

## **CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) SPECIAL PROVISIONS – NON-IT SERVICES**

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### **DEFINITIONS:**

Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.

- a) **“Agreement”** means this Agreement or agreement (including any purchase order), by whatever name known or in whatever format used.
- b) **“Business entity”** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- c) **“Buyer”** means the State’s authorized contracting official.
- d) **“Contract”** when used in a CMAS agreement, means a Contract issued by the purchasing agency to the CMAS Agreement holder.
- e) **“Contractor”** means the Business Entity with whom the State enters into this Agreement. Contractor shall be synonymous with “supplier”, “vendor” or other similar term.

### **1. CMAS - AGREEMENT AMOUNT:**

There is no guarantee of minimum purchase of Contractor's products or services by the State.

### **2. CMAS - TERMINATION OF CMAS AGREEMENT:**

- a) The State may terminate this CMAS Agreement at any time upon 30 days prior written notice.
- b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered terminated on the same date.
- c) Upon termination or other expiration of this Agreement, each party will assist the other party in orderly termination of the Agreement and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.
- d) Prior to the expiration of this Agreement, this Agreement may be terminated for the convenience of both parties by mutual consent.
- e) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

### **3. CMAS - 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 therefor.
- 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.

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### **4. CMAS - 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.

### **5. CMAS - 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.

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- 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.

### **6. CMAS-DEBARMENT CERTIFICATION (FEDERALLY FUNDED CONTRACTS):**

When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

### **7. CMAS - PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT:**

All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:

- a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.
- b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.
- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the

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option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.

### **8. CMAS - SUBCONTRACTING REQUIREMENTS:**

Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract/purchase order, and which is expected to receive more than ten (10) percent of value of the Contract/purchase order, must also meet all contractual, administrative, and technical requirements of the Contract/purchase order, as applicable.

### **9. CMAS - PROGRESS PAYMENTS:**

Contracts may provide for progress payments to Contractors for work performed or costs incurred in the performance of the Contract. Not less than 10 percent of the Contract amount shall be withheld pending final completion of the Contract. However, if the Contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task. No State agency shall make progress payments on a Contract unless it first has established procedures, approved by the department, which will ensure that the work or services contracted are being delivered in accordance with the Contract. (PCC 10346)

### **10. CMAS - CONTRACT TYPE:**

- a) Unless otherwise specified, the Statement of Work shall define and authorize work on a Fixed Price basis, with a guarantee of task completion.
- b) To the extent that additional work not foreseen at the time this Contract is executed must be accomplished, Work Authorizations, as described in the Statement of Work, will be the means for defining and authorizing such work on a Labor Hour basis.

### **11. CMAS – CONTRACTOR PERSONNEL:**

- a) Contractor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State.
- b) The State reserves the right to disapprove the continuing assignment of Contractor personnel provided to the State under this Contract. If the State exercises this right, and the Contractor cannot immediately replace the disapproved personnel, the parties agree to proceed with any equitable adjustment in schedule or other terms that may be affected thereby.
- c) The Contractor will make every effort consistent with sound business practices to honor the specific requests of the State with regard to assignment of its employees; however the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.
- d) In recognition of the fact that Contractor personnel providing services under this Contract may perform similar services from time to time for others, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, providing that such use does not conflict with the performance of services under this Contract.

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### **12. CMAS - RESPONSIBILITIES OF THE STATE:**

The State shall provide normal office working facilities and Equipment reasonably necessary for Contractor performance under this Contract. Any special requirements (e.g., reprographic services, computer time, key data entry, etc.) shall be identified in the Statement of Work.

The State is responsible for providing required information, data, Documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth in the Statement of Work.

The Contractor will not be responsible for any delay, cost increase, or other consequence to the extent that it is caused by the State's failure to fulfill responsibilities set forth herein. In the event of any claim for equitable adjustment to price, schedule, or both, the parties will negotiate in good faith regarding execution of a Contract amendment. Should the Contractor determine that a delay exists or is probable due to a failure of the State, the Contractor will promptly notify the State in writing.

### **13. CMAS - INVOICING, AND PAYMENT FOR SERVICES:**

- a) During the execution of each Milestone (as set forth in the Statement of Work) which involves the delivery to the State of identified Deliverables, the Contractor may submit periodically to the State invoices reflecting a pro-rata cost of the Milestones, determined on the basis of the lesser of either:
  - i. The number of Deliverables provided to the State divided by the total number of Deliverables required to be delivered to the State, less a ten percent withhold, less any amounts previously invoiced; or
  - ii. The number of work-hours expended by the Contractor in the performance of the task divided by the number of work hours scheduled for the task, less a ten percent withhold, less any amounts previously invoiced; provided that the Statement of Work may specify a withhold of more than ten percent.
- b) For those Milestones which do not involve delivery to the State of identified Deliverables, but which are of a continuing nature, the Contractor may submit invoices reflecting a pro-rata cost of the Milestone, less a ten percent withhold, less any amount previously invoiced. Actual progress payment amounts for such Milestones must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.
- c) Upon completion of a Milestone in accordance with the acceptance criteria set forth herein, the full charge for such Milestone, less amounts previously invoiced to the State, may be submitted for payment. Nothing herein will be construed to waive or contradict any requirement of California Public Contract Code Section 10346 or any similar or successor provision.
- d) In the event that work not specified in the Statement of Work is performed with the State's written consent, invoices for services as reflected on Work Authorizations will be submitted to the State for payment. In no event shall the total amount paid for such work exceed ten percent of the value of personal services anticipated by this Contract.
- e) Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to the State.
- f) In the aggregate, invoices reflecting progress payments will not exceed ninety percent of the ceiling amount of the Contract, with the balance to be invoiced upon completion of the Contract, in accordance with the acceptance criteria set forth herein.

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### **14. CMAS - CONTRACTOR EVALUATION:**

In accordance with PCC 10367 and 10369, performance of the Contractor under orders issued against this contract will be evaluated. The ordering agency shall complete a written evaluation, and if the Contractor did not satisfactorily perform the work specified, a copy of the evaluation will be sent to the DGS, Office of Legal Services.

### **15. CMAS - INSURANCE:**

When performing work on property in the care, custody or control of the State, Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the Contract. 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.

### **16. CMAS - WARRANTY:**

The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS Agreement. When there is a conflict between the language, the following warranty language overrides.

Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

- a) Contractor warrants services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof).
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.

### **17. CMAS - 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.

### **18. CMAS - 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.

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### **19. CMAS - 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 Terms and Conditions – Non-IT Services;
- b) contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
- c) federal GSA (or other multiple award) terms and conditions;
- d) statement of work, including any specifications incorporated by reference herein;
- e) special terms and conditions; and
- f) all other attachments incorporated in the Contract by reference.

### **20. CMAS - QUARTERLY REPORTS:**

Contractors are required to submit quarterly business activity reports, as specified in this Agreement, even when there is no activity. A separate report is required for each Agreement, as differentiated by alpha/numeric suffix.

### **21. CMAS – RIGHTS IN DELIVERABLES:**

All deliverables as defined in the ordering agency's scope of work originated or prepared by the Contractor pursuant to this contract including papers, reports, charts, and other documentation shall be delivered to and shall become the exclusive property of the ordering agency.

The ideas, concepts, know-how, or techniques relating to the subject matter of each individual project developed during the course of this contract by the Contractor or jointly by the Contractor and the State or ordering agency can be used by either party in any way it may deem appropriate.

All inventions, discoveries or improvements of the deliverables developed pursuant to this contract shall be the property of the State and/or ordering agency.

This contract shall not preclude the Contractor from developing materials outside this contract, which are competitive, irrespective of their similarity to materials which might be delivered to the State and/or ordering agency pursuant to the contract.

Pursuant to this contract, all preexisting intellectual property, copyrights, trademarks and products of the Contractor shall be the sole property of the Contractor.

### **22. CMAS - 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.

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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.

**23. CMAS - CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance and use of the goods 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.

**24. CMAS - INSURANCE:**

When performing work on property in the care, custody or control of the State, contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the contract. 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.