hereunder to Contractor for performance under the contract or require direct payment from Contractor to the State. The parties agree that the damages herein provided are difficult to establish and Contractor shall pay the amounts in this section of the Contract as liquidated damages and not as a penalty.

(3) Other Remedies

The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract. Notwithstanding any other term of this Contract, the State may elect, in its discretion, to recover actual damages or seek other remedies caused by Contractor's failure to perform its obligations under this Contract in lieu of assessing liquidated damages. Such actual damages will include, without limitation, staff time and travel costs.

B. Transition-In

If the Contractor is unable to assume complete responsibility for the maintenance and operation of SFIS after the one hundred and eighty (180) day Transition-In Period has expired due to inadequate staff, inadequate technical skills, or for any other reason, within the Contractor's control, then the Contractor may pay liquidated damages in the amount of ten thousand dollars (\$10,000.00) per day for each calendar day in which that inability remains uncured.

C. Entire section intentionally deleted.

D. Entire section intentionally deleted.

E. Fingerprint Match Accuracy

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(1) Two Finger OPEN SEARCH False Match

A SFIS OPEN SEARCH request made with two (2) fingerprint images that match against two (2) corresponding fingerprint records that were not rejected for matching contained in the SFIS database is a correct or True Match. A SFIS OPEN SEARCH request made with two (2) fingerprint images that were not rejected for matching and that show a result of "match" against two (2) fingerprint records contained in the SFIS database but that are not, in fact, a match of corresponding fingerprints is an incorrect or False Match. Contractor shall at all times operate SFIS so that the SFIS system must not produce a False Match result more than fifty (50) times per month on average regardless of workload and database size. This is the minimum Two Finger OPEN SEARCH False Match Accuracy Level that Contractor is required to maintain for the SFIS system for the term of the Contract.

The OPEN SEARCH False Match rate shall be measured directly from the Matcher Subsystem or its equivalent with no review by an operator at any stage in the match process. Calculation of the False Match Rate shall be done by tracking each False Match monthly and shall be the average False Match Rate for the prior six (6) month period, beginning the seventh (7<sup>th</sup>) month and then each month thereafter for the term of the Contract. The State may specify intervals for the calculation of the OPEN SEARCH False Match rate other than monthly.

Each month the Contractor does not meet the OPEN SEARCH False Match rate, the Contractor may meet with the State to determine which false matches the State may discard as a result of factors outside of the Contractor's control which cause Poor Quality in fingerprint images. Poor Quality is defined as fingerprint images with badly formed ridges, the absence of a significant number of minutiae (< 25), and the presence of false minutiae due to bad contrast, smudges, and scars. Those false matches which were the result of Poor Quality due to factors outside of the Contractor's control shall not be counted in the Two Finger OPEN SEARCH False Match rate.

If the Contractor does not meet or maintain this minimum Two Finger OPEN SEARCH False Match System Accuracy Level in any one (1) month or portion thereof, the Contractor may be assessed liquidated damages of two hundred dollars (\$200.00) for each one-sixth (1/6) of a percentage point over the required average Two Finger OPEN SEARCH False Match System Accuracy Level, per day and for each day thereafter until the Contractor provides the required Two Finger OPEN SEARCH False Match System Accuracy Level.

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(2) Two Finger OPEN SEARCH False Non-Match

A SFIS OPEN SEARCH request made with two (2) fingerprint images that match against two (2) corresponding fingerprint records that were not rejected for matching contained in the SFIS database is a correct or True Match. A SFIS OPEN SEARCH request made with two (2) fingerprint images that were not rejected for matching and that show a result of "no match" against the fingerprint records contained in the SFIS database where there are, in fact, corresponding matching fingerprints that should have produced a match result is a False Non-Match.

Contractor shall at all times operate the SFIS system so that no more than three percent (3%) of all OPEN SEARCHES in a month produce a False Non-Match result. This is the minimum Two Finger OPEN SEARCH False Non-Match Accuracy Level that Contractor is required to maintain for the SFIS system for the term of the Contract.

Each month the Contractor does not meet the Two Finger OPEN SEARCH False Non-Match Accuracy Level, the Contractor may meet with the State to determine which Two Finger OPEN SEARCH False Non-match results the State may discard as a result of factors outside of the Contractor's control which cause Poor Quality in fingerprint images. Poor Quality is defined as fingerprint images with badly formed ridges, the absence of a significant number of minutiae (< 25), and the presence of false minutiae due to bad contrast, smudges, and scars. Those False Non-match results which were caused by Poor Quality due to factors outside the Contractor's control shall not be counted when the Two Finger OPEN SEARCH False Non-Match Accuracy Level is calculated.

If the Contractor does not meet or maintain this Two Finger OPEN SEARCH False Non-Match System Accuracy Level, Contractor may be assessed liquidated damages by the State. Liquidated damages will be forty thousand dollars (\$40,000.00) per each percentage point or portion thereof above the three percent (3%) Two Finger OPEN SEARCH False Non-Match System Accuracy Level required, per month and for each calendar month thereafter until the Contractor provides the required Two Finger OPEN SEARCH False Non-Match System Accuracy Level.

The OPEN SEARCH False Non-Match rate shall be measured directly from the Matcher Subsystem (or equivalent) with no review by an operator at any stage in the match process. Contractor shall provide the State with a report each month describing the OPEN SEARCH False Non-Match rate for the prior month.

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(3) Two Finger CLOSED SEARCH False Non-Match

A SFIS CLOSED SEARCH request made with two (2) fingerprint images that match against two (2) corresponding fingerprint records that were not rejected for matching contained in the SFIS database is a correct or True Match. A SFIS CLOSED SEARCH request made with two (2) fingerprint images that were not rejected for matching and that show a result of "no match" against the fingerprint records contained in the SFIS database where there are, in fact, corresponding matching fingerprints that should have produced a match result is a False Non-Match.

Contractor shall at all times operate the SFIS system so that no more than three percent (3%) of all CLOSED SEARCHES in a month produce a False Non-Match result. This is the minimum Two Finger CLOSED SEARCH False Non-Match Accuracy Level that Contractor is required to maintain for the SFIS system for the term of the Contract.

If the Contractor does not meet or maintain this Two Finger CLOSED SEARCH False Non-Match System Accuracy Level, Contractor may be assessed liquidated damages of two hundred dollars (\$200.00) for each one-tenth (1/10) of a percentage point above the required three percent (3%) per day and for each calendar day thereafter, until the Contractor provides the required Two Finger CLOSED SEARCH False Non-Match System Accuracy Level.

The CLOSED SEARCH False Non-Match rate shall be measured directly from the Matcher Subsystem (or equivalent) with no review by an operator at any stage in the match process. The CLOSED SEARCH False Non-Match rate shall be measured each month, or at other intervals specified by the State, for the term of the Contract. Contractor shall provide the State with a report each month describing the CLOSED SEARCH False Non-Match rate for the prior month.

Each month the Contractor does not meet the CLOSED SEARCH False Non-Match rate, the Contractor may meet with the State to determine which Two Finger CLOSED SEARCH False Non-match results the State may discard as a result of factors outside of the Contractor's control which cause Poor Quality in fingerprint images. Poor Quality is defined as fingerprint images with badly formed ridges, the absence of a significant number of minutiae (< 25), and the presence of false minutiae due to bad contrast, smudges, and scars. Those False Non-match results which were the result of Poor Quality due to factors outside the Contractor's control shall not be counted when the Two Finger CLOSED SEARCH False Non-Match Accuracy Level is calculated.

F. Verification Technician Accuracy

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To confirm that two (2) fingerprint images are a match, Contractor Verification Technicians shall find at least twelve (12) points of minutiae that are common to both fingerprint images. Fingerprint images with less than twelve (12) points of minutiae common to both images shall be classified as inconclusive. Verification technician's determination of fingerprint images as a match, no match, or as inconclusive shall be accurate, as determined by the State, at least ninety-nine point seven percent (99.7%) of the time measured on a monthly basis.

If the State and Contractor cannot agree that the State's determination was accurate, the Contractor shall provide a Certified Fingerprint Examiner (CFE), at no charge to the State, to make a recommendation to State Certified Fingerprint Examiner (SCFE) who shall make a final determination.

On behalf of the State, the SCFE will determine and report monthly on the accuracy of Contractor's Verification Technicians for the prior month. The SCFE shall each month for the term of the Contract provide to the State and Contractor a report (titled Verification of Unexpected Results) describing the raw numbers and percentage calculation of Contractor Verification Technicians accuracy for the prior month.

The Contractor shall have six (6) weeks from the date of Notice from the State of the intent to assess damages related to the Contractor's Verification Technician's accuracy to take corrective action and to meet or maintain the RFP or proposed Contractor Verification Technician's accuracy of Unexpected Results during the second monthly period. If, after the six (6) week cure period the Contractor does not meet or maintain this Contractor Verification Technician Accuracy level in any month, Contractor may be assessed liquidated damages of two hundred dollars (\$200.00) for each one-tenth (1/10) of a percentage point below the Verification Technician Accuracy Level specified in the RFP, each day and for each calendar day thereafter, until the Contractor provides the required level of Verification Technician Accuracy.

**G. Open Search Response Times**

The SFIS OPEN SEARCH response times specified below associated with the "Daily Application" workload is defined as the time that elapses between the moment the operator selects TRANSMIT and the time that the search result is available to the SFIS operator at the workstation that transmitted the search, via the SFIS Inquiry function, and the search result is submitted to the print queue at the workstation printer, if the SFIS Operator has the automated print function enabled; or in the cases where the automated print function is not enabled, the search is available to be printed.

All SFIS PRIORITY OPEN SEARCH match/no match responses shall be

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returned to the workstation transmitting the search data within three hundred (300) seconds on average per day.

All SFIS NON-PRIORITY (NORMAL and CONVERSION) OPEN SEARCH match/no match responses shall be returned to the workstation transmitting the search data within seven thousand two hundred (7200) seconds on average per day.

To compute these averages the response times in seconds for each of the respective searches (PRIORITY, NORMAL, and CONVERSION) made each day is totaled and divided by the total number of each kind of corresponding search (PRIORITY, NORMAL, and CONVERSION) made for that day.

Each month the Contractor shall provide the State a report of the OPEN SEARCH response times, and average response times for each type of search (PRIORITY, NORMAL, and CONVERSION) for each day of the month, for the prior month. The report shall include the response times for each remote workstation and for the Central System.

The Contractor is not responsible for and shall not be assessed liquidated damages pursuant to this provision where the Response Times required by this liquidated damages requirement are not met and the cause for not meeting the requirements is because of the performance of a part of the SFIS network under the control of the State.

The State will provide the Contractor current data on the bandwidth for all circuits used to support SFIS.

If the Contractor does not meet or maintain the Open Search Response Times specified in this subsection 18G for the respective searches (PRIORITY, NORMAL, and CONVERSION) the Contractor shall have seven (7) calendar days from the date of Notice from the State of the defective performance to take corrective action and to have the system meet the applicable required Open Search Response Times. If at the end of that 7 day period the applicable response time requirement(s) still is not met, Contractor may be assessed liquidated damages of one thousand dollars (\$1,000.00) for each calendar day, or part thereof, that the Open Search Response Time requirement(s) is not met, measured from the first (1<sup>st</sup>) day of Notice the standard was not met until the Contractor provides the applicable required response time. Each notice by the State of defective performance under this paragraph is a separate event.

H. Deliverables

If the Contractor does not provide the Deliverables identified herein on the dates agreed upon in the Project Plan or the Deliverable Expectation Document for that Deliverable, or if Contractor does not correct any

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Deliverables not meeting the Acceptance criteria for the applicable Deliverable by the dates mutually agreed upon by the parties, Contractor may be assessed liquidated damages of two thousand dollars (\$2,000.00) for each day each deliverable is not provided until the Contractor provides the Deliverable meeting the Acceptance criteria for that Deliverable.

I. Workstation Availability

The workstation availability is measured weekly (Monday through Friday) during hours of 7:00 am to 7:00 pm Pacific Time.

Contractor may pay liquidated damages as specified below, if, as measured on a weekly basis, either:

- The Average Workstation Availability for all State and county-operated Workstations (stationary and portable) operating in the CA SFIS is less than the percentage proposed by the Bidder in Exhibit D; or
- More than five percent (5%) of the State and county-operated Workstations (stationary and portable) have an individual average Workstation Availability of less than ninety-five percent (95%); or
- Any individual State or county-operated Workstation (stationary and portable) has a Workstation Availability level below ninety percent (90%).

All Uptime/Downtime hours will be calculated using the same hours of operation 7 am to 7 pm Pacific Time regardless of actual site operational hours.

If any one (1) of the Workstation Availability requirements listed above is not met, the Contractor will provide Notice of defective performance and shall have seven (7) calendar days in which to correct any deficiency and meet the Workstation Availability requirements. If at the end of that time the Workstation Availability requirements are still not met and maintained, Contractor may be assessed liquidated damages as specified below (1) through (3), from the first (1<sup>st</sup>) calendar day of Notice that the Workstation Availability requirements were not met until the deficiency is corrected. Each Notice by the State of defective performance under this paragraph is a separate liquidated damages event. Liquidated damages will be calculated according to one (1) of the following methods of calculation; whichever is more:

- (1) One thousand dollars (\$1,000.00) per day per each one tenth (1/10) of a percentage point the Average Workstation Availability for all State and county-operated Workstations in the CA SFIS is less than the percentage proposed by the Bidder in Exhibit D; or



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- (2) One thousand dollars (\$1,000.00) per day per each one tenth (1/10) of a percentage point below ninety-five percent (95%) if more than five percent (5%) of the State and county-operated Workstations have an individual average Workstation Availability of less than ninety-five percent (95%); or
- (3) One thousand dollars (\$1,000.00) per day per each one tenth (1/10) of a percentage point below ninety percent (90%) (for the lowest single Workstation Availability measurement) if any single State or county-operated Workstation has a Workstation Availability level below ninety percent (90%).

Workstation Availability Calculation is as follows:

$$\frac{[(\text{Total Scheduled Hours} - \text{Total Adjusted Down time}) / \text{Total Scheduled Hours}] \times \text{one hundred (100)}}{1} = \text{Workstation Availability (expressed as a percentage)}$$

Where Total Scheduled Hours = Sum of all scheduled operational hours for all State and county-operated SFIS workstations

Total Adjusted Down Time = Sum of all Adjusted Down Time hours for all State and county-operated SFIS workstations

J. Central Site Availability

Central Site Availability is measured weekly (Monday through Friday). Between the hours of 7 a.m. to 7 p.m. Pacific Time (or actual in-use hours when the system is used by the State outside of the period between 7 a.m. to 7 p.m.). The Average Uptime Percentage for the Central Site must be ninety-eight point five percent (98.5%)

The following conditions are considered as one hundred percent (100%) of the Central Site being down and count as one (1) Central Site System Downtime Hour or fraction thereof for each hour that the condition continues:

- Failure or malfunction of the Central Site's contractor-supplied capability to maintain communications between the remote sites and the Central Site;
- Failure or malfunction of the Central Site's transaction log storage capability;
- Failure or malfunction of the RDBMS capabilities of the system;
- Failure or malfunction of the database management capabilities of the system;
- Failure or malfunction of the Central Site's capability to control the flow of transactions within the Central Site system; or

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- Failure or malfunction of the Central Site's capability to support match verifications at the Central Site. If the system is configured with more than one (1) verification workstation at the Central Site and if one (1) or more of these workstations fail or malfunction, one (1) Central Site System Downtime Hour is computed as follows: (Number of Verification Workstations Failed / Total Number of Verification Workstations) x one (1) hour = Central Site System Downtime Hour or fraction thereof for each hour that the condition continues.

Central Site Secondary fifty percent (50%) Components

Each of the following conditions is considered as fifty percent (50%) of the Central Site being down and counts as one-half (1/2) Central Site System Downtime Hour or fraction thereof for each hour that the condition continues:

- Failure or malfunction of the Central Site's capability to retrieve photo and/or fingerprint images; or
- Failure or malfunction of the Central Site's capability to perform image-to-image matching. If the system is configured with more than one (1) matching subsystem at the Central Site and if one (1) or more of these subsystems fail or malfunction, one (1) Central Site System Downtime Hour is computed as follows: (Number of Matching Subsystems Failed / Total Number of Matching Subsystems) x one-half (1/2) hour = Central Site System Downtime Hour or fraction thereof for each hour that the condition continues.

If the Contractor does not meet or maintain the Central Site Availability Level of ninety-eight point five percent (98.5%), the Contractor shall be given Notice of the deficiency and will have seven (7) calendar days thereafter to meet this requirement. If at the end of that time the Central Site Availability Level has not been met and maintained Contractor may be assessed, liquidated damages from the first (1<sup>st</sup>) day that Contractor was provided Notice that the Central Site Availability Level was not met. Each Notice by the State of defective performance under this paragraph is a separate liquidated damages event.

Liquidated damages shall be one thousand dollars (\$1,000.00) for each one-tenth (1/10) of a percentage point for each calendar day that the Central Site Availability level is below the required level and liquidated damages shall continue until the Central Site Availability Level requirement has been met.

Central Site Availability Calculation is as follows:

$$\frac{[(\text{Total Scheduled Hours} - \text{Total Adjusted Down time}) / \text{Total Scheduled Hours}] \times \text{one hundred (100)}}{1} = \text{Central Site Availability (expressed as a percentage)}$$

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Total Scheduled Hours = Sum of all scheduled operational hours for the Central Site

Total Adjusted Down Time = Sum of all Adjusted Down Time hours for the Central Site

**K. Test Bed System Availability**

Test Bed System reliability is measured weekly (Monday through Sunday). The Average Uptime Percentage for the Test Bed System must be ninety-eight percent (98%).

Failure or malfunction of any system functionality in the Test Bed System is considered as one hundred percent (100%) of the Test Bed System being down and counts as one (1) Test Bed System Downtime Hour or fraction thereof for each hour that the condition continues.

If the Contractor does not meet or maintain the required Test Bed System Availability Level, the Contractor will be given Notice by the State of the defective performance and shall have seven (7) calendar days to correct any defects and to meet and maintain the required Test Bed System Availability Level. If at the end of that time the required Test Bed Availability Level remains unmet the Contractor may be assessed liquidated damages from the first (1<sup>st</sup>) day of Notice that the Test Bed System Availability Level was not met. Each Notice by the State of defective performance under this paragraph is a separate liquidated damages event.

Liquidated damages shall be one thousand dollars (\$1,000.00) per each one-tenth (1/10) of a percentage point for each calendar day or portion thereof that the Test Bed System Availability Level remains below required levels and will continue thereafter until the required Availability level has been met and maintained.

**L. Database Capacity**

Database Capacity is the maximum amount or number of records that can be contained or accommodated by the database. Database Capacity will be measured by the ability of the database to accommodate the requirement of fourteen million six hundred and thirty-seven thousand one hundred and seventy-six (14,637,176) database records.

If the system cannot maintain at all times the database capacity requirements identified immediately above Contractor may be assessed liquidated damages of one thousand dollars (\$1,000.00) per day for every fifty thousand (50,000) records the database capacity is below the capacity requirement until the Contractor meets the requirement.

**M. Contractor Personnel**

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Contractor shall provide the Staff identified in the Staffing Plan, Section V, Administrative Requirements, Administrative Requirement #11, Detailed Staffing Plan, throughout the term of the Contract. If at any time the Contractor does not provide the required personnel or does not provide personnel to meet directly with the State when requested by the State, Contractor may be assessed liquidated damages equal to eight (8) hours of pay at the applicable Hourly Rate for each required Staff member each calendar day the staff member is not so provided, unless the failure to provide or provide access to such staff is beyond Contractor's control as defined in Force Majeure, General Provisions (GSPD-401IT Revised Solely for RFP OSI-2046) paragraph 24.

If the Contractor does not provide the required personnel or does not provide personnel to meet directly with the State when requested by the State, the Contractor will be given a seventy-two (72) hour cure period. If the Contractor is unable to cure the problem during the cure period, liquidated damages shall accrue for each calendar day the staff member is not so provided, unless the failure to provide or provide access to such staff is beyond Contractor's control as defined in Force Majeure, General Provisions (GSPD-401IT Revised Solely for RFP OSI-2046) paragraph 24.

N. Help Desk

If the Contractor Help Desk does not, in any one (1) week on average have Contractor personnel respond to ninety-five percent (95%) of Help Desk callers within two (2) minutes or less, Contractor shall have five (5) business days from the date of Notice of non-compliance by the State, to correct their Help Desk response times to meet the standards contained above. If at the end of this five (5) day period, Help Desk response times do not meet or exceed the standards specified above, Contractor may be assessed liquidated damages of one thousand two hundred and fifty dollars (\$1,250.00) for each fifteen (15) seconds or fraction thereof that the average Help Desk response is greater than two (2) minutes. Liquidated damages shall be measured from the first (1<sup>st</sup>) week that the standards were not met and each week thereafter until the standards are met.

O. Entire section intentionally deleted.

P. Contractor Removal of Equipment upon Expiration or Termination of Lease

As provided in section 14.C of this Contract, Contractor and the State shall agree upon specific date(s) for Contractor to remove Contractor provided machines and equipment from State and County sites.

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If the machines and equipment are not removed by the Contractor on the specific date(s) mutually agreed upon, the Contractor may be assessed three dollars (\$3.00) per day per machine as liquidated damages until each applicable machine is removed from the applicable site.

**Q. Conditions for Termination of Liquidated Damages**

No liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the State Project Manager certifying the correction of conditions for which liquidated damages were imposed, and until all Contractor corrections have been subject to adequate system testing or other verification as determined to be appropriate by the State Project Manager. Liquidated damages will cease on the day of the Contractor's certification if subsequent testing of the correction, if any, establishes that the correction has been made in the manner and at the time certified by the Contractor and the correction has been accepted by the State. Notwithstanding the foregoing, or anything to the contrary herein, if the State terminates this Contract for any reason, any liquidated damages being assessed at the time of termination will stop accruing as of the effective date of the termination.

**R. Cascading Liquidated Damages**

In the event of cascading Contractor failures resulting from a single failure subject to liquidated damages, the State will be entitled to assess the highest single liquidated damage amount only.

**S. Cumulative Liquidated Damages**

After conclusion of the first (1<sup>st</sup>) contract year, in no event shall cumulative liquidated damages assessed under this Contract exceed ten percent (10%) of the total contract price paid by the State to Contractor under this Contract.

18. Entire section intentionally deleted.

19. Entire section intentionally deleted.

20. Notices

Notice shall be deemed to be given by the parties under this Contract if in writing and delivered personally or by messenger, or mailed by first-class registered or certified mail, postage prepaid, to:

Notice Address for the State:

State Project Manager  
SFIS  
Office of Systems Integration

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P.O. Box 138014  
Sacramento, CA 95813-8014

Notice Address for Contractor: \_\_\_\_\_

Each party will provide Notice to the other of changes to the above information.

In addition, Notice may be made by e-mail by mutual agreement and the inclusion of an official e-mail address for the State and Contractor in this Section 20. E-mail shall be sent and acknowledged with an electronic return receipt.

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30. Conflict of Interest

A. Appearance of Conflict

Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of the State. Thus, Contractor agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with Contractor's fully performing his/her obligations to the State under the terms of this Contract. Contractor shall inquire and require disclosure by its Staff and Subcontractors of all activities that may create an appearance of conflict. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State Project Manager a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement setting forth the relevant details for the State consideration and direction shall be grounds for Termination of this Contract.

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B. Current or Former State Employees

Contractor acknowledges it is aware of and shall take no action, which causes State employees or officers, or former State Employees or officers to violate the following provisions. If Contractor has any questions on the status of any person rendering services or involved with this Contract, Contractor will contact the State Project Manager immediately for clarification:

(1) Current State Employees (PCC 10410)

- (a) No State 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.
- (b) No officer or employee shall contract on that person's own behalf as an independent contractor with any State agency to provide goods or services.

(2) Former State Employees (PCC 10411)

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

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33. Maintenance Services

- A. The Contractor shall provide maintenance services for all equipment provided to the State by the Contractor in the performance of this contract. Maintenance services shall be provided to the State throughout the term of this Contract including any Contract extensions at the rates for maintenance specified herein.

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- B. All Equipment for which Contractor has maintenance responsibilities hereunder shall be maintained by Contractor in good operating condition. "Good operating condition", means that the equipment is performing in accordance with the Acceptance Criteria for that piece of equipment, the equipment Manufacturer's or Contractor's specifications, and at the performance level of the same or similar equipment operating pursuant to this contract.
- C. Maintenance service does not include:
- (1) Electrical work external to the machines or maintenance of accessories, alterations, attachments, or other devices not provided by Contractor pursuant to this Contract.
  - (2) Repair of damages or increase in service time caused by: accident, disaster, which shall include; but not be limited to; fire, flood, water, wind and lightning, transportation, neglect or misuse, alterations, which shall include; but not be limited to; any deviation from Contractor's physical, mechanical, or electrical machine design; attachments, which are defined as the mechanical, electrical or electronic interconnection to a Contractor machine of non-Contractor equipment and devices not supplied by Contractor.
  - (3) Repair of damage or increase in service time resulting from failure to provide a suitable installation environment with all facilities prescribed by the appropriate Contractor Installation Manual-Physical Planning (including, but not limited to, failure of, or failure to provide adequate electrical power, air conditioning or humidity control).
  - (4) Repair of damage or increase in service time attributable to the use of the machines for other than the purposes for which it was acquired.
  - (5) The furnishing of supplies, except Contractor shall provide supplies for the proper operation of Live Scan equipment;
    - Painting or refinishing the machines;
    - Furnishing the machines or furnishing material therefore;
    - Inspecting machines altered by other than Contractor;
    - Making specification changes;
    - Performing services connected with the relocation of machines; or
    - Adding or removing attachments or other devices.
  - (6) Such service which is impractical for Contractor to render because of alterations in the machines or their connection by mechanical or electrical means to another machine or device.



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- (7) Repair of damage or increase in service time caused by conversion from one (1) Contractor model to another or the installation or removal of a Contractor feature whenever any of the foregoing was performed by other than the Contractor unless expressly allowed elsewhere in this Agreement.
- (8) Replacement parts or increases in service time as set forth in the sections covering access to machines.
- (9) Repair or maintenance by Contractor that is required to restore equipment to proper operating condition after any person other than Contractor's employee, unless expressly allowed elsewhere in this Agreement or agreed upon by the parties, had performed maintenance or otherwise repaired an item of equipment. An additional charge for such repair or maintenance shall be at Contractor's applicable time and material rates and terms then in effect.

**D. Responsibilities of the Contractor**

- (1) The Contractor shall provide labor, parts, materials, and transportation to maintain the Equipment in compliance with the equipment manufacturer's specifications during the term of the contract.
- (2) Maintenance shall be available from the Contractor twenty-four (24) hours a day, seven (7) days a week.
- (3) Contractor agrees to provide maintenance coverage during periods mutually agreed upon by the parties to keep the machines in good working order. This maintenance service includes:
  - (a) Scheduled preventive maintenance based upon the specific needs of the individual machines as determined by Contractor.
  - (b) Unscheduled, on-call remedial maintenance. Such maintenance will include lubrication, adjustments, and replacement of maintenance parts deemed necessary by the Contractor.
- (4) The Contractor shall specify in writing the frequency and duration of preventive maintenance for the equipment to keep the machines in good working order. Preventive (scheduled) maintenance shall be performed on a schedule which is mutually acceptable to the State and the Contractor, which is consistent with the State's operating requirements, and which is based upon the specific needs of the equipment as determined by the Contractor.
- (5) Remedial maintenance shall be commenced promptly after notification by the State authorized personnel that equipment is inoperative and the Contractor shall always be responsive to the maintenance requirements of the State. The Contractor's maintenance personnel will arrive at the

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installation site after notification by the State that remedial maintenance is required. For this purpose, Contractor shall have full and free access to the machines.

- (6) Contractor shall assign the technical level of maintenance support required to successfully repair or replace any machine operating problem or defect until the machine has been returned to good operating condition. When Contractor maintenance service personnel respond to a remedial maintenance call and the machine malfunction has not been diagnosed and repair or replacement begun within two (2) hours from the time of arrival of the Contractor maintenance service personnel, the contractor will utilize 2nd Level Technical Support. In the event that four (4) additional hours elapse from the time of response of the 2nd level of technical support and the machine's malfunction has not been diagnosed and repair or replacement begun, the Contractor will utilize 3rd Level Technical Support.

2nd Level Technical Support is defined as a machine(s) specialist with unique training and/or experience who specializes in providing diagnostic assistance and/or repair expertise when a service call is particularly difficult.

3rd Level Technical Support is defined as a machine(s) specialist whose geographic responsibilities normally include multiple Field Engineering Branch Offices and who has received in-depth specialized training and experience and possesses extensive diagnostic ability specifically designed to assist on unusually complex problems.

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- (7) The Contractor's Project Manager shall escalate to their manager and the State Project Manager if (a) any Central Site hardware or software component is inoperative for a period greater than two (2) consecutive State Work Days, or (b) any remote workstation hardware or software component is inoperative for a period of greater than three (3) consecutive State Work Days. The escalation shall include a corrective action plan. This provision shall not apply to hardware and software components owned by the State.
- (8) Machines which fail to function in the manner for which they were designed and contracted for three (3) times in any sixty (60) day period shall be replaced at the State's request. Before requesting replacement, the State will attempt to satisfactorily resolve the equipment malfunction problem with the Contractor. The State will be the sole judge as to the adverse impact upon the State programs of non-functioning equipment requested for replacement. The Contractor must provide the State with written confirmation of all permanently replaced equipment including model and serial numbers of the equipment being replaced and equipment being installed.
- (9) Maintenance parts will be furnished by Contractor and will be new, recycled or refurbished when used in these machines. Unless the machine has been purchased by the State, replaced machine parts are the property of the Contractor.

34. Responsibilities of the State

- A. Unless mutually agreed to by the Contractor and the State, State personnel will not perform maintenance or attempt repairs to the Equipment provided by Contractor in performance of this Contract that is owned by the Contractor ("Contractor Equipment").
- B. Subject to the State's security regulations, the Contractor shall have full and free access to the Contractor Equipment to provide service thereon. If persons other than Contractor representatives, unless expressly allowed elsewhere in this Agreement, have performed maintenance or repairs on the Contractor Equipment, and as a result further repair by the Contractor is required, such further repairs will be made at the Contractor's then applicable time and material rates.
- C. Entire section intentionally deleted.

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35. Maintenance Coverage

A. Period of maintenance coverage

- (1) The State may select a period or periods of maintenance coverage in accordance with the following:
  - (a) A minimum monthly maintenance charge entitles the State to maintenance coverage during the Principal Period of Maintenance (PPM), normally between the twelve (12) consecutive hours of 7:00 a.m. to 7:00 p.m. Pacific Time.
  - (b) The State may select in lieu of the hours available for the minimum monthly maintenance charge, one (1) or more of the optional periods of maintenance coverage specified in Attachment B, Contractor Rates. The additional charge is based on a percent of the minimum monthly maintenance charge, depending on the optional periods selected and the applicable machine group.
- (2) The hours of PPM coverage for individual systems on Monday through Friday shall be the same each day; and the hours on Saturday and Sunday shall be the same hours on all Saturdays or Sundays.
- (3) The State may change its selected period of maintenance coverage by giving Contractor thirty (30) days prior written notice.
- (4) All Contractor Equipment covered under this Agreement must have a simultaneous span of time within the selected periods of maintenance coverage, at least equal to the shortest period offered for any machine in the system.
- (5) If the State requests unscheduled, on-call remedial equipment maintenance to be performed at a time which is outside the selected periods of maintenance coverage, the service will be furnished at the applicable per-call rate per person-hour contained herein. Travel expenses are also billable.
- (6) The State will not pay travel expenses for remedial maintenance performed within the selected periods of maintenance coverage.

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B. Preventive Maintenance (scheduled)

Preventive maintenance can either be performed within or outside of the Principal Period of Maintenance. If the State requests that Preventive Maintenance be performed outside of the Principal Period of Maintenance (PPM) an additional charge to the State may be made at the agreed upon rate. No additional charge shall be made for preventive maintenance, which is to be performed within the PPM.

C. Remedial Maintenance (unscheduled)

- (1) Remedial maintenance shall be performed after notification by the authorized State personnel that the equipment is inoperative.
- (2) The Contractor shall use the Help Desk as the designated point of contact and will make arrangements to enable its maintenance representative to receive such notification.
- (3) There shall be no additional maintenance charges for:
  - (a) Remedial maintenance during the PPM coverage unless the remedial maintenance is due to the fault or negligence of the State.
  - (b) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has been commenced.
  - (c) Remedial maintenance required because the scheduled preventive maintenance preceding the malfunction had not been performed, unless the State had failed to provide access to the equipment.
  - (d) Remedial maintenance for a malfunction, which occurred and was serviced within the previous forty-eight (48) hours.
- (4) When remedial maintenance is required to be performed outside the PPM on equipment located beyond a forty (40) mile radius from City Hall in the nearest Maintenance City Center specified herein, an additional charge for travel is allowed. The travel charge shall be based on the actual travel mileage from the Contractor's nearest service location, but shall not exceed the travel time and mileage that would reasonably be required to travel from a point forty (40) miles from City Hall in the nearest Maintenance City Center to the State's site and return. The travel mileage shall be calculated at the rate normally paid State employees traveling on State business plus any tolls.

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- (5) The time required for the contractor to respond to a call for remedial maintenance is known as response time. This time is defined as the time interval between the time a trouble call is made and the time maintenance service personnel arrive at the site of the problem, exclusive of that time during which the Contractor is denied access to the equipment. The maximum response time will vary depending on the site location distance from City Hall in the nearest Maintenance City Center as defined herein.
- (6) For those sites located within a forty (40) mile radius of City Hall of any Maintenance City Center, the response time shall not exceed two (2) hours. For those sites located outside of the forty (40) mile radius of City Hall of any Maintenance City Center an extra one-half ( $\frac{1}{2}$ ) hour will be allowed for each additional twenty (20) mile increment. At no location shall the response time exceed eight (8) hours.
- (7) Service calls within the PPM are covered by the basic monthly maintenance charges. There shall be no additional charge for remedial maintenance during the PPM.
- (8) If remedial maintenance is required during the PPM, the Contractor will adhere to the response time contained herein.
- (a) If remedial maintenance is required at any time other than during the PPM, the response time will be no more than one (1) hour beyond the time allotted for remedial maintenance during PPM.
- (b) Although there will be no additional service charge for remedial maintenance during the PPM, the Contractor will be allowed to charge the amount agreed upon and contained in the price schedule on an hourly basis for remedial maintenance outside the PPM. There will, however, be no charge for a call back which is remedial maintenance of a malfunction that occurred and was serviced within the previous forty-eight (48) hours.
- (9) When Contractor is called to perform remedial maintenance service on the equipment and by mutual agreement it is determined that either no failure existed or that the service was outside the scope of the warranty as set forth herein, the State shall pay Contractor for the travel expense and the time spent by the Contractor working on the machine, at the applicable per-call rate, per man-hour, then in effect.

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36. Maintenance Credit for Inoperative Machines

- A. The Contractor shall grant a proportionate maintenance credit on a machine when the machine is inoperative for consecutive scheduled work periods totaling twenty-four (24) hours from the time the State notifies the Contractor the machine was inoperative, provided (1) the machine became inoperative through no fault of the State, and (2) the breakdown was attributable to equipment failure.
- B. The Contractor shall have ten (10) business days to repair or replace (cure) the inoperative machines(s). If at the end of the cure period, the Contractor is unable to restore the machine to normal operating condition, Contractor shall grant a credit to the State for each such hour in the amount of one-twentieth (1/20) of the total monthly maintenance charges for the inoperative machine plus one-twentieth (1/20) of the total monthly maintenance charges for any Contractor-supplied interconnected machine, which became unusable as a result of a breakdown.

37. Engineering Changes

- A. Engineering changes, determined applicable by Contractor, will be controlled and installed by Contractor on equipment covered by this contract. Prior to installing any engineering changes on production equipment the Contractor shall demonstrate that the change works on the Test System. The State must approve the application of the engineering change in writing. The State may elect to have only mandatory changes, as determined by Contractor, installed on machines so designated. A written notice of this election must be provided to the Contractor for written confirmation. Any Contractor-initiated change shall be installed at a time mutually agreeable to the State and the Contractor. There shall be no charge for installation of engineering changes unless Contractor has made a reasonable effort to secure time to install such changes and has been unable to install such changes due to circumstances outside control of the Contractor as determined by the State. If this situation occurs, Contractor may charge, at its then current time and material rates, for additional service time and materials required to install such changes.
- B. Entire section intentionally deleted.

38. Relocation of Equipment

- A. In the event the equipment being maintained pursuant to this contract is moved to another location within the State of California, the Contractor shall continue to maintain the equipment at the new location.

39. Maintenance Charges

- A. Contractor's monthly maintenance charges shall be firm for the maintenance period and the State will pay no additional maintenance charges except as

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specifically set forth herein in Attachment A, Equipment List, Prices, Installation Dates, and Allied Information. The contractor shall submit invoices for total monthly maintenance charges in the month following the month in which the charges accrue.

- B. Maintenance charges for fractions of a calendar month shall be computed at the rate of one-thirtieth (1/30) of the applicable Total Monthly Maintenance Charge specified in Attachment A, Equipment List, Prices, Installation Dates, and Allied Information, for each day that maintenance was provided.
- C. The State agrees to pay, at the agreed upon rates specified in Attachment B, Contractor Rates, all proper charges for remedial maintenance performed outside of the PPM and other service activities not included in the basic maintenance charge, or to pay for the loss of or damage to the equipment, caused by 1) use of the equipment for other than its intended purposes, or 2) alterations and attachments made by the State. The Contractor shall furnish all consumable items used by all Live Scan devices used in the CA SFIS for the life of the CA SFIS contract at no additional cost to the State.
- D. All maintenance and other service activities (including but not limited to activities relating to pre-installation planning, inspections, relocation of machines, engineering changes and altered programming) which may be made available by Contractor to the State at no additional charge or at Contractor's then applicable time and material charges, in connection with any machines or programming supplied under this Contract shall be subject to the terms and conditions of this Contract.



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40. Maintenance City Centers

The Maintenance City Centers that are used to calculate applicable maintenance response times are:

Anaheim	Bakersfield	Fresno
Los Angeles	Marysville	Monterey
Oakland	Redding	Sacramento
San Bernardino	San Diego	San Francisco
Stockton	San Jose	Riverside

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**ATTACHMENT 1**

**EQUIPMENT LIST, PRICES, INSTALLATION DATES, AND ALLIED INFORMATION (Pages 1, 2 and 3 of 5)**

Line No.	COST ITEM	Monthly Lease Cost per Unit (Month 7 through Month 60)	Monthly Lease Cost per Unit (Month 61 through Month 96)	Monthly Maintenance Cost per Unit (Month 7 through Month 60)	Monthly Maintenance Cost per Unit (Month 61 through Month 96)	Warranty Period
	<b>Monthly Workstation Lease</b>					
1	Workstation (includes software licenses, LAN cable, surge protector, extension cord, keyboard, mouse and security devices (key, locks, plates, cables and cord locks)).					
2	Monitor					
3	FP Scanner (includes cable)					
4	Camera (includes cable, tripod, back drop and back drop stand)					
5	Light (includes dimmer switch and light bulb replacement tool kit)					
6	<u>Stored Transaction Transport Device</u>					
7	Printer (includes cable and 1 spare toner cartridge)					
8	Barcode Scanner					
	<b>Monthly Workstation Maint.</b>					
9	Workstation (includes software licenses, LAN cable, surge protector, extension cord, keyboard, mouse and security					

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Line No.	COST ITEM	Monthly Lease Cost per Unit (Month 7 through Month 60)	Monthly Lease Cost per Unit (Month 61 through Month 96)	Monthly Maintenance Cost per Unit (Month 7 through Month 60)	Monthly Maintenance Cost per Unit (Month 61 through Month 96)	Warranty Period
	devices (key, locks, plates, cables and cord locks)).					
<del>10</del>	Monitor					
<del>11</del>	FP Scanner (includes cable)					
<del>12</del>	Camera (includes cable, tripod, back drop and back drop stand)					
<del>13</del>	Light (includes dimmer switch)					
<del>14</del>	<u>Stored Transaction Transport Device</u>					
<del>15</del>	Printer (includes cable and 1 spare toner cartridge)					
<del>16</del>	Barcode Scanner					
	<b>Monthly Portable Workstation Lease</b>					
<del>17</del>	Workstation (includes software licenses, LAN cable, surge protector, extension cord, keyboard, mouse and security devices (key, locks, plates, cables and cord locks)).					
<del>18</del>	FP Scanner (includes cable)					
<del>19</del>	Camera (includes cable, tripod, back drop and back drop stand)					
<del>20</del>	Light (includes dimmer switch and light bulb replacement tool kit)					

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Line No.	COST ITEM	Monthly Lease Cost per Unit (Month 7 through Month 60)	Monthly Lease Cost per Unit (Month 61 through Month 96)	Monthly Maintenance Cost per Unit (Month 7 through Month 60)	Monthly Maintenance Cost per Unit (Month 61 through Month 96)	Warranty Period
<del>21</del>	<del>Stored Transaction Transport Device</del>					
<del>22</del>	<del>Barcode Scanner</del>					
	<b>Monthly Portable Workstation Maint.</b>					
<del>23</del>	<del>Workstation (includes software licenses, LAN cable, surge protector, extension cord, keyboard, mouse and security devices (key, locks, plates, cables and cord locks)).</del>					
<del>24</del>	<del>FP Scanner (includes cable)</del>					
<del>25</del>	<del>Camera (includes cable, tripod, back drop and back drop stand)</del>					
<del>26</del>	<del>Stored Transaction Transport Device</del>					
<del>27</del>	<del>Light (includes dimmer switch and light bulb replacement tool kit)</del>					
<del>28</del>	<del>Barcode Scanner</del>					
	<b>Monthly Central Site Lease</b>					
<del>29</del>	<del>All Central Site equipment (hardware and software)</del>					
	<b>Monthly Central Site Maint.</b>					
<del>30</del>	<del>All Central Site equipment (hardware and software)</del>					

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<b>Line No.</b>	<b>COST ITEM</b>	<b>Cost Per Transaction (Month 7 through Month 60)</b>	<b>Cost Per Transaction (Month 61 through Month 96)</b>
	<b>Cost per Transaction</b>		
<b>1</b>	<b>≤25,000</b>		
<b>2</b>	<b>25,001 to 60,000</b>		
<b>3</b>	<b>≥ 60,001</b>		

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**ATTACHMENT 1**

**EQUIPMENT LIST, PRICES, INSTALLATION DATES, AND ALLIED INFORMATION (Pages 4 & 5 of 5)**

Line No. (1)	Cost Item (2)	Cost per Item (Month 7 through Month 60)	Cost per Item (Month 61 through Month 96)
	<b>Consumables</b>		
1	Fingerprint (FP) Scanner Platens (Each)		
2	FP Scanner Platen Replacement and Diagnostic Tool Kit (Each)		
3	FP Scanner Cleaning Solution (Bottle)		
4	FP Scanner Wipe (Bag*)		
5	Corn Huskers Lotion (7 Oz. Bottle)		
6	Eye Dropper for Corn Huskers Lotion		
7	Finger Wipe (Bag*)		
8	Light Bulbs (Each)		
9	Light Bulbs Replacement Tool Kit (one light bulb and one 2" screwdriver) (Each)		
10	Printer Cartridge (Each)		
11	System Backup Media ( Set**)		
12	Stored Transaction Transfer Media (Each)		
13	Fingerprint scanner cable		
14	Camera cable (6' or 12')		
15	Surge Protector - Heavy duty 1214 Joules, 8 ports		
16	Extension cord 6' - 2 plug, color: brown		
17	USB cables		
18	Lamp dimmer switch		
19	Tripod 19" extended - Camera		
20	Security keys and Locks		
21	Lan cables (length varies)		
22	3' Security cable		
23	5' Security cable		
24	Security fittings - plates and cord locks		
25	Back drop		
26	Back drop Stand		
27	Easel 36" to hold back drop for Portable workstations		
28	Keyboard		
29	Mouse		
30	Printer cables (length could vary)		
31	Portable carrying bags (set)		
	<b>Monitor Privacy Filters</b>		
32	Monitor Privacy Filters		
	<b>Workstation Installs, Moves and Deletions</b>		

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<b>Line No. (1)</b>	<b>Cost Item (2)</b>	<b>Cost per Item (Month 7 through Month 60)</b>	<b>Cost per Item (Month 61 through Month 96)</b>
<b>33</b>	Workstation Add		
<b>34</b>	Workstation Move		
<b>35</b>	Workstation Removal		

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**ATTACHMENT 2**

**CONTRACTOR RATES (Page 1 of 2)**



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Line No.	Cost Item	Percentage (%) Month 7 through Month 60	Percentage (%) Month 61 through Month 96
<b>Maintenance</b>			
1	Pricing scheme of maintenance of equipment not originally specified in the contract	% of Purchase Price	% of Purchase Price
<b>Percentage Increase to Extend Principal Period</b>			
2	Monday through Friday - 12 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
3	Monday through Friday - 16 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
4	Monday through Friday - 20 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
5	Monday through Friday - 24 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
6	Saturdays - 4 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
7	Saturdays - 8 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
8	Saturdays - 12 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
9	Saturdays - 16 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
10	Saturdays - 20 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
11	Saturdays - 24 Hours	% Increase in Transaction Cost	% Increase in Transaction Cost
12	Sundays and Holidays - 4 hours	% Increase in Transaction Cost	% Increase in Transaction Cost
13	Sundays and Holidays - 8 hours	% Increase in Transaction Cost	% Increase in Transaction Cost
14	Sundays and Holidays - 12 hours	% Increase in Transaction Cost	% Increase in Transaction Cost
15	Sundays and Holidays - 16 hours	% Increase in Transaction Cost	% Increase in Transaction Cost
16	Sundays and Holidays - 20 hours	% Increase in Transaction Cost	% Increase in Transaction Cost
17	Sundays and Holidays - 24 hours	% Increase in Transaction Cost	% Increase in Transaction Cost
<b>Mileage</b>			
18	% State Mileage Rates for Service Calls outside the PPM (Maximum 100%)	% State Mileage Rate	% State Mileage Rate
<b>Purchase Credit - Workstations</b>			
19	% of lease payments to be credited towards purchase	% Monthly Lease Payment	% Monthly Lease Payment
<b>Purchase Credit - Central Site</b>			
20	% of lease payments to be credited towards purchase	% Monthly Lease Payment	% Monthly Lease Payment
21	<b>Move - Central Site</b> Move of Central Site System and Staff to a location provided by the Bidder, if required	% Increase in Transaction Cost	

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Line No. (1)	Cost Item (2)	Cost Per Item (Month 7 through 60)	Cost Per Item (Month 61 through 96)
21	<b>Maintenance</b> Hourly rate for remedial maintenance performed outside the Principal Period of Maintenance (PPM)		
22	<b>Additional Personnel Rates (Hourly)</b> Motorola/Printrak Senior Software Engineer		
23	Motorola/Printrak System Engineer		
24	Motorola/Printrak Software Engineer		
25	Motorola/Printrak Integration/Test Engineer		
26	Motorola/Printrak Service Engineer		
27	Consultant		
28	Senior Technical Leader		
29	Application Analyst		
30	Systems Analyst		
31	Systems Engineer		
32	Advanced Systems Engineer		
33	Fingerprint Expert Testimony		

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**ATTACHMENT 3**

**SAMPLE CHANGE REQUEST / CHANGE ORDER (WORK AUTHORIZATION) (Page 1 of 3)**

***Change Request***

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**Change Request Identification**

**Control Number:** **Status:**  
**Initiated By:** **Date Initiated:** **Phase:**  
**Project Manager:** **PM Validation:**  Yes  No  TBD **Priority:**  
**PM Comments:**

---

**Change Request Description**

**Title:**  
**Description:**

**Change Type:** **Change Category:**

**Is CR due to Risk Event?**  Yes  No  TBD

**Is Change Mandated?**  Yes  No  TBD

**Requirements Affected?**  Yes  No  TBD

**Catalyst for Change:**

**Justification for Change:**

**Status Date/Description:**

**If yes, Risk Control Number?:**

**Explain**

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**ATTACHMENT 3**

**SAMPLE CHANGE REQUEST / CHANGE ORDER (WORK AUTHORIZATION) (Page 2 of 3)**

**Analysis Information**

*Analysis Assigned To:* \_\_\_\_\_ *Date Analysis Assigned:* \_\_\_\_\_  
*Analysis Due Date:* \_\_\_\_\_ *Date Analysis Returned:* \_\_\_\_\_

*Estimated Effort:* \_\_\_\_\_ *Confidence Level:* \_\_\_\_\_

*Technical Solution:* \_\_\_\_\_

*Programs Affected:* \_\_\_\_\_

*Cost of Change:* \_\_\_\_\_ *Estimate of Change:* \_\_\_\_\_

*Proposed One-Time Costs:* \_\_\_\_\_ *Proposed On-Going Costs:* \_\_\_\_\_

*Milestones Affected?*  Yes  No  TBD

*Configurables:*  Yes  No  TBD

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> 6,000 Record Sample Dataset          | <input type="checkbox"/> Application Software – Back-End    | <input type="checkbox"/> Application Software – GUI        |
| <input type="checkbox"/> Configuration Management Plan        | <input type="checkbox"/> Database                           | <input type="checkbox"/> Disaster Recovery Plan            |
| <input type="checkbox"/> EDS Internal Documentation           | <input type="checkbox"/> Hardware – Remote and Central Site | <input type="checkbox"/> Help Desk Knowledge Base          |
| <input type="checkbox"/> Help Desk Plan                       | <input type="checkbox"/> OSI's SFIS Web Site                | <input type="checkbox"/> Implementation Plan               |
| <input type="checkbox"/> Portable Input Workstations          | <input type="checkbox"/> Regression Testing                 | <input type="checkbox"/> Regression Testing Scripts        |
| <input type="checkbox"/> Requirements Document                | <input type="checkbox"/> Software in Escrow                 | <input type="checkbox"/> Source Code                       |
| <input type="checkbox"/> System and Utilities Software (COTS) | <input type="checkbox"/> System Design Document             | <input type="checkbox"/> System Operation and Support Plan |
| <input type="checkbox"/> Test Scripts and Results             | <input type="checkbox"/> Toolbar/Shortcut                   | <input type="checkbox"/> Training Database                 |
| <input type="checkbox"/> Training Materials                   | <input type="checkbox"/> Transfer Plan                      | <input type="checkbox"/> User Acceptance Testing           |
| <input type="checkbox"/> User Communications                  | <input type="checkbox"/> User Guide                         | <input type="checkbox"/> User Input                        |
| <input type="checkbox"/> Workstation On-line Help             |   |  |

*Project Plan Required?*  Yes  No  TBD

<i>Resources:</i>	<i>Name</i>	<i>Hours</i>	<i>Position</i>	<i>Rate</i>	<i>Total</i>
	TBD	TBD	TBD	TBD	TBD

*Total Resource Cost: \$0*

*Analysis Comments:* \_\_\_\_\_

**Approval Cycle**

<b>Project Configuration Control Board Action</b>		
<b>Board Action:</b> <input type="radio"/> Approved <input type="radio"/> Disapproved <input type="radio"/> TBD		<b>Project CCB Status:</b> <input type="radio"/> Forward to Program CCB <input type="radio"/> Hold <input type="radio"/> Cancel <input type="radio"/> Unknown
<b>Board Chair Name:</b>	<b>Signature:</b>	<b>Date:</b>



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**ATTACHMENT 4**

**FEDERAL ASSURANCES - NONCONSTRUCTION PROGRAMS (Page 1 of 2)**

Contractor shall at all times during the term of this Contract strictly adhere to all applicable federal and State laws and implementing regulations as they currently exist and may hereafter be amended. Contractor acknowledges that the following laws are included into (incorporated by reference) into this Contract:

- |  |                            |
|--|----------------------------|
| 1. Age Discrimination Act of 1975                | 42 U.S.C. ss 6101 et seq.  |
| 2. Age Discrimination in Employment Act of 1967  | 29 U.S.C. ss 621-634       |
| 3. Americans with Disabilities Act (ADA) of 1990 | 42 U.S.C. ss 12101 et seq. |
| 4. Equal Pay Act                                 | 29 U.S.C. s 206(d)         |
| 5. Immigration Reform and Control Act of 1986    | 8 U.S.C. s 1324b           |
| 6. Section 504 of the Rehabilitation Act of 1973 | 29 U.S.C. s 794            |
| 7. Title VI of the Civil Rights Act of 1964      | 42 U.S.C. s 2002d          |
| 8. Title VII of the Civil Rights Act of 1964     | 42 U.S.C. s 2000e          |
| 9. Title IX of the Education Amendments of 1972  | 20 U.S.C. ss 1681, et seq. |
| 10. Section 306 of the Clean Air Act             |                            |
| 11. Section 508 of the Clean Water Act           |                            |

Contractor will not discriminate against any person on the basis of race, color, national origin, age, sex, religion, or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions, in performance of work under this Contract, and all relevant Sections of:

1. Executive Order 11246, as amended by Executive Order 11375.
2. Department of Labor Relations (41 C.F.R. Part 60)
3. Section 503 of the Rehabilitation Act of 1973, as amended.
4. Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1970.
5. The Drug Abuse Office and Treatment Act of 1972.
6. The Comprehensive Alcohol Abuse and Alcoholism Treatment Act of 1970.
7. Sections 523 and 527 of the Public Health Services Act of 1912.
8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. s 3601).

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**ATTACHMENT 4**

**FEDERAL ASSURANCES—NONCONSTRUCTION PROGRAMS (Page 2 of 2)**

Contractor shall also comply with any and all laws and regulations prohibiting discrimination in the specific programs, which are the subject of this Contract. In consideration of and for the purpose of obtaining any and all federal or State financial assistance, Contractor makes the following assurances:

1. At all times during the performance of this Contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of service, programs, or activities performed by Contractor, or be subjected to any discrimination by Contractor.
2. Contractor shall take all necessary affirmative steps, as required by 45 C.F.R. s 92.36(e), to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies for Equipment, and Services purchased under this Contract.
3. As required by Executive Order 12549, Contractor certifies to the best of its knowledge and belief that it, its principals, agents, and Subcontractors:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from performing the terms of this Contract by a government entity, either federal, State, or local.
  - b. Have not within a three (3) year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction, violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State, or local) with the commission of any of the offenses enumerated in paragraph b of this section; and
  - d. Have not within a three (3) year period preceding this Contract had one (1) or more contracts with a public agency terminated for cause for default.
  - e. Contractor certifies that it will provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and implemented at 45 C.F.R. Part 76, Subpart F for grantees, as defined at 45 C.F.R. Part 76, Sections 76.605 and 76.610.