

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
1(kk)	Definitions Site License		Optum		This definition does not capture the essential nature of a site license; namely, that the use of the Software is restricted to a named location and/or facility.	DELETE Definition not referenced in GSPDs.
1(II)	Definitions Software	1 a,b,f, h, j, k, l, n, o, p, s, v, bb, dd, jj, mm, oo, 18a, b, c (ii), (iii), d, 36a, 37b, 38c, 39a, c, d(ii), (iii), (iv), e, 43c,(ii)	Optum		We believe that the State intends this definition to be limited to the object code form of computer programs and such limitation should be included in the definition.	REJECT
1(n)	Definitions Documentation	18a, 36a, b, 37a, 40, 55	Optum		The limitation that Documentation must be nonproprietary creates a gap with the terms and conditions; i.e., it fails to cover documentation that is proprietary to the Contractor but used or useful to the State. This gap needs to be filled with a separate definition.	MODIFY Proposed will be to remove "proprietary" and "printed". (37a works with definition changes) If definition is changed #36a needs to be reviewed.
1	Definitions Original Equipment Manufacturer	1c	CompuCom	Original Equipment Manufacturer" ("OEM") means all third party companies that manufacturers Equipment	Request to add.	REJECT
1	Definitions Services	1l, u, ee, oo, ee, 7e, 12c, 16e, 18a, d, e(ii), 21a, 22a, 22b(i), 22c(i), A, 23a(i), c, 25a, 28, 30, 31, 41a, b, 43b (v), c(ii), 44, 48a, 50	CompuCom	"Services" means the information technology services which are performed by Contractor and described in a Statement of Work.	Request to add.	REJECT
1	Definitions		CTA	Remove all Definitions if it doesn't exist in GSPD. It will allow the Departments to prescribe a more explicit definition based on their own operation.	Request to delete.	ACCEPT (site license & performance testing period)

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1	Definitions Software Publisher		CompuCom	"Software Publisher" means the Software publisher who creates, and licenses the Software	Request to add.	REJECT
1	Definitions Reseller	39	CompuCom	Clearly define the role of a reseller of third party products in which we procure the products on your behalf.	Request to add.	REJECT
1(L)	Definitions Deliverables	14, 15, 16a,b, d, e, 18a, b,d, e(ii), 21a, b, 22c(i), A, 23a(i), c, d(i) d(ii), d(iii), e, 25a, b, 27a, b, 30, 39c, d(i), 50,	IBM	"Deliverables" means Goods, Software, <u>Materials</u> , Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract.		TABLE
1	Definitions Enterprise	59b	IBM	"Enterprise" means any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.	Request to add.	REJECT
1(dd)	Definitions Performance Testing Period		IBM	"Performance Testing Period" means a period of time defined in an applicable statement of work, or if no period of time, then thirty (30) calendar days from the delivery to Contractor's carrier for shipment to the State, 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.		DELETE Definition not referenced in GSPDs.

Deleted: including any such items furnished incident to the provision of services.

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1(d)	Definitions Business entity	1i	SOS	"Business entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability, company, limited partnership, general partnership, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized business entity defined as such by statute.		REJECT
1	Definitions Object Code		SOS	"Object Code" means the binary code version of a Software program loaded into a computer's memory to enable it to perform a program function.	Request to add.	REJECT
1	Definitions Subcontractor	12b, 16a, 16c, 24, 28, 46a,	SOS	"Subcontractor" means a person, partnership or company that is not in the employment of or owned by Contractor and that is performing Services under this Contract pursuant to a separate contract with or on behalf of Contractor.	Request to add.	REJECT
1	Definitions Materials		IBM	"Materials" means literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that Contractor may deliver to the State under a Statement of Work. The term "Materials: does not include Contractor's commercial Software or other items available under their own license terms or agreements.	Request to add	REJECT

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2	CONTRACT FORMATION			**NO CHANGES**		
3	COMPLETE INTEGRATION		APPLE		Because among the products offered under the agreement are software products, Vendor will need to add language with respect to end user license agreements (EULAs), which accompany the software, and licensing language. The State is licensed to use the software, subject to the terms of the license accompanying the products, if any, and the applicable patent, trademark, copyright, and other intellectual property, federal and state laws of the United States. EULAs will need to be integrated into the agreement, and in the event of a conflict between the terms of the agreement and any EULA, the terms of the EULA will control solely as to the software covered by that EULA.	REJECT
4	SEVERABILITY		CTA		The Contractor and the State agree that if any provisions of this Contract are 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. What is "unenforceable" mean? Vendors interpret this as a mean to replace their own T&C and not accept the State's T&C. Please clarify.	REJECT

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5	INDEPENDENT CONTRACTOR			**NO CHANGES**		
6	APPLICABLE LAW			**NO CHANGES**		
7.a)	COMPLIANCE WITH STATUTES AND REGULATIONS		IBM	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 <u>applicable to Contractor as a provider of information technology products and services and agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.</u>		REJECT
7. a)	COMPLIANCE WITH STATUTES AND REGULATIONS		KPMG	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 agrees to indemnify the State against <u>incidents resulting in death, bodily injury and damage to tangible recovery property any loss, cost, damage or liability</u> by reason of the contractor's violation of this provision.	Insertion and proposed change in liability for the State's consideration.	REJECT

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7 Nonspecific General state	COMPLIANCE WITH STATUTES AND REGULATIONS		SAP		SAP recommends that the State specify in each RFP and contract the specific laws that it expects bidders to satisfy. Some laws that apply to some types of contracts do not apply to others. Certain federal laws may apply to a supply contract, for example, but not to a software consulting contract- and vice-versa.	REJECT
7 Non specific General State	COMPLIANCE WITH STATUTES AND REGULATIONS		SAP		In interest of mutuality, the State also should warrant that its performance will comply with applicable statute, rules and regulations.	MODIFY The state would consider mutuality, but not indemnification.
7 Non specific General State	COMPLIANCE WITH STATUTES AND REGULATIONS		SAP		In addition, SAP does not believe it is necessary to include an indemnity as to compliance with statues and regulations. Contractors are under legal obligations to comply and many and various regimes assure and enforce their compliance. Should non-compliance affect performance under a particular contract, the State will have remedies for non-performance, and these should control rather than some additional, superfluous indemnity. Removal of the indemnity would be accompanied by removal of provisions that concern "notice" and "control" over subsequent actions.	REJECT
7. b)	COMPLIANCE WITH STATUTES AND REGULATIONS		IBM	The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and	Request to delete	REJECT

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7. c)	COMPLIANCE WITH STATUTES AND REGULATIONS		IBM	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 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.	Request to delete	REJECT
8	CONTRACTOR'S POWER AND AUTHORITY		IBM	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.	Request to delete	REJECT
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8. a)	CONTRACTOR'S POWER AND AUTHORITY		IBM	The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and	Request to delete	REJECT

8. b) (ii)	CONTRACTOR'S POWER AND AUTHORITY		COMPUCOM	The State will have the right to approve or disapprove any settlement or compromise <u>if such settlement or compromise contains a stipulation to or admission or acknowledgement of, any liability or wrongdoing (whether in contract, tort or otherwise) on the part of the State,</u> which approval will not unreasonably be withheld or delayed; and	Request to add	REJECT
8. b)	CONTRACTOR'S POWER AND AUTHORITY		IBM	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.	Request to delete	REJECT

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8. b)	CONTRACTOR'S POWER AND AUTHORITY		IBM	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.	Request to delete	REJECT
9	ASSIGNMENT		IBM	This Contract shall not be assignable by either party the Contractor in whole or in part without the written consent of the other State. The assignment of this Contract, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. 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. It is not considered an assignment for Contractor to divest a portion of its business in a manner that similarity affects all of its customers.	Request to add and delete	REJECT

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9	ASSIGNMENT		OPTUM		In the case of other terms and conditions, where the State's consent is required, there is language stating that the State's consent shall not be unreasonably withheld or delayed. We would suggest that such language be added to this Section. In addition, in light of the reorganizations that take place within Contractors to provide a more focused offering or other benefits to the State, we would suggest that mere notice, as opposed to consent, would be required in connection with assignments made by a Contractor to an affiliate, provided that the affiliate agrees to be bound by all of the terms and conditions of the original Contract.	MODIFY State will consider adding "State's consent shall not be unreasonably withheld or delayed". Reject rest of changes
10	WAIVER OF RIGHTS			**NO CHANGES**		
11	ORDER OF PRECEDENCE		SAP		Specific contracts may justify a different order of precedence, for example elevating the importance of the Statement of Work, or Specifications, or Special Terms and Conditions, over the General Provisions. The clause should include a provision, "Except otherwise provided...." In a contract for system implementation, solution and/or software consulting, there may be additional contractual documents, such as Special Provisions, a Software License, or Professional Service Terms, that should be recognized and put into Order of Precedence.	REJECT <i>Order of precedence can be changed but only if DGS approves.</i>

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11	ORDER OF PRECEDENCE		APPLE		Order of Precedence will need to be amended to include end user license agreements and the WSCA Master Price Agreement.	REJECT <i>Order of precedence can be changed but only if DGS approves.</i>
11. a)	ORDER OF PRECEDENCE		IBM	Statement of work, including any attachments and/or specifications incorporated therein; 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);	Request to add/delete	REJECT See proposed revisions to 11
11. c)	ORDER OF PRECEDENCE		IBM	Information technology special provisions; and	Request to add	MODIFY 11c-project specific Goes to the elimination of special provisions.
11. d)	ORDER OF PRECEDENCE		IBM	Statement of Work, including any specifications incorporated by reference herein; and	Request to delete	REJECT
11. e)	ORDER OF PRECEDENCE		IBM	all other attachments listed on incorporated in the Contract form by reference.	Request to add/delete	REJECT- see proposed language above.
12. c)	PACKAGING AND SHIPMENT		COMPUCO M	To the extent the Goods are shipped directly from the OEM, Contractor shall use commercially reasonable efforts to inform the OEM of these shipping requirements, however Contractor shall not be held accountable for Goods shipped directly from the OEM.	Request to add	REJECT
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13. a)	TRANSPORATION COSTS AND OTHER FEES OR EXPENSES		IBM	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.	Request to delete	Additional vendor information needed.
14	DELIVERY		IBM	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.	Request to delete ("strictly")	REJECT
14	DELIVERY		APPLE		Vendor agrees to make commercially reasonable efforts to deliver the products within 10 to 14 days after acceptance of a purchase order, or in accordance with the schedule in the State's purchase order	REJECT Schedule specified in contract
15	SUBSTITUTIONS			**NO CHANGES**		
16	INSPECTION, ACCEPTANCE AND REJECTION		HP	Unless otherwise specified in the Statement of Work	While this provision is subject to modification by a Statement of Work, HP continues to see lengthy acceptance periods and vague acceptance criteria which impact upon HP's ability to manage its risk and expected return. To the extent these items are not clear, any contractor will include opportunity risk dollars in its bid prices to account for unusually long or vague acceptance periods. Especially with the warranty coverage already provided in the contract template, the majority of standard offerings (hardware or COTS software) should be able to be accepted upon delivery following a visual inspection to ensure that there was not damage in transit. This is the standard UCC process for acceptance of any good.	CARVE OUT

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16	INSPECTION, ACCEPTANCE AND REJECTION		SAP		The standard provision for GSPD 401-IT appears to contemplate a supply contract as distinct from a solutions or service contract. Many, if not all of the standard provisions have no applicability to a solutions or service contract. Accordingly, the present standard clause 16 should be deleted from solutions and service contracts. This suggests that DGS should consider a variation of GSPD 401-IT that is different, for service and solution contracts, than what is used for supply contracts. For most solution and service contracts, the Statement of Work will contain specific requirements and process that must be satisfied in order for the solution or service to meet requirements. These will control and should be recognized contractually. Also, where performance of a system, solution or services contract includes delivery of COTS software, there cannot be separate acceptance criteria with respect to such software.	NOTED
16	ACCEPTANCE		APPLE	The State will give written notice of rejection of the products or services within fourteen calendar days following shipment of the products or performance of the services. If the State does not provide such notice of rejection within fourteen days following shipment of the products or performance of the services, such products and services will be deemed accepted.	The State will determine whether all products and services delivered meet Vendor's published specifications. No payment must be made for any products or services until the State has accepted the products or services.	REJECT

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16. a)	INSPECTION, ACCEPTANCE AND REJECTION		COMPUCOM	This paragraph does not apply to Hardware and Software purchases if Contractor is a reseller in which event any and all end user warranties are provided by the OEM and Software Publisher on a pass through basis.	Request to add	REJECT
16. a)	INSPECTION, ACCEPTANCE AND REJECTION		EMC ²	<u>For Deliverables developed or designed for the State according to State specifications, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. 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. When acquiring commercial items sold or offered to the public the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection. Any in-process inspection by the State shall be conducted in a manner consistent with commercial practice</u>	Request to add	CARVE OUT
16. b)	INSPECTION, ACCEPTANCE AND REJECTION		EMC ²	<u>Subject to paragraph a) above, all Deliverables may be subject to inspection and test by the State or its authorized representatives only if required and as specified in the Statement of Work.</u>		CARVE OUT

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16. c)	INSPECTION, ACCEPTANCE AND REJECTION		EMC ²	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.		NO CHANGE
16. d)	INSPECTION, ACCEPTANCE AND REJECTION		EMC ²	If required in the Statement of Work, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.	Request to add	CARVE OUT
16. e)	INSPECTION, ACCEPTANCE AND REJECTION		EMC ²	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.		NO CHANGE
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16. e)	INSPECTION, ACCEPTANCE AND REJECTION		CALTRANS		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. [Q. Does this supersede the Acceptance Tests?] 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.	It depends.
16. f)	INSPECTION, ACCEPTANCE AND REJECTION		IBM	Notwithstanding any other provision contained herein, title to Equipment shall transfer to the State when the Equipment is shipped to the State.	Request to add	ADD & MODIFY Title to Equipment shall transfer to the State when the Equipment is delivered and Accepted.
17	SAMPLES		SAP		No relevance to services, solution or software consulting contracts.	REJECT

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17. b)	SAMPLES		CTA		Samples, if not destroyed by the tests , may, upon request made at the time of the sample is furnished, be returned at Contactor's expense. What will happen if it is destroyed? Should the sample be destroyed, State is not responsible for destroyed sample.	REJECT The state will provide certification to the vendor.
18	WARRANTY		APPLE		Vendor only warrants Vendor products, and the sole warranty for Vendor products is Vendor's standard limited warranty which is set forth in the documentation which accompanies a Vendor product. All third party products are sold "as is". Upon request, Vendor will provide a copy of any manufacturer's warranty accompanying the third party products.	CARVE OUT (a, c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.
18	WARRANTY		SAP		Generally, SAP believes that the Warranty clause is overbroad and reflects concepts originally intended for delivery of supplies that are not appropriate for services, solution or consulting contracts. For example, sub (ii) describes a warranty from "material defects in materials and workmanship" that should be deleted. Also, in solution contracts, such as for system implementation, both the State and the provider will benefit from making measure of satisfactory performance compliance with the Statement of Work, and Specifications, rather than relying upon a "functionality" warranty, and so that should be deleted.	CARVE OUT (a, c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.

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18	WARRANTY		SAP		The standard provisions contain a warranty that deliverables will be free of harmful code, viruses, etc., at the time of delivery. This term is out of synch with contemporary commercial practice and should be removed. An alternative is a "system warranty" that expresses a commitment of performance substantially in accord with the approved System Design for a defined term following final System Acceptance.	CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.
18	WARRANTY		SAP		SAP objects to overlapping, duplicative and excessive liability and damages provisions as these are rife with opportunities for misunderstanding and expose companies to unacceptable business and financial risks. Therefore, SAP recommends that the Warranty clause be revised to remove "Cost to Cover" from the State's remedies and that the Limit of Liability for breach of warranty should be limited to the value of the specific non-conforming deliverable.	CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.
18. a)	WARRANTY		DELOITTE	We suggest revising the language regarding Commercial Software to indicate that where the Contract calls for the delivery of Commercial Software, the Contractor will warrant that if such Software does not perform in accordance with its license and accompanying Documentation, the Contractor will agree to repair and/or replace such Software with comparable functionality at no cost to the State, subject to the State's written approval.		CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.

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18. a)	WARRANTY		COMPUCOM	<p>Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that (i) the Deliverables Services 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 Services provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for a delivery of Commercial Software, when the Contractor is a Software Publisher, 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. When the Contractor resells Hardware, Software and spare parts, and any all end user warranties are provided by the OEM and Software Publisher on a pass through basis.</p>	Request to add/delete	<p>CARVE OUT (a,c& e)</p> <p>Note-The state needs to clear up common misunderstandings in the area of warranty.</p> <p>(State rejects all redlines)</p>

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18. a)	WARRANTY		EMC ²	<p>Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter.</p> <p>When Deliverables are developed or designed for the State according to State specifications, 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 warranty set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its <u>customary commercial license and warranty</u>. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.</p>		<p>CARVE OUT (a,c& e)</p> <p>Note-The state needs to clear up common misunderstandings in the area of warranty.</p>

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
18. a)	WARRANTY		KPMG	Unless otherwise specified in the Statement of Work, (if applicable) the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that	Request to add	CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.
18. a)	WARRANTY		CTA	(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 is 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 the 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.	Request to bold	CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.
18. b)	WARRANTY		COMPUCOM	When Contractor is a Software Publisher, Contractor warrants that Deliverables the Software furnished hereunder		CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty. (REJECT)

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
18. b)	WARRANTY		EMC ²		Contractor warrants that Deliverable furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder the State will have the remedies specified in the applicable commercial software license agreement, software warranty, or software maintenance agreement.	CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.
18. b)	WARRANTY		IBM	Contractor warrants that Deliverables furnished hereunder (i) have been scanned prior to will be free, at the time of delivery by an up-to-date version of a commercially available antivirus software designed to detect and remove, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and		REJECT Note-The state needs to clear up common misunderstandings in the area of warranty. (b is NOT A CARVE OUT)

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
18. b)	WARRANTY		HP	Contractor warrants that Deliverables furnished hereunder (j) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data or Software);... <u>Without limiting the generality of the foregoing</u> , if the State believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the State's request, provide a master copy of the Software for comparison and correction	While HP is able to provide this warranty for HP Branded Products, it is difficult for HP to provide a warranty for third party products supplied through HP's relationships with third party software providers for Software over which it has little or no control. HP carefully monitors the use of third party software and may be able to seek to obtain this warranty from third party providers on a pass-through basis. HP respectfully requests that this provision be modified to allow HP to pass through third party supplier warranties as to malicious code. Further, it is unclear what Contractor's obligation may be as to the provision of a –master copy of Software. –Master copy is not a well-defined term of art in the industry. To the extent that it means source code, it may not be appropriate or within HP's control to provide the State with actual source code or other versions of Software. In the event that the State believes there is harmful code present, it may be more appropriate to provide a new or clean install of the Software.	REJECT Note-The state needs to clear up common misunderstandings in the area of warranty. (b is NOT A CARVE OUT)

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
18. c) (i-ii)	WARRANTY		CTA		<p>c) Unless otherwise specified in the Statement of Work: (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption. (ii) 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.</p> <p>Contradicting itself.</p> <p>Can this be tighten up? Does this still apply on Software warranty?</p>	<p>CARVE OUT (a,c& e)</p> <p>Note-The state needs to clear up common misunderstandings in the area of warranty.</p>
18. c) (iii)	WARRANTY		COMPUCOM	<p>Where Contractor resells Hardware or Software it purchased from an OEM or Software Publisher third party, and such third party offers additional or more advantageous warranties than those set forth herein any and all end user warranties are provided by the OEM an Software Publisher on a Contractor will pass through basis to the State and 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.</p>		<p>CARVE OUT (a,c& e)</p> <p>Note-The state needs to clear up common misunderstandings in the area of warranty.</p>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
18. c) (iii) Last sentence	WARRANTY		HP	Such warranty pass through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.	Any third party software that is COTS is generally subject to the licensor's license agreement and the contractor will not be able to provide any rights greater or lesser than is provided in that license agreement. HP respectfully requests that this provision be modified to allow HP to pass through third party supplier warranties. The State is free to review and determine whether to accept a third party warranty, but the contractor does not control the terms of the third party license or warranty.	CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.
18. c) (iii)	WARRANTY		IBM	Where the Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor, <u>to the extent it is legally able to do so</u> , will pass through any such third party 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.		Potential Modify CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
18. c) (i-iii)	WARRANTY		EMC2	c) Unless otherwise specified in the Statement of Work: (i) Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption. (ii) 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. (iii) 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.		CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty. (Appears as no changes 18 d, e & f have been omitted. State is unclear on what is being asked.)

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
18. d)	WARRANTY		COMPUCOM	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.		REJECT (d is not a CARVE OUT) Note-The state needs to clear up common misunderstandings in the area of warranty.
18. d)	WARRANTY		EMC2	d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.		REJECT (d is not a CARVE OUT) Note-The state needs to clear up common misunderstandings in the area of warranty. (No change, unclear on vendor intent)
18. e) (i-ii)	WARRANTY		COMPUCOM	(i)re-performance, repair, or replacement of the nonconforming Service ; or (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable (including without limitation and infringing 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."		CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
18. e) (ii)	WARRANTY		IBM	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 (c) (ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."	Request to delete	CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty.
18. f)	WARRANTY		EMC ²	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.		CARVE OUT (a,c& e) Note-The state needs to clear up common misunderstandings in the area of warranty. (No change, unclear on vendor intent)
19	SAFETY AND ACCIDENT PREVENTION		IBM	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 grounds for termination of this Contract in accordance with the default provisions hereof.	Request to delete	REJECT

Add'l Ref.

Contractor N

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
20	INSURANCE		HP	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.	HP maintains adequate insurance to provide the State with coverage from numerous identified perils. However, it is difficult to include the cost of any specialized insurance within the cost structure of the bid where the State retains the right to add additional types of insurance to a contract without the vendor's consent.	Submitter dropped last sentence in this provision, unclear on changes to be made.
20	INSURANCE		IBM	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 Contractor's commercial general liability and automobile liability selected policies.		Validate minimum requirements with Office of Risk & Insurance Management (ORIM) MODIFY: Contractor shall maintain all insurance requirements as stated in SOW
20	INSURANCE		SAP		As a drafting point, the present clause does not inform vendors of what the State needs or requires as it leaves open such amount as the State "deems appropriate". The State should commit to inform bidders, in a solicitation, of amounts that it requires for insurance and the types of insurance that are required. These should align with current insurance industry practices.	Validate minimum requirements with Office of Risk & Insurance Management (ORIM) MODIFY: Contractor shall maintain all insurance requirements as stated in SOW

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
20	INSURANCE		DGS-OLS	<p>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 <u>required</u> under the Contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the Buyer, Contractor may be required to shall have the State shown as an "additional insured" on-if selected required under the Contract. policies.</p>		<p>Validate minimum requirements with Office of Risk & Insurance Management (ORIM)</p> <p>MODIFY: Contractor shall maintain all insurance requirements as stated in SOW</p>
21. a)	TERMINATION FOR NON-APPROPRIATION OF FUNDS		COMPUCOM	<p>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, to terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.</p>		<p>REJECT</p> <p>The state has no authority to pay</p>

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
21	TERMINATION FOR NON-APPROPRIATION OF FUNDS		SAP		This clause presumably intended originally for contracts for the supply of goods, is inapposite and unreasonable in the context of a more complex agreement for system implementation, solution or consulting services. For example, there may be no deliverables that can be "taken back". It is very important, both for the State and for its service providers, to deal responsibly and fairly with situations, as can arise, where project funding is reduced or even eliminated. The contractual treatment of these issues should be specifically negotiated and there should be mutual obligations to respond and resolve funding changes.	REJECT
21. a)	TERMINATION FOR NON-APPROPRIATION OF FUNDS		EMC ²	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.		(No change, unclear on vendor intent)
21. b)	TERMINATION FOR NON-APPROPRIATION OF FUNDS		EMC ²	STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES FOR WHICH DELIVERY HAS NOT OCCURED 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		(No change, unclear on vendor intent)

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
21. b)	TERMINATION FOR NON-APPROPRIATION OF FUNDS		IBM	STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, STATE SHALL PROVIDE CONTRACTOR WITH AT LEAST SIXTY (60) DAYS' PRIOR TO WRITTEN NOTICE, AND 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.		REJECT
22	TERMINATION FOR CONVIENCE OF THE STATE		APPLE		Termination for convenience needs to be mutual and upon thirty days prior written notice. Both parties may not terminate for convenience a specific purchase order after it has been issued if Vendor accepted the purchase order. Upon termination for any reason, the State may retain its rights in all products and services accepted prior to the effective termination date. Upon termination for any reason, the State must pay Vendor all amounts due for products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.	REJECT
22	TERMINATION FOR CONVIENCE OF THE STATE		SAP		Where there is a partial termination, there may be additional costs caused to the contractor that should be recoverable by an equitable adjustment as the contractor may submit.	22c provides a CARVE OUT- Vendor request propose some additional language. SAP needs to propose some language. Potential modification for SI GSPDs.

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
22	TERMINATION FOR CONVIENCE OF THE STATE		CALTRANS	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 State of General Services Deputy Director Procurement Division or Designee, determines that a termination is in the State's interest. The State 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.		<i>Can be changed on a case by case basis with advance DGS approval.</i>
22	TERMINATION FOR CONVIENCE OF THE STATE		CTA		SHOULD THE DGS DIRECTOR BE INVOLVED? 22-24 MUST BE CONSISTENT IN ALL TERMINATION LANGUAGE.	Noted
23	TERMINATION FOR DEFAULT		HP	The State may...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;...	Allowing termination for default for any failure to deliver the Deliverables or meet specified timelines creates a large amount of risk to the contractor on very complex contracts. Missing a minor deadline may not be critical to the functioning of the program and may force the contractor to spend limited resources on less important parts of the project in order to avoid a possible default. HP respectfully requests that this provision be limited to <u>material failures or missing critical milestones</u>	REJECT- The state has a whole other process that occurs before this point.(23b) Material becomes "subjective" vs. "objective".

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
23	TERMINATION FOR DEFAULT		APPLE		<p>Either party may terminate the agreement based upon a material breach of the agreement. The non-breaching party must give the breaching party written notice specifying the breach. If within thirty days after receipt of the notice, the breaching party has not corrected the breach or, in a case of a breach that cannot be corrected in thirty days, has not begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement.</p> <p>Upon termination for any reason, the State may retain its rights in all products and services accepted prior to the effective termination date.</p> <p>Upon termination for any reason, the State must pay Vendor all amounts due for products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.</p>	REJECT
23	TERMINATION FOR DEFAULT		SAP		It should be made clear that both parties, upon any termination for default, have a duty to mitigate the damages suffered by it for which the other party may be liable.	Potential MODIFY this proposed change becomes 23g, existing 23g becomes 23h.
23	TERMINATION FOR DEFAULT		CTA		SHOULD THE DGS DIRECTOR BE INVOLVED? 22-24 MUST BE CONSISTENT IN ALL TERMINATION LANGUAGE.	Noted

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
23	TERMINATION FOR DEFAULT		SAP		Again, the standard form clause apparently was drafted with supply contracts in mind and is deficient in its suitability for more complex contracts for system implementation, solution and software services. A crucial proposition that should be reflected in this clause is that the State may not terminate a solution vendor for default where it is in "substantial performance" with the State's requirements. Further, there should be a "materiality" qualification such that non-performance or non-compliance must be "material" to the State's requirements before a vendor can be threatened with default. In all cases, a suitable and reasonable opportunity to "cure" should be afforded, again with the measure of a satisfactory cure being in line with a "substantial performance" requirement. Generally, the clause should be clarified so that a contractor is obligated to deliver to the State completed or partially completed deliverables only where the State has made full payment or where there are arrangements made, satisfactory to the contractor, for full payment to be made. It is grossly unfair for the State to demand or receive delivery, in a default setting, for work it has not paid for.	REJECT- The state has a whole other process that occurs before this point.(23b) Material becomes "subjective" vs. "objective".
23	TERMINATION FOR DEFAULT		SAP		Default is an extreme sanction that serves the interest of no one, since it is disruptive of the State's achievement of its business purposes and usually results in expensive, lengthy litigation. Accordingly, and especially for system implementation, solution and consulting services contracts, the Default clause should include provisions that require good-faith escalation measures, as well as opportunities for correction or cure, in order to avert a default.	The state has a whole other process that occurs before this point.(23b +41) (See state's proposed revisions to Disputes)

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
23	TERMINATION FOR DEFAULT		SAP		In the interests of mutuality, contractors should be provided a right to terminate for default for non-payment by the State following a reasonable and defined process to resolve any issues which may have caused failure to pay undisputed.	Same as above
23. a)	TERMINATION FOR DEFAULT		EMC ²	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; or iii) Perform any of the other provisions of this Contract.		(No change, unclear on vendor intent)
23. a)	TERMINATION FOR DEFAULT		IBM	iii) Perform any of the other <u>material</u> provisions of this Contract.	Request to add	
23. b)	TERMINATION FOR DEFAULT		EMC ²	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 and the State do not agree upon a plan to cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.	Request to add	

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
23. b)	TERMINATION FOR DEFAULT		HP	Which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period...	The opportunity to cure a performance defect is an essential part of a termination process that allows both parties to achieve performance in a reasonable way. However, not all defaults are capable of being cured within 15 days. Moreover, the provision permits an even shorter cure period to be specified in the statement of work. A standard cure period is 30 days, not 15. Finally, the failure to meet critical deadlines may be better addressed through the use of limited liquidated damages or other contract remedies short of termination. If timeliness is the main concern, the provision could require the Contractor to have taken steps to remedy the default within 15 days.	CARVE OUT The state historically allows more time, on a case by case basis.
23. b)	TERMINATION FOR DEFAULT		OPTUM		This section provides for a cure period of fifteen (15) days or a shorter period if set forth in the Statement of Work. The industry practice is to provide for a 30 day cure period, which seems more appropriate before action is taken to terminate the Contract given the impact of that remedy for both parties. A SOW could always specify a shorter period, if particular circumstances so warranted.	CARVE OUT The state historically allows more time, on a case by case basis.
23. b)	TERMINATION FOR DEFAULT		OPTUM		This section provides for a cure period of fifteen (15) days or a shorter period if set forth in the Statement of Work. The industry practice is to provide for a 30 day cure period, which seems more appropriate before action is taken to terminate the Contract given the impact of that remedy for both parties. A SOW could always specify a shorter period, if particular circumstances so warranted.	CARVE OUT The state historically allows more time, on a case by case basis.

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
23. c)	TERMINATION FOR DEFAULT		EMC ²	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.		(No change, unclear on vendor intent)
23. c)	TERMINATION FOR DEFAULT		IBM	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 may 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.		Potential Modify

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
23. d)	TERMINATION FOR DEFAULT		EMC ²	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.		(No change, unclear on vendor intent)
23. d)	TERMINATION FOR DEFAULT		EMC ²	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.		(No change, unclear on vendor intent)

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
23. e)	TERMINATION FOR DEFAULT		IBM	The State shall pay Contract price for completed Deliverables delivered and accepted.		REJECT
23. e)	TERMINATION FOR DEFAULT		EMC ²	The State shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.		(No change, unclear on vendor intent)
23. f)	TERMINATION FOR DEFAULT		EMC ²	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.		(No change, unclear on vendor intent)
23. g)	TERMINATION FOR DEFAULT		EMC ²	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."		(No change, unclear on vendor intent)

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
23. h)	TERMINATION FOR DEFAULT		KPMG	(h) The State agrees that the Contractor shall not have any liability to the State as a result of its use of any unfinished, incomplete, or draft work products and materials that are furnished to the State, provided that the contractor has notified the State of the incomplete status of such material	Request to add Rationale: Unfinished, incomplete, or draft work products are, by definition, not in a final format. Reliance on these documents to render a final decision is inadvisable because all relevant factors informing an engagement have not been fully considered. The inclusion of this language would highlight the user agency's need to more fully develop the work product before relying on it, and Contractor's will have greater assurance that they will not retain liability for work that does not represent their complete effort.	Point well taken
24	FORCE MAJEURE		SAP		In the nature of clarification, the clause should provide explicitly that a force majeure event also entitles the affected contractor to necessary delivery extension.	REJECT (no value added)
24. c)	FORCE MAJEURE		COMPUCOM	c) Unavailability of Equipment or Software from OEM or Software Publisher.	Request to add	REJECT
25. a)	RIGHTS AND REMEDIES OF SATE FOR DEFAULT		IBM	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 promptly immediately replace all such rejected items with others conforming to the Contract.		Vendor typo-promptly is correct word used in GSPDs.

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
25. d)	RIGHTS AND REMEDIES OF SATE FOR DEFAULT		SAP		Should be clarified to limit any right of offset to the contract that is subject to default.	REJECT
26	LIMITATION OF LIABILITY		APPLE	(i) personal injury claims due to gross negligence or willful misconduct (claims caused by acts of negligence must be subject to the limitation of liability); and (ii) Vendor's intellectual property indemnification obligations.	Vendor requires a hard cap (i.e., not to exceed a specific amount), and such amount must be in the aggregate. Vendor can only agree to the following carve-outs:	REJECT
26	LIMITATION OF LIABILITY		SAP		Limitation of Liability is of crucial business importance to leading IT vendors. Creating exceptions ("carve-outs") to LoL, or diluting the assurance of liability protection, works against the State by causing vendors to assign high risk to contracting with the State. In some situations, this can lead to "no bid" results, while in other situations there may be price adjustment because of risks. For these and related reasons, SAP believes that the LoL should be reduced below the present 2x multiplier and, instead, should be limited to the value of any non-conforming deliverable. The "carve out" for the IP infringement indemnification should be removed from the LoL clause. It is not a responsible or reasonable business practice for the State to cause its contractors to be exposed to potential unbounded liability in the event of IP infringement. Other provisions of the Contract should deal with such risk, and focus on practical and responsible solutions, and so an exception from the LoL for this cause is unnecessary. Liquidated damages should not be used in system implementation and solution contracts where performance is subject to many mutual, bilateral dependencies, as the risk of unfair result to the contractor is too great.	REJECT (REFERENCE TO 26b, not a "carve out")

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
26	LIMITATION OF LIABILITY		OPTUM		We applaud the State for its thoughtful, measured and balanced approach to a Contractor's limitation of liability. We would suggest, however, one change as it relates to Liquidated Damages. Liquidated damages are excluded from the general limitation of liability and from the general exclusion for consequential damages. On the other hand, the imposition of liquidated damages, by their very nature, arise in situations where it is difficult, if not impossible, to quantify or prove the State's actual damages. The language in Section 26 does not, however, state that if liquidated damages apply, the amount of the liquidated damages is the State's sole and exclusive remedy and the Contractor's entire liability. To provide Contractor's with greater certainty regarding the scope of their potential exposure that may then result in lower priced products and services to the State, while still affording the State a meaningful remedy, we would recommend that Section 26 clearly state that if liquidated damages are triggered, payment of such amounts shall constitute the Contractor's entire liability and the State's sole and exclusive remedy.	REJECT (REFERENCE TO 26b, not a "carve out") State encourages caps.
26. a)	LIMITATION OF LIABILITY		HP	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...	A liability limit of twice the purchase price is specified in the State's general provisions. For large-value contracts, it is unreasonable to expect a bidder to assume such risk. The State has also required performance bonds in the past. Both a high limitation of liability and a performance bond will increase the bid price without providing the State with any additional –value when the bidder is a large, financially strong company	REJECT State agrees and when appropriate reduces.

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
26. a)	LIMITATION OF LIABILITY		IBM	Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the two times Purchase Price, unless the charges are recurring, in which case, twelve (12) months' charges apply. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.		REJECT
26. a)	LIMITATION OF LIABILITY		CTA	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; except that, with respect to a Contract under which multiple purchase orders will be issues (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.	The Damage could be greater than 2x the purchase price especially for critical State service. (eg. Iron Mountain service). Clarity needed as Liquidated Damages can supersede the contract (x2) amount.	REJECT <i>Can be changed on a case by case basis with advance DGS approval.</i>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
26. b)	LIMITATION OF LIABILITY		COMPUCOM	The foregoing limitation of liability shall not apply (i) to liability under the General Provisions, Section 39 entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) Section 28, entitled "Indemnification" 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 (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.		REJECT
26. b)	LIMITATION OF LIABILITY		HP	The foregoing limitation of liability shall not apply... (ii) to claims covered by any specific provision herein calling for liquidated damages..	The removal of liquidated damages from the limitation of liability removes the ability of the vendor to properly manage its risk. Some bidders may be unwilling to assume the risk and determine not to bid. This is especially true of a company such as HP which is a large, publically traded corporation with significant assets that could be placed at risk with uncapped liquidated damages. Since the amount of liquidated damages vary based on the specific opportunity, a cap lower than the limitation of liability may often be appropriate to encourage robust competition with a manageable risk profile.	REJECT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
26. b)	LIMITATION OF LIABILITY		IBM	The foregoing limitation of liability shall not apply (i) to liability under the General Provisions entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; or (ii) to claims covered by any specific provision herein calling for liquidated damages; (ii) 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 (iii) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.		REJECT
26. b)	LIMITATION FOR LIABILITY		CALTRANS	The foregoing limitation of liability shall not apply (i) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) 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 <u>(note: do not cap indemnities);</u> (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action; or (v) claims arising from the gross negligence or intentional misconduct of Contractor..	Request to add	<i>Can be changed on a case by case basis with advance DGS approval.</i>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
26. d)	LIMITATION FOR LIABILITY		COMPUCOM	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 such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.		REJECT
27	CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY		IBM	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.	Request to delete 27a & b	REJECT (Request to delete 27a & 27 b)
27	CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY		SAP		Language should be added confirming that this provision is not intended to create, and shall not be construed to create, any third-party beneficiary rights or causes of action.	REJECT
28	INDEMNIFICATION		APPLE	Vendor will indemnify for personal injury claims arising from the negligence, gross negligence and willful misconduct of Vendor. Vendor will not indemnify for any claim arising out of the State's acts of negligence or misconduct. Vendor's personal injury indemnification obligation is contingent upon: (i) the State providing thirty days prior written notice; and (ii) the State's tender of sole control of the defense (the State may not have the right to approve or disapprove any settlement).	Modify to add	MODIFY*** {Request to modify 28 a), b) } "Contractor will not indemnify losses resulting from the willful misconduct or negligent acts or omissions of the state."-(Consider adding)

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
28	INDEMNIFICATION		COMPUCOM	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, to the extent such damage or injury results ing 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:		REJECT (No value added)
28	INDEMNIFICATION		IBM	Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims for damages on account of costs (including without limitation reasonable attorneys' fees), and losses due to the bodily injury or death of any individual, or the loss or damage to any real property or tangible personal property for which Contractor is legally liable to that third party, and pay all costs, damages and attorney's fees that a court finally awards or that are included in a settlement approved by Contractor, provided that: resulting from the willful misconduct of 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:		REJECT Redline does not address settlement.

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
28	INDEMNIFICATION		SOS	Contractor agrees to indemnify, defend and save hold 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 or intangible 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 entity 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:		PARTIAL MODIFY*** Reject "hold". Reject "intangible". Adding "business entity" rather than "corporation"
28. b)	INDEMNIFICATION		COMPUCOM	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 if such settlement or compromise contains a stipulation to or admission or acknowledgment of, any liability or wrongdoing (whether in contract, tort or otherwise) on the part of the State, 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.		REJECT (Undermines section 1)

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
28. b)	INDEMNIFICATION		HP	(ii) the State will have the right to approve or disapprove any settlement or compromise, which approval shall not unreasonably be withheld or delayed.	This provision allows the State to retain control over the litigation strategy and successful compromise of a claim for which the Contractor is indemnifying the State. Allowing the State to retain the right to approve or disapprove a settlement limits the Contractor's ability to compromise a potential claim without subjecting the compromise to political, and possibly public, review. If the State truly intends to tender its defense to the Contractor, then the Contractor should be free to make appropriate litigation decisions, including the determination that settlement is in the best interests of the parties. HP respectfully requests that this provision be eliminated or be limited to the approval of those settlements which would require the State to provide funds or otherwise impact future State operations or liabilities.	REJECT
29	INVOICES			**NO CHANGES**		

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
30	REQUIRED PAYMENT DATE			**NO CHANGES**		
31	TAXES			**NO CHANGES**		
32	NEWLY MANUFACTURED GOODS		EMC ²	All Goods furnished under this Contract shall be newly manufactured Goods; or refurbished or remanufactured goods that are warranted as new for both purchase and use in maintenance/repair.		REJECT (Carve out)
32	NEWLY MANUFACTURED GOODS		IBM	All Goods furnished under this Contract shall be new or equivalent to newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.		REJECT (Carve out)
33	CONTRACT MODIFICATION		CDCR	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. An oral understanding or agreement that is not incorporated in the Contract is not binding on any of the parties.		REJECT
33	CONTRACT MODIFICATION		CTA		Clarification needed. Do we need to have the amendment language during solicitation, prior to the contract, for an amendment to be available for execution?	(YES)
34	CONFIDENTIALITY OF DATA		CTA	<u>If the contractor experiences a loss or breach of data, it will immediately report the loss or breach to the State. If the State determines that notice to the individuals whose data has been lost or breached is appropriate, the contractor will bear any and all costs associated with the notice or any mitigation selected by the State. These costs include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach or loss of data.</u>	Request to add	<i>Can be changed on a case by case basis with advance DGS approval.</i>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
34	CONFIDENTIALITY OF DATA		IBM	<p>“Confidential Information” means all financial, statistical, personal, technical and other data and information relating to either party's the State operation which are (i) marked with a restrictive legend of the disclosing party; (ii) if Confidential information is not marked with such legend or is disclosed orally, the Confidential Information must be identified as confidential at the time of disclosure by the disclosing party; or (iii) documents will also be considered confidential if they are recognizable as Confidential Information to a reasonably prudent person, designated Each party shall keep such Confidential Information confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor from unauthorized use and disclosure through the observance of the same care and discretion to avoid disclosure, publication or dissemination of the disclosing party's Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate. The receiving party may disclose, publish, disseminate 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 receiving party may disclose, publish, disseminate, and use Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information: 1) which is or subsequently becomes publicly available through no fault of the receiving party; 2) is already rightfully in the receiving party's Contractor's possession without obligation of confidentiality; 3) is independently developed; by the Contractor outside the scope of this Contract, or 4) is rightfully obtained from third parties without obligation of confidentiality; or 5) is disclosed by the disclosing party to another without obligation of confidentiality. Confidential Information disclosed under this Contract will be subject to this Contract for two (2) years following the initial date of disclosure, unless a longer time period is required by law or statute without the possibility of contractual waiver.</p>		<p>ACCEPT 2) & 4)-see notes***</p> <p>2)is already rightfully receiving party's Contractor's possession without obligation of confidentiality</p> <p>4)is rightfully obtained from third parties without obligation of confidentiality</p>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
34	CONFIDENTIALITY OF DATA		KPMG	<p>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 <u>or is required to be disclosed pursuant to law or legal process.</u></p>	<p>This language is a reasonable written reflection of what a Contractor would be obligated to do. Inclusion of this language merely affirmatively establishes the Contractor's obligations under the law. At times, KPMG will utilize onshore and offshore resources to aid us in research and development of proposal materials, statements of work, and other clerical and administrative functions. Adding this language here foregoes the need to address it ad-hoc for each instance where we would see a need to leverage this valuable internal resource. The State benefits by improved clarity of proposal and SOW content, thereby removing the potential for confusion of disputes. Procedures and practices are in place to maintain strict confidentiality of all "client" information. Furthermore, this practice is used frequently by KPMG in support of other clients whom have approved the insertion of this language into standard contracts.</p>	REJECT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
34	CONFIDENTIALITY OF DATA		SAP		This clause can be clarified to emphasize the responsibility of the State to clearly identify confidential state data and to establish that State procedures on protection of such data must be disclosed to the contractor, and confirmed by agreement, in order to be binding.	REJECT
35	NEWS RELEASES		DGS		"Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services."-Rewrite submitted by Roger Anderson	MODIFY
36	DOCUMENTATION		SAP		It should be clarified that the provision of documentation as called for by this clause does not divest the contractor of any rights in the IP represented by such documentation or constitute any greater license to the State to use such documentation beyond that conveyed by clause 37 (Rights Work Product)	REJECT
36. b)	DOCUMENTATION		IBM	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.	Request to delete	REJECT

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
37. a)	RIGHTS IN WORK PRODUCT		CALTRANS	All <u>The rights, ownership and interests in the</u> inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be <u>as provided in Exhibit D.</u> The provisions of this sub-section a) may <u>NOT</u> be revised in a Statement of Work.	(Note: The terms of Section 37-39 track what suppliers use with their own suppliers and contractors)	REJECT
37. a)	RIGHTS IN WORK PRODUCT		COMPUCOM	All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract <u>to the extent such are unique to the State's way of doing business and include the State's Confidential Information</u> (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.		REJECT
37. b)	RIGHTS IN WORK PRODUCT		IBM	Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("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.		REJECT
37. b)	RIGHTS IN WORK PRODUCT		CALTRANS	Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works <u>directly derived from the Pre-Existing Materials and</u> created pursuant to this Contract, <u>do not</u> constitute Work Product, but other <u>all</u> elements do not . Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials constitute Work Product.		<i>Can be changed on a case by case basis with advance DGS approval.</i>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
37. c)	RIGHTS IN WORK PRODUCT		HP	The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder...	This provision seeks to define the license provided to the State under numerous scenarios and may pose an impediment to a vendor being able to contract with the State. While this may be appropriate in a large, custom-developed-software system, where the contractor is providing COTS software, it may not be appropriate. Any third party COTS software is generally subject to the licensor's license agreement and the Contractor will not be able to provide any rights greater or lesser than what is provided in that license agreement. COTS software may be licensed by specific CPU, by number of U's, by user, by location, or by concurrent users, so it is difficult to establish a one-size-fits-all license term. HP recommends that the State allow this term to be varied in the Statement of Work.	REJECT
37. c)	RIGHTS IN WORK PRODUCT		KPMG	The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. The Work Product provided as part of this engagement will be developed for the State, and is not intended for use by any other party or for any other purpose, and may only be relied upon by the State. The Contractor no has obligation to update or revise the Work Product whether as a result of new information, future events or otherwise after termination of the Contract. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.	Contractors seek to limit risk and liability by not having their work product applied to other situations where it may be misapplied or taken out of context. The last sentence, regarding commercial purpose, accomplishes only part of the concern. Under professional standards, Contractors provide consulting to their clients alone. Advice and recommendations are only made with the Client's specific needs in mind. Work product used to assist the State in resolving concerns or problems, which are different from the parameters for which the services were procured, will not likely provide an effective solution. The State will benefit because component parts of the State will be disinclined to use solutions that are not appropriate for a particular situation. This, in turn, will save the State time, energy, and ultimately, money.	REJECT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
37. c)	RIGHTS IN WORK PRODUCT		CALTRANS	<p><u>Prior to beginning work under this Agreement, (a) Contractor shall prepare a document that defines the specific Pre-Existing Works that shall be used in this Agreement and (b) the parties shall discuss and seek agree to the specific property that shall be considered as Pre-Existing Works. If the parties cannot agree to the specific property that shall be considered as Pre-Existing Works, either party may terminate this Agreement prior to any work being performed under this Agreement or the work under this Agreement may proceed and no property shall be considered as Pre-Existing Works.</u></p>		<p><i>Can be changed on a case by case basis with advance DGS approval.</i></p>
37. c)	RIGHTS IN WORK PRODUCT		SAP	<p>...“Government Purpose Right” are the unlimited, irrevocable, worldwide, perpetual.....</p>	<p>For companies such as SAP, preservation of intellectual property is an absolute and unqualified prerequisite to doing business with any customer and any risk of compromise or loss of IP rights is reason to decline prospective business. Further, SAP believes strongly that the State should not seek to use the work product or other IP or SAP to compete against SAP, first because this is not the proper role of government, and second because the State is not equipped or capable technically of supporting the product, solution or software as SAP may provide. Therefore, SAP proposes to delete from the “Government Purpose Rights” license the word “unlimited”. SAP also recommends that language be added to confirm that the vendor assumes no liability to any recipient for the State’s release or disclosure of Work Product. SAP also would limit the State’s right to disclose IP and Work Product to government users who have a valid license to use SAP’s software.</p>	<p>REJECT</p>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
37. c)	RIGHTS IN WORK PRODUCT		CTA	The State will have Government Purpose Rights to the work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local government, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display create derivative works from, or disclose the Work Product for any commercial purpose.	Do we have oversight, control, monitor, & release of such products?	REJECT
37. d)	RIGHTS IN WORK PRODUCT		CALTRANS	The State will have Government Purpose Rights to the <u>Pre-Existing Works and all derivatives of Pre-Existing Works that are incorporated into or used by the</u> Work Product as- or any Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose <u>the Pre-Existing Works and all derivatives of Pre-Existing Works that are incorporated into or used by the</u> Work Product <u>or any Deliverable.</u> "Government Purpose Rights" also include the right to release or disclose the Pre-Existing Works and all derivatives of Pre-Existing Works that are incorporated into or used by the Work Product or any Deliverable outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.		(See previous page -37c becomes 37 d with request to modify)

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
37. d)	RIGHTS IN WORK PRODUCT		CALTRANS	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.		<i>Can be changed on a case by case basis with advance DGS approval.</i>
37. f)	RIGHTS IN WORK PRODUCT		CALTRANS	<u>Contractor, its employees or any of Contractor's Subcontractor's employees agrees to perpetually assign, and upon creation of each Work Product automatically assigns to the State ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Contractor's Subcontractor from the State. From time to time upon the State's request, the Contractor's Subcontractor and/or its employees, shall confirm such assignments by execution and delivery of such assignments, confirmations or assignment, or other written instruments as the State may request. The State shall have the right to obtain and hold in its own name all copyright registrations and other evidence of rights that may be available for Work Product. Contractor hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.</u>	Request to add	<i>Can be changed on a case by case basis with advance DGS approval.</i>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
37. g)	RIGHTS IN WORK PRODUCT		CALTRANS	<p><u>The Contractor, its employees and any Contractor's Subcontractor hereby agrees to assign to the State all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority there under, and the same shall become and remain the State's property regardless of whether such protection is sought. The Contractor, its employees and Contractor's Subcontractor shall promptly make a complete written disclosure to the State of each Invention not otherwise clearly disclosed to the State in the pertinent Work Product, specifically pointing out features or concepts that the Contractor, its employees and Contractor's Subcontractor believes to be new or different. The Contractor, its employees and Contractor's Subcontractor shall, upon the State's request and at the State's expense, cause patent applications to be filed thereon, through solicitors designated by the State, and shall sign all such applications over to the State, its successors, and assigns. The Contractor, its employees and Contractor's Subcontractor shall give the State and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as the State may consider necessary or appropriate to carry out the intent on this Agreement.</u></p>	Request to add	<p><i>Can be changed on a case by case basis with advance DGS approval.</i></p>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
37. h)	RIGHTS IN WORK PRODUCT		CALTRANS	<u>In the event that the State is unable for any reason whatsoever to secure the Contractor's, its employees' and/or Contractor's Subcontractor's signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), Contractor, its employees and Contractor's Subcontractor hereby irrevocably designates and appoints the State and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on Contractor, its employees and Contractor's Subcontractor's behalf and stead, to execute and file such applications and to do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks or patents thereon with the same legal force and effect as if executed by Contractor, its employees and/or Contractor's Subcontractor. The State shall have no obligations to file any copyright, trademark or patent applications.</u>	Request to add	<i>Can be changed on a case by case basis with advance DGS approval.</i>
37. i)	RIGHTS IN WORK PRODUCT		CALTRANS	<u>Contractor shall affirmatively bind by contract any of its subcontractors providing services under this Agreement to conform to the provisions of Section 37, 38 and 39. Contractor's subcontractor shall then provide the signed contract to the Contractor, who shall provide it to the Department's Contract Manager prior to the commencement of any work. In performing services under this Agreement, Contractor's subcontractor agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor's subcontractor becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor's subcontractor shall immediately notify the Contractor in writing. Contractor will then immediately notify the State in writing.</u>	Request to add	<i>Can be changed on a case by case basis with advance DGS approval.</i>
GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments

38. a)	PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPREITARY DATA		CALTRANS	State agrees that all material appropriately marked or identified in writing <u>by Contractor</u> as proprietary, and furnished hereunder <u>by Contractor</u> , 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 <u>commercially</u> reasonable steps to insure <u>ensure</u> that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.		<i>Can be changed on a case by case basis with advance DGS approval.</i>
38. b)	PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPREITARY DATA		CALTRANS	The State will take insure <u>commercially reasonable steps to ensure.</u> prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.		<i>Can be changed on a case by case basis with advance DGS approval.</i>
38. c)	PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPREITARY DATA		CALTRANS	The State agrees and <u>Contractor each agree, respectively,</u> 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 <u>of</u> to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.		<i>Can be changed on a case by case basis with advance DGS approval.</i>

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
39	PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY		SAP		<p>There should not be overlapping or duplicative coverage of this issue in the Warranty clause as well as in this indemnity clause. The indemnity should be limited to infringement or violation of U.S. IP rights by any deliverable developed by or service provided by the contractor. No bond should be required, as this is burdensome and expensive, and potentially unachievable by some reputable companies the State should wish to encourage to bid on its requirements. Great care should be taken to tailor this clause to the particulars where a contract is for system implementation, solution or software services. A contractor must have reasonable assurance that it and the State will work through responsible and affordable remedies, and that the financial exposure is capped and at a level that a responsible business can accommodate.</p>	<p>**CLARITY NEEDED**</p> <p>39b Would it be helpful if state added language? RE: state will pay under certain circumstances.</p>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
39	PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY		APPLE	<p>Subject to the notice and defense requirements and certain exceptions (listed below), Vendor will indemnify only for claims that a Vendor product infringes a U.S. patent, copyright, trademark or trade secret. Vendor's intellectual property indemnification obligation is contingent upon: (i) the State providing thirty days prior written notice; and (ii) the State's tender of sole control of the defense (the State may not have the right to approve or disapprove any settlement). If a Vendor product becomes the subject of an intellectual property claim, Vendor may, at its sole option: (i) provide the State the right to continue using the Vendor product; (ii) replace or modify the Vendor product so that it becomes non-infringing; or (iii) accept the return of the Vendor product and refund an amount equal to the five year depreciated value of the returned Vendor product, less the unpaid portion of the purchase price, shipping charges and any other amounts, which are due to the State. Vendor will not have any obligation to indemnify for an intellectual property claim arising out of: (i) Vendor's compliance with the State's designs, specifications, or instructions; (ii) Vendor's use of technical information or technology provided by the State; (iii) product modification to any Vendor product; (iv) combination, operation or use of any Vendor product with non-Vendor products or other programs, devices, data products or documentation; (v) use of any Vendor products consisting of software in a manner not authorized under the applicable Vendor end user license agreement; or (vi) export, distribution, or resale of any Vendor product.</p>		POTENTIAL TO USE IF RE-WRITTEN*** See notes

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
39. a)	PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY		COMPUCOM	<p>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 Contractor Services provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a. The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.</p>		REJECT
39. a)	PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY		HP	<p>...provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnify 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). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.</p>	As a third party provider of Software, HP can only provide to the State what it receives from the Software vendor without taking on additional risk and passing those costs on to the State.	REJECT

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
39. a)	PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY		IBM	<p>Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims that Contractor's commercial Hardware, commercial Software or Materials ("Contractor Product") provided under a Statement of Work infringes that party's patent, copyright or trade secret, and will defend the State against that claim at Contractor's expense and pay all costs (including without limitation reasonable attorneys' fees), and damages that a court finally awards against the State or that are included in a settlement approved in advance by Contractor. With respect to claims arising from computer Hardware or Software manufactured by a 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). and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party. The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.</p>		REJECT
<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>

39. a)	<u>AVOIDANCE AND INFRINGEMENT</u> and PATENT, COPYRIGHT AND TRADE SECURITY INDEMNITY		CALTRANS	<u>In performing services under this Agreement, Contractor and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor or its employees becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor or its employees shall immediately notify the State in writing.</u>		<i>Can be changed on a case by case basis with advance DGS approval.</i>
39. a) (ii)	PATENT, COPYRIGHT AND TRADE SECURITY INDEMNITY		COMPUCOM	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 <u>if such settlement or compromise contains a stipulation to or admission or acknowledgment of, any liability or wrongdoing (whether in contract, tort or otherwise) on the part of the State</u> , 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.		REJECT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
39. a) (ii)	PATENT, COPYRIGHT AND TRADE SECURITY INDEMNITY		IBM	Unless a Third Party Obligation provides otherwise, The defense and payment obligations set forth in this Section 39a) will be conditional upon the following: 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); and (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.		REJECT
39. b)	PATENT, COPYRIGHT, AND TRADE SECURITY IDEMNITY		HP	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.	Bonds should not be required from a financially stable company such as HP because the State has sufficiently mitigated the risk or performance failures through acceptance periods, milestone payments and general holdbacks. There may also be reasonable liquidated damages that can be assessed. A bond requirement increases the price to the State with no commensurate value.	REJECT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
39. b)	PATENT, COPYRIGHT, AND TRADE SECURITY IDEMNITY		IBM	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.		REJECT
39. c)	PATENT, COPYRIGHT, AND TRADE SECURITY IDEMNITY		COMPUCOM	Should the Contractor Deliverables or Software Services , 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 Services , 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 Services by the State shall be prevented by injunction, the Contractor agrees to take back such infringing Deliverables or Software Services and make every reasonable effort to assist the State in procuring substitute Deliverables or Software Services . If, in the sole opinion of the State, the return of such i Services 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 Services and refund any sums the State has paid Contractor less any reasonable amount for use or damage.		REJECT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
39. c)	PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY		IBM	<p>Should Contractor Product the Deliverables or Software or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of such claim-of infringement of 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 Contractor Product, Deliverables or Software or to replace with Contractor Product that is at least functionally equivalent 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 Contractor Product Deliverables or Software by the State Contractor shall be prevented by injunction, the State Contractor agrees to return such Contractor Product take-backe such Deliverables or Software and discontinue its use 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 will then give the State a credit equal to: 1) for commercial Hardware, the State's net book value calculated according to generally-accepted accounting principles' 2) for commercial Software, the amount the State paid Contractor for the Software license or twelve (12) months' charges (whichever is less); and 3) for Materials, the amount the State paid Contractor for the creation of the Materials 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.</p>		REJECT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
39. d) i)	PATENT, COPYRIGHT AND TRADE SECURITY INDEMNITY		COMPUCOM	Contractor following the designs, specifications or written instructions of the State; or The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor		REJECT
39. d)i)	PATENT, COPYRIGHT AND TRADE SECURITY INDEMNITY		IBM	The combination or utilization of <u>Contractor's Product Deliverables</u> furnished hereunder with Equipment, <u>Software</u> or devices not made or furnished by the Contractor; or,		REJECT
39. d) ii)	PATENT, COPYRIGHT AND TRADE SECURITY INDEMNITY		COMPUCOM	the State's failure to obtain proper licenses for hardware, software or tools provided by the State for use hereunder;; or 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;		REJECT
39.)d) iii)	PATENT, COPYRIGHT AND TRADE SECURITY INDEMNITY		IBM	Any The modification by the State or a third party of Contractor's Product the Equipment furnished hereunder or use of a Contractor Product with any other product, hardware device, program, data, apparatus, method or process; of the Software or		REJECT
39. d) iv)	PATENT, COPYRIGHT AND TRADE SECURITY INDEMNITY		COMPUCOM	use of the Services in conjunction with hardware, software, systems or methods not provided by Contractor or specified in the SOW. The combination or utilization of Software furnished hereunder with non contractor supplied Software.		REJECT
39. d) iv)	PATENT, COPYRIGHT AND TRADE SECURITY INDEMNITY		IBM	Anything provided by the State or a third party on the State's behalf that is incorporated into a Contractor Product or Contractor's compliance with any designs, specifications, or instructions provided by the State or a third party on the State's behalf. The combination or utilization of Software furnished hereunder with non contractor supplied Software.		REJECT
40	EXAMINATION AND AUDIT		DGS/OLS		Consider changing documentation to information.	

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
40	EXAMINATION AND AUDIT		KPMG	Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting Documentation directly pertaining to performance of this Contract. 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 similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.	Whether a public or a private company, there are many records over which, the Contractor would like to maintain some level of confidentiality because the release of the information could result in competitive or business harm. An auditor's collection of data renders the information subject to the State's Public Records Act. In the event of a public Records Act Request, both the State and the Contractor have to expend time and money to evaluate the release information subject to the Public Records Act. However, with the inclusion of the word "directly", the State and the Contractor are narrowing the categories of documentation that might be requested. This allows the Contractors greater comfort that they are able to protect necessary business information without having to involve the State in a drawn out public records act action.	Possibly modify
40	EXAMINATION AND AUDIT		APPLE	Vendor agrees to maintain, for a period of three years after the date of final payment under the agreement, all books and records directly relating to the performance of the agreement. The books and records directly related to the performance of the agreement will be available upon no less than thirty business days prior written notice for review and audit by the State no more than once per year. In no event will Vendor furnish or be required to furnish any information concerning any of Vendor's other customers or anything not pertaining specifically to goods and services sold by Vendor to the State under the agreement.		REJECT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
40	EXAMINATION AND AUDIT		HP	<p>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.</p> <p>Notwithstanding the foregoing, the State will have no right to audit the Contractor's internal cost documentation.</p>	<p>While HP understands the need for the State to be able to audit the vendor's performance in some contracts, this provision may not be necessary in every contract. To the extent that a contract is based on a firm, fixed price, there is no performance for the State to audit outside of the contractor's invoices. In complex development projects, an audit may remove necessary resources from the performance of a project at critical times during delivery. In addition, the contractor must include adequate hours in its proposal in anticipation of the number of audits and the amount of time required to assist the State with the audit. Limiting this provision to one audit per year or some reasonable cycle and scope will allow the contractor to better understand the costs involved and reduce the ambiguity of this provision. Depending on the services procured, the scope of the audit should match the need for the audit to be performed. Allowing the provision to be varied in the statement of work may prove an adequate solution. At the very least, the vendor will not accept the auditing of internal cost information unless the contract is structured in a way that internal cost information is designed to be disclosed.</p>	REJECT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
40	EXAMINATION AND AUDIT		IBM	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. 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 similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. <u>Notwithstanding anything else contained herein, such audit rights shall not include access to Contractor's or its subcontractors' confidential financial information, including, but not limited to, cost or pricing methodologies, overheads, profit margins, internal audit results, Contractor's employee data or those of its subcontractor's</u>		REJECT
41	DISPUTES		SAP		The clause in the present GSPD 401-IT is not sufficient to address the complexity of performance issues that can arise in complex undertakings for system implementation, solution and software consulting. Experience has proven it is very valuable, both for the State and its contractors, to have more elaborated provisions that provide for clear dispute resolution and escalation steps. SAP recommends that DGS consider using a different Disputes clause for supply contracts, and for "simple" services contracts, and have alternatives available that are better tailored for large, challenging contracts. Treatment of Disputes in the standard Terms & Conditions should be reconciled to other "problem escalation" or performance measurement processes that may be included elsewhere in contractual documentation.	NOTED

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
41. a)	DISPUTE RESOLUTION		TAB/DRU/OLS	<p>The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the <u>contracting</u> Department Director or designee a written demand for a <u>final</u> 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. <u>The contracting Department Director or designee shall have 30 days to render a written decision. If a written decision is not rendered within 30 days after receipt of Contractor's demand, it shall be deemed a decision adverse to Contractor's contention.</u> If the Contractor is not satisfied with the decision of the contracting Department Director or designee, the Contractor may appeal the decision, in writing, <u>within 10 days of its issuance,</u> to the Department of General Services, Deputy Director, Procurement Division, <u>who shall have 45 days to render a final decision. If Contractor does not appeal the decision of the contracting Department Director or designee, the decision shall be conclusive and binding regarding the dispute and Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies. 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.</u></p>		MODIFY

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
41. a)	DISPUTES		IBM	<p>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. <u>Unless the parties agree otherwise, the Executive Committee shall be comprised of two (2) representatives of the Department, two (2) executives of the Contractor, and a mutually agreed upon representative of the State (other than the Deputy Director, Procurement Division). The Executive Committee will act in an advisory capacity only and will proceed diligently to recommend a resolution and disposition of the dispute.</u></p>		<p>REJECT</p> <p>State deleting executive committee, and modifying existing #41 Disputes</p>
41. b)	DISPUTES		IBM	<p><u>After the decision of the Department Director, the parties may agree to submit a dispute to non-binding mediation by an independent mediator mutually agreed upon by the parties. In addition, if the dispute is valued at \$750,000 or more, the Contractor may, at its option, submit such dispute to non-binding mediation by an outside mediator mutually agreed upon by the parties. The parties shall agree upon the process for all mediations and shall equally split the costs of such mediation. 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.</u></p>		<p><u>REJECT</u></p>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
41. c)	DISPUTES		TAB/DRU/OLS	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 Deputy Director, Procurement Division State fails to render a final decision within 45 90 days after receipt of Contractor's appeal demand for a final decision , 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. The Deputy Director, Procurement Divison, decision shall be conclusive and binding regarding the dispute and Contractor shall be banned from comensing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust contractor administrative remedies.		MODIFY
41. c)	DISPUTES		IBM	Any final decision of the State, which final decision shall take into account the recommendation (if any) of the Executive Committee, and/or the results of the non-binding mediation (if any), 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.		REJECT

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
42	STOP WORK		SAP		It should be clarified that a contractor has a right to stop work in the event of termination for non-appropriation of funds.	REJECT
42. a)	STOP WORK		IBM	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 thirty (30) 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 promptly 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 thirty (30) 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:		MODIFY Change 90 days to 45 days. Keep the language as immediately.
42. b) (ii)	STOP WORK		IBM	The Contractor asserts its right to an equitable adjustment within sixty (60) 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.		ACCEPT
43. c) (iii)	FOLLOW ON CONTRACTS		CALTRANS	Where the State has entered into an agreement with college campuses.		<i>Can be changed on a case by case basis with advance DGS approval.</i>
<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
44	PRIORITY HIRING CONSIDERATIONS			**NO CHANGES**		

45	COVENANT AGAINST GRATUITIES			**NO CHANGES**		
46	NONDISCRIMINATION CLAUSE			**NO CHANGES**		
47	NATIONAL LABOR RELATIONS BOARD CERTIFICATION			**NO CHANGES**		
48	ASSIGNMENT OF ANTITRUST ACTIONS			**NO CHANGES**		
49	DRUG-FREE WORKPLACE CERTIFICATION			**NO CHANGES**		
50	FOUR DIGIT DATE COMPLIANCE		CTA		RECOMMENDED REVIEW. IS IT STILL APPLICABLE?	YES
51	SWEATFREE CODE OF CONDUCT			**NO CHANGES**		
52	RECYCLING			**NO CHANGES**		
53	CHILD SUPPORT COMPLIANCE ACT			**NO CHANGES**		
54	AMERICANS WITH DISABILITIES ACT			**NO CHANGES**		
55	ELECTRONIC WASTE RECYLING ACT OF 2003			**NO CHANGES**		
56	USE TAX COLLECTION			**NO CHANGES**		
57	EXPATIRATE CORPORATIONS			**NO CHANGES**		
58	DOMESTIC PARTNERS			**NO CHANGES**		
59	SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS			**NO CHANGES**		
60	LOSS LEADER			**NO CHANGES**		
GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments

No number assigned	LICENSE GRANT		DGS-TAB	<p>a.) Contractor hereby grants to the State and the State accepts from Contractor, subject to the terms and conditions of this Contract, a non-exclusive, non-transferable <u>perpetual</u> license to use the Software Products listed in the Statement of Work of this Contract (hereinafter referred to as "Software Products")</p> <p>b.) State may use the Software Products in the conduct of its own business, and any division thereof</p> <p>c.) The license granted above authorizes the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.</p> <p>d.) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used. The redesignation will be effective upon the date specified in the notice of redesignation.</p> <p>e.) <u>Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of the Contract.</u></p>		<p>Carry Over from Special Provisions</p> <p>To eliminate all Special Provisions.</p>
No number assigned	LICENSE GRANT		CHP	<p>The state reserves the right to use software on a CPU other than the specified CPU do to equipment failure, scheduled maintenance, or other network optimization function. Software licenses sold as "enterprise" or other aggregate licenses shall be used without CPU restriction.</p>		SOW

<u>GSPD#</u>	<u>Name of GSPD item</u>	<u>Add'l Ref.</u>	<u>Contractor Name</u>	<u>Proposed redline</u>	<u>Contractor's rationale for proposed change</u>	<u>State Comments</u>
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No number assigned	Encryption/CPU ID Authorization Codes		DGS-TAB/OLS	<p>a. When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the Contractor will provide all codes to the State with delivery of the Software.</p> <p>b. In case of an inoperative CPU as defined in paragraph 1c. above, Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.</p> <p>c. When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.</p>		<p>Carry Over from Special Provisions</p> <p>Change reference in 1c-License Grant</p> <p>To eliminate all Special Provisions.</p>
No number assigned	<p>Acceptance of Software</p> <p>This will become a subsection of License Grant.</p>		DGS-TAB/OLS	<p><u>Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of the Contract.</u></p>		<p>To eliminate all Special Provisions.</p>

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
No number assigned	Right To Copy or Modify		DGS-TAB	<p>a. Any Software Product provided by Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.</p> <p>b. The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of <u>the Contract.</u></p> <p>c. <u>The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in the merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of the Contract.</u></p>		<p>Partial carry over from Special Provision.</p> <p>To eliminate all Special Provisions.</p>
No number assigned	Right to Copy or Modify		CHP	The state may modify any non-personal computer software product, and machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in the merge program material shall be used only designated CPUs and shall be subject to the terms and conditions of this Contract.		ACCEPT

GSPD#	Name of GSPD item	Add'l Ref.	Contractor Name	Proposed redline	Contractor's rationale for proposed change	State Comments
No number assigned	Future Release		DGS-TAB/OLS	Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions of any Software Product are developed by contractor, and are made available to other licensees, they will be made available to the State at the State's option at a price no greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.		Carry over from Special Provisions. To eliminate all Special Provisions.
No number assigned	TITLE OF EQUIPMENT		DGS-TAB/OLS	Unless otherwise specified in the Statement of Work, title to Equipment shall remain with in the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.		Partial carry over from Special Provision. To eliminate all Special Provisions.