

STATE OF CALIFORNIA
STANDARD AGREEMENT
 CalPERS STD 213 (Rev 10/15/04)

AGREEMENT NUMBER 2012-6581

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

STATE AGENCY'S NAME

California Public Employees' Retirement System

CONTRACTOR'S NAME

Level 4 Press, Inc.; dba Level 4 Ventures, Inc.

2. The term of this Agreement is: Upon Execution through December 31, 2015

3. The maximum amount of this Agreement is: \$ 0.00

4. THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, HEREINAFTER "CALPERS", AND LEVEL 4 PRESS, INC.; DBA LEVEL 4 VENTURES, INC., HEREINAFTER "CONTRACTOR", AS FOLLOWS:

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

CONTRACTOR

California Department of General Services Use Only

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Level 4 Press, Inc.; dba Level 4 Ventures, Inc.

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

William Roetzheim, Chief Executive Officer

ADDRESS

13518 Jamul Drive
 Jamul, CA 91935

STATE OF CALIFORNIA

AGENCY NAME

California Public Employees' Retirement System

BY (Authorized Signature)

DATE SIGNED (Do not type)



PRINTED NAME AND TITLE OF PERSON SIGNING

Dale Jablonsky, Assistant Executive Officer

ADDRESS

400 Q Street
 Sacramento, CA 95811

Exempt per:
 Exempt from approval by the Department of General Services per California Constitution, Article XVI, Section 17.

PROJECTED EXPENDITURES

AMOUNT ENCUMBERED BY THIS DOCUMENT	PROGRAM/CATEGORY (CODE AND TITLE)			FUND TITLE
\$ 0.00	ITAD/Contracts & Procurement Unit			Not Applicable
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT	ITEM	CHAPTER	STATUE	FISCAL YEAR
\$ 0.00	Not Applicable	---	---	Not Applicable
TOTAL AMOUNT ENCUMBERED TO DATE	OBJECT OF EXPENDITURE (CODE AND TITLE)			
\$ 0.00	Not Applicable			

I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.

ACCOUNTING OFFICER'S SIGNATURE



Not Applicable

DATE SIGNED

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ATTACHMENTS

- A. Terms and Conditions
- B. List of Approved Verticals, Sub-verticals, and Classifications
- C. CalPERS Contract-Related Disclosure Form

1. SERVICES TO BE PROVIDED

Contractor agrees to provide for CalPERS, on an as-needed basis, the following Information Technology (IT) consultant services and vertical/classification(s) pursuant to Section IV. Services to be Provided/Minimum Qualifications, of RFP No. 2011-6339. Services are described on Attachment B, List of Approved Verticals, Sub-verticals and Classifications, of this Agreement.

2. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution of the Agreement by all parties, through December 31, 2015, unless terminated earlier pursuant to Section G or extended pursuant to Section B, paragraph 12.

3. AMOUNT OF AGREEMENT

Contractor shall be paid as prescribed in a Statement of Work (SOW) for services rendered not to exceed the fees as prescribed on the Fee Schedule submitted in the response to the proposal. Contractor is participating in a pool of potential Contractors and as such is not guaranteed any purchase orders, SOWs, or compensation under this Agreement. Any rates paid to the Contractor shall be based on the types of services and rates reflected in each SOW that is awarded the firm. Upon execution of a SOW, money will be internally transferred to fund the work and will not require an amendment to this Agreement. Hourly rates bid in the Fee Proposal, Attachment K, in response to RFP No. 2011-6339 represent the maximum hourly rate(s) for services during the term of the contract. Attachment K, submitted in response to RFP No. 2011-6339 is hereby incorporated by reference as though attached in full. No per diem and/or expenses will be paid as a result of this contract.

4. NOTICES

The parties agree that to avoid unreasonable delay in the progress of the services performed hereunder, Contractor and CalPERS shall each designate specific staff representatives for the purpose of communication between the parties. Any notice or other written communication required or which may be given hereunder shall be deemed given when delivered personally, or if mailed, three (3) days after the date of mailing; unless by express mail, telecopy, or telegraph, then upon the date of confirmed receipt, to the following representatives:

For CalPERS:

California Public Employees' Retirement System
Attention: Contracts Officer
400 Q Street, LPW, Room 2580
Sacramento, CA 95811
Telephone No. (916) 795-3020
FAX No. (916) 795-3379
Email: OSSD_ContractsAdmin@calpers.ca.gov

For Contractor:

William Roetzheim, Chief Executive Officer
Level 4 Press, Inc.; dba Level 4 Ventures, Inc.
13518 Jamul Drive
Jamul, CA 91935
Telephone No. (619) 917-4917
FAX No. (619) 374-7311

Either party hereto may, from time to time by notice in writing served upon the other as aforesaid, designate a different mailing address or a different or additional person to which all such notices or demands thereafter are to be addressed.

5. KEY PERSONNEL

- a) Each SOW issued to the Contractor will contain a resume for each member of Contractor's staff who will exercise a significant administrative, policy, or consulting role under this Agreement. These personnel shall be hereafter referred to (both individually and collectively) as "Key Personnel".
- b) Contractor shall not substitute, replace or reassign Key Personnel without CalPERS' prior approval. However, with CalPERS' prior approval, the parties may agree in writing to a change in these Key Personnel, which writing shall become a part of this Agreement.
- c) This Agreement and any SOW or purchase order issued pursuant to this Agreement may be terminated immediately in whole or in part of CalPERS' sole discretion and upon written notice from CalPERS to Contractor, because of any change in or departure of Contractor's Key Personnel.

TERMS AND CONDITIONS

A. DEFINITIONS

The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified:

1. "**Acceptance Tests**" means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
2. "**Application Program**" means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
3. "**Attachment**" means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine of System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
4. "**Business Entity**" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
5. "**Buyer**" means the California Public Employees' Retirement System's (CalPERS) authorized contracting official.
6. "**CalPERS**" means the California Public Employees' Retirement System, its Board of Administration, its employees and authorized representatives.
7. "**Commercial Software**" means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
8. "**Contract**" means this Contract or Agreement (including any purchase order), by whatever name known or in whatever format used.
9. "**Custom Software**" means Software that does not meet the definition of Commercial Software.
10. "**Contractor**" means the Business Entity with whom CalPERS enters into this Contract. Contractor shall be synonymous with "supplier," "vendor" or other similar term.

11. "**Data Processing Subsystem**" means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
12. "**Deliverables**" means Goods, Software, Information Technology, telecommunications technology, and other items (e.g., reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
13. "**Designated CPU(s)**" means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
14. "**Documentation**" means nonproprietary manuals and other printed materials necessary or useful to CalPERS in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for CalPERS hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.
15. "**Equipment**" is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including Hardware and Operating Software (if any).
16. "**Equipment Failure**" is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
17. "**Facility Readiness Date**" means the date specified in the Statement of Work by which CalPERS must have the site prepared and available for Equipment delivery and installation.
18. "**Goods**" means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
19. "**Hardware**" usually refers to computer Equipment and is contrasted with Software. See also "Equipment."
20. "**Installation Date**" means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by CalPERS.
21. "**Information Technology**" includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval,

telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.

22. "**Machine**" means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
23. "**Machine Alteration**" means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
24. "**Maintenance Diagnostic Routines**" means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
25. "**Manufacturing Materials**" means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
26. "**Mean Time Between Failure (MTBF)**" means the average expected or observed time between consecutive failures in a System or component.
27. "**Mean Time To Repair (MTTR)**" means the average expected or observed time required to repair a System or component and return it to normal operation.
28. "**Operating Software**" means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
29. "**Operational Use Time**" means for performance measurement purposes, that time during which Equipment is in actual operation by CalPERS. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
30. "**Performance Testing Period**" means a period of time during which CalPERS, by appropriate tests and production runs, evaluates the performance of newly-installed Equipment and Software prior to its acceptance by CalPERS.
31. "**Period of Maintenance Coverage**" means the period of time, as selected by CalPERS, during which maintenance services are provided by the Contractor for fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.

32. "**Preventive Maintenance**" means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
33. "**Principal Period of Maintenance**" means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by CalPERS, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
34. "**Programming Aids**" means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, such as tape-to-disk routines, disk-to-print routines, etc.).
35. "**Program Product**" means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licenses to CalPERS for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
36. "**Remedial Maintenance**" means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
37. "**Site License**" means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
38. "**Software**" means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
39. "**Software Failure**" means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of "Equipment Failure."
40. "**State**" means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
41. "**System**" means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
42. "**U.S. Intellectual Property Right**" means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

B. GENERAL PROVISIONS

1. Time is of the Essence

Time is of the essence in this Agreement.

2. Fees

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

3. Invoices and Payments

Unless a different basis is specified in this Agreement or in a Statement of Work or Purchase Order executed pursuant to this Agreement, Contractor shall submit itemized monthly invoices in arrears. Subcontracted work shall be itemized separately, identifying the firm, whether it is a targeted business enterprise (see Section C., paragraph 6.), services performed and costs. All invoices for payment shall be for work already performed and no payments will be made in advance of services rendered. Invoices should be sent, in triplicate, stating the Contract Number to:

California Public Employees' Retirement System
Administrative Accounting
P.O. Box 942703
Sacramento, CA 94229-2703
Email: FCSD_AP_invoice@calpers.ca.gov

CalPERS shall make payment to Contractor for performance under this Agreement as promptly as fiscal procedures permit, and in accordance with invoices submitted. Payment is due to Contractor 45 days from the date the services are received and accepted by CalPERS or 45 days from the date a correct invoice is received in the office specified by CalPERS, whichever is later. When provision is made for a testing period preceding acceptance by CalPERS, "date of acceptance" shall mean the date services are accepted by CalPERS during the specified testing period.

4. Protection of Information Assets

A. The following terms shall be given the meaning shown:

- (i) **"Information Assets"** means any information necessary to the operation of either party that is created, stored, transmitted, processed or managed on any hardware, software, network components, or any printed form.

- (ii) **“Disclosing Party”** means the party who sends Information Assets that it owns to the other party for the purposes outlined in this Agreement.
- (iii) **“Receiving Party”** means the party who receives Information Assets owned by the other.

- B. The Receiving Party will not use any of the Disclosing Party’s Information Assets for any purpose, except as set forth in this Agreement, or as otherwise required by law.
- C. The Receiving Party must take all reasonable and necessary steps to prevent the unauthorized disclosure, modification or destruction of the Disclosing Party’s Information Assets. The Receiving Party must, at a minimum, use the same degree of care to protect the Disclosing Party’s Information Assets that it uses to protect its own Information Assets.
- D. The Receiving Party agrees not to disclose the Disclosing Party’s Information Assets to anyone, except to employees or third parties who require access to the Information Assets pursuant to this Agreement, but only where such third parties have signed agreements regarding the Information Assets containing terms that are equivalent to, or stricter than, the terms of this section, or as otherwise required by law.
- E. The Receiving Party shall notify the Disclosing Party in writing of any unauthorized disclosure, modification or destruction of the Disclosing Party’s Information Assets by the Receiving Party, its officers, directors, employees, contractors, agents or third parties. The Receiving Party shall make this notification promptly upon becoming aware of such disclosure, modification or destruction, but in any event, not later than four (4) working days after becoming aware of the unauthorized disclosure, modification or destruction. After such notification, the Receiving Party agrees to cooperate reasonably, at the Receiving Party’s expense, with the Disclosing Party to remedy or limit the unauthorized disclosure, modification or destruction and/or its effects.
- F. The Receiving Party understands and agrees that the Disclosing Party may suffer immediate, irreparable harm in the event the Receiving Party fails to comply with any of its obligations under this section, that monetary damages will be inadequate to compensate the Disclosing Party for such breach and that the Disclosing Party shall have the right to enforce this section by injunctive or other equitable remedies.
- G. The provisions of this section shall survive the expiration or termination, for any reason, of this Agreement.

5. Taxes

CalPERS is exempt from federal excise taxes and shall not make any payment for any personal property taxes levied on Contractor or any taxes levied on employee wages. The only taxes CalPERS will pay on the services rendered pursuant to this Agreement are state and local sales or use taxes.

6. Use Tax Collection

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

7. Funding Provisions

This Agreement is valid subject to availability of funds approved by the CalPERS Board of Administration, in accordance with Article XVI, Section 17, California Constitution. If this Agreement overlaps CalPERS fiscal years, CalPERS' monetary obligation under this Agreement in subsequent fiscal years is subject to and contingent upon availability of funds budgeted for the purpose of this contract.

8. Severability

Should one or more provisions of this contract be held by any court to be invalid, void or unenforceable, the remaining provisions shall nevertheless remain and continue in full force and effect.

9. Force Majeure

a) Neither party to this Agreement shall be in default of its obligations hereunder for delay or failure in performing that arises out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

b) This subdivision shall apply to Contractor only after Contractor has implemented the appropriate elements of the Plan provided for, Attachment A, Section C. Affirmative Covenants, Subsection 22, B., Business Continuity.

10. Nondiscrimination

During the performance of this Agreement, contractor and its subcontractors, as well as their agents and employees, shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of

sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (40 or over), marital status, and use of family and medical care leave pursuant to federal law. Contractors and subcontractors, as well as their agents and employees, shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors, as well as their agents and employees, shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

11. Contract Formation

- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to CalPERS which is accepted by the issuance of this Contract and no further action is required by either party.
- b) If this Contract results from a solicitation other than described in paragraph a), above, Contractor's quotation or proposal is deemed a firm offer and this Contract document is CalPERS' acceptance of that offer.
- c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. CalPERS assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.

12. Amendments

This Agreement may be amended by mutual consent of the parties. Except as provided herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

13. Delivery

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, CalPERS shall not be required to make payment for excess Deliverables, and may return them to Contractor at Contractor's expense or utilize other rights available to CalPERS at law or in equity.

14. Waivers

No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

15. Incorporation of Amendments to Applicable Laws

Any references to Sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

16. Attorney's Fees and Costs

In the event of any litigation between the parties to enforce or interpret the provisions of this Agreement, the non-prevailing party shall, unless both parties agree to the contrary, pay the expenses arising from such litigation, including reasonable attorneys' fees, allocated costs for services of in-house counsel, and court costs, of the prevailing party. These expenses shall be in addition to any other relief to which the prevailing party may be entitled.

17. Non-Assignment

Neither this Agreement nor any rights or obligations hereunder may be assigned by either party without the prior written consent of the other party.

18. Titles/Section Headings

Titles or headings are not part of this Agreement, are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.

19. Dispute Resolution Process

a) Except as set forth in Subsection B of this Section, if any dispute arising out of or in connection with this Agreement is not resolved within a reasonable period of time by Contractor and CalPERS staff normally responsible for the administration of this Agreement, the parties shall attempt to resolve the dispute through executive level involvement. The

Executive Officer of each party or his or her designated representative shall meet and confer to attempt to resolve the dispute. If the parties agree, a neutral third party mediator may be engaged to assist in dispute resolution at either the line employee level or the executive level, or both. If after expending reasonable efforts at executive level resolution of the dispute, no resolution can be reached, then either party may seek its rights and remedies in a court of competent jurisdiction.

- b) CalPERS shall not be required to follow the dispute resolution process set forth in this Section before: (1) issuing any notice of termination for default under this Agreement and (2) barring Contractor from further access to CalPERS computer systems and premises. However, neither party may seek its rights and remedies in court respecting any such notice of termination for default without first following the dispute resolution process stated in this Section.
- c) Contractor shall continue to attempt to correct the Notice of Deficiency or Notice of Rejected Deliverable during the Dispute Resolution Process.

20. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any conflict of laws provisions) to the extent such laws have not been preempted by applicable federal law. Any suit brought hereunder (including any action to compel arbitration or to enforce any award or judgment rendered thereby) shall be brought in the state or federal courts sitting in Sacramento, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

21. Compliance with Statutes and Regulations

- a) Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify CalPERS against any loss, cost, damage or liability by reason of the Contractor's violation of this provision. If Contractor is either a foreign or domestic corporation it must be in good standing and must be qualified to do business in California currently and during the term of the Agreement.
- b) To the extent that this contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.

22. Independent Contractor

Contractor and Contractor's personnel shall operate as independent Contractors and shall not be considered as employees or agents of CalPERS or the State of California.

23. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. Ambiguities Not Held Against Drafter

This contract having been freely and voluntarily negotiated by all parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this contract.

25. Evaluation of Contractor

Pursuant to Public Contract Code section 10369, the Staff shall evaluate Contractor's performance under the terms and conditions of this Agreement within sixty (60) days after the completion of Contractor's performance under this Agreement. If the evaluation indicates unsatisfactory performance, a copy will be sent to the Department of General Services, the Office of Legal Services and to Contractor who may file a response to the evaluation. The evaluation and response shall remain on file for thirty-six (36) months and shall not be public records.

26. Insurance Requirements

Contractor warrants that it carries adequate liability, worker's compensation, and other necessary insurance and shall maintain such insurance at levels reasonably acceptable to CalPERS in full force and effect during the term of this Agreement. In making its determination of what levels of insurance are reasonably acceptable to CalPERS, CalPERS shall take into account the nature of the insurable risks entailed in Contractor's performance of the Agreement and Contractor's ability, if any, to self-insure any risk. Contractor agrees to furnish satisfactory evidence of this insurance coverage to CalPERS upon request.

C. AFFIRMATIVE COVENANTS

1. Permits and Licenses

Contractor shall carry out its duties and responsibilities herein in accordance with, be limited in the exercise of its rights by, and observe and comply with, all federal, state, city and county laws, rules or regulations affecting services under this Agreement. Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the work contemplated in this Agreement.

2. Reports and/or Meetings

- a) Contractor shall provide oral or written progress reports as requested by CalPERS to determine if Contractor is performing to expectations or is on schedule, to provide communication of interim findings, and to afford occasions for discussing and resolving problems encountered.
- b) Contractor shall meet with CalPERS' staff and/or the Board upon request to discuss progress on the Agreement or to present findings, conclusions and recommendations.

3. Books and Records

- a) In case this Agreement calls for goods and services that are priced on a cost reimbursement basis, in whole or in part, then Contractor shall keep accurate books and records documenting its costs and other relevant data (such as overhead allocations) connected with the performance of this Agreement. Contractor shall ensure that books and records of subcontractors, suppliers, and other providers reflecting their costs and other relevant data shall also be accurately maintained.
- b) Regardless of the pricing basis of this Agreement, Contractor shall maintain adequate books and records to establish its compliance with all Contractor covenants, representations, and warranties made in this Agreement, and shall require all permitted subcontractors to do the same. Contractor's financial statements, books, accounts, and records shall be prepared and maintained in compliance with all applicable state and federal laws, regulations, and Generally Accepted Accounting Principles and statutory accounting principles.
- c) All books and records required by this Section to be kept shall be kept in a secure location at Contractor's office(s) and shall be available for inspection and copying by CalPERS and its representatives at any time.

4. Examination and Audit

- a) Contractor (and its parent, subsidiaries, affiliates, subcontractors and any other related parties that have relevant records) shall be subject to examination and audit by CalPERS, CalPERS authorized representatives (Representatives), and the Bureau of State Audits, during the term of this Agreement and for three (3) years after CalPERS final payment to Contractor under this Agreement. Any examination or audit shall be limited to the performance of services under this Agreement, including, without limitation, the costs of administering this Agreement. Contractor shall cooperate fully with the Bureau of State Audits (consistent with California Government Code, Section 8546.7), CalPERS, and their Representatives in connection with any examination or audit. On thirty (30) days prior notice for audits or examinations of a routine nature (and on reasonable shorter notice for non-routine audits or examinations), Contractor shall permit CalPERS, its Representatives and the Bureau of

State Audits, during normal business hours, to inspect, audit, and copy all, financial statements, books, accounts, and records of Contractor and anything else in connection to this Agreement; including Contractor's performance against performance standards and the terms of this Agreement. Contractor will provide copies of any records or documents requested in connection with an audit or examination within thirty (30) days after request.

- b) Contractor will cooperate fully in the development of any corrective action plans that CalPERS determines to be necessary as a result of audit or examination. Contractor will research any discrepancies identified by CalPERS auditors and report the results of this research to CalPERS within fifteen (15) State business days of the identification of the discrepancies. Any necessary adjustments, payments, or reimbursements shall be made promptly by the appropriate party.

5. Inspection, Acceptance, and Rejection

Unless otherwise specified in the Statement of Work:

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to CalPERS covering Deliverables and services under this Contract and will tender to CalPERS 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 CalPERS during Contract performance and for three years after final payment. Contractor shall permit CalPERS to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b) All Deliverables may be subject to inspection and test by CalPERS or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to CalPERS. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All Deliverables may be subject to final inspection, test and acceptance by CalPERS at destination, notwithstanding any payment or inspection at source.
- e) CalPERS 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 CalPERS does not provide such notice of rejection within sixty (60) days of delivery, such

Deliverables and services will be deemed to have been accepted. Acceptance by CalPERS 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 CalPERS might have at law or by express reservation in this Contract with respect to any nonconformity.

6. Disabled Veteran Business Participation

- a) Contractor agrees that, as a Contractor of CalPERS, it will meet the requirements of the CalPERS Board's policies which embrace Section 10115, et seq. of the Public Contract Code regarding the three percent (3%) Disabled Veteran Business Enterprise (DVBE) participation goal for state contracts. DVBE is referred to hereafter as a "Targeted Business Enterprise" (TBE).
- b) Nothing shall be construed to authorize any contractor to discriminate in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin, or ancestry.
- c) Contractor agrees to provide CalPERS or its delegate with any information reasonably necessary to comply with the obligations set forth in the applicable provisions of Public Contract Code Sections 10115, et seq. Upon reasonable notice, Contractor shall permit CalPERS or its delegate access to its premises during normal business hours to interview employees and to inspect and copy books, records, accounts, and other materials for the purpose of determining compliance with the applicable provisions of Public Contract Code Sections 10115, et seq. and Title 2, California Code of Regulations, Sections 1896.60, et seq. Contractor agrees to maintain such records for a period of three (3) years after final payment under this Agreement. Contractor further agrees to make this section applicable to all subcontracts entered into hereunder..

7. Priority Hiring Considerations

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 11200 in accordance with PCC Section 10353.

8. Conflict of Interest

All actual and potential Conflicts of Interests of the firm and each Key Person must be fully disclosed in writing. The firm shall explain in writing how it proposes to manage or mitigate all potential or actual Conflicts of Interests of the firm or any Key Persons. The disclosure requirements relating to Conflicts of Interests shall be interpreted broadly and in cases where the firm is unsure whether an actual or potential Conflict of Interest actually exists, the firm should nevertheless disclose the actual or potential Conflict of Interest of the firm or any Key Person. Such disclosures must be updated as changes in status occur as

required by the terms of the Agreement, or otherwise in accordance with CalPERS policy and or procedures relating to disclosure of Conflicts of Interest in effect during the term of such Agreement, but, in any event, no less than annually. In addition, at the time of an assignment or as soon thereafter as practicable, the Contractor shall disclose in writing all actual or potential Conflicts of Interest of the Contractor or any of its Key Persons related to such assignment.

All disclosures shall conform to CalPERS policy and or procedures relating to disclosure of Conflicts of Interest in effect during the term of such Agreement and shall be specific enough in detail to allow CalPERS to knowingly and intelligently analyze the actual or potential Conflict of Interest. Disclosures should be made to the CalPERS Deputy Executive Officer, Operations and Technology; General Counsel; and the Contract Manager.

A "Conflict of Interest" includes those circumstances that create or have the potential to create an actual or reasonably perceived conflict with the firm's and/or any Key Person's fiduciary duty of exclusive loyalty to CalPERS. A Conflict of Interest includes personal Conflicts of Interests of any Key Person or any Key Person's spouse, domestic partner, or dependent children.

In the event that Contractor or its Key Persons fails to disclose a Conflict of Interest and/or fails to receive a written waiver from CalPERS as required by this section, CalPERS, in its sole and absolute discretion, may penalize Contractor up to five percent (5%) of the total Agreement price.

Contractor acknowledges that the System is subject to the provisions of the Political Reform Act of California (Government Code Section 81000, et seq., and all regulations adopted thereunder, including, but not limited to, Title 2, California Code of Regulations, Section 18700) and Contractor shall comply promptly with any requirement thereunder. If required by law, Contractor shall require its Key Persons named and later all substitutions thereto to file Statements of Economic Interests in compliance with CalPERS Conflict of Interest Code (Title 2, California Code of Regulations, Section 560, et seq.).

Contractor acknowledges that if its Key Persons are required to file a Statement of Economic Interests, they are subject to the ethics training requirement found at Government Code Sections 11146 – 11146.4 that require new filers to satisfy the ethics training requirement within six (6) months of the commencement of the Agreement and at least once during each consecutive period of two (2) calendar years commencing on the first odd-numbered year thereafter.

9. Changes in Control, Organization or Key Personnel

Contractor shall promptly, and in any case within five (5) calendar days, notify CalPERS in writing: (i) if any of Contractor's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement; (ii) of any change in Contractor's staff who exercise a significant administrative, policy, or consulting role under this Agreement, including without limitation the Key Personnel; (iii) of any change in the majority ownership,

control, or business structure of Contractor; or (iv) of any other material change in Contractor's business, partnership or corporate organization. All written notices from Contractor under this provision shall contain sufficient information to permit CalPERS to evaluate the changes within Contractor's personnel or organization under the same criteria as was used by CalPERS in its award of this Agreement to Contractor. Contractor agrees to provide CalPERS with such additional information as CalPERS may request.

10. Indemnification

Contractor shall indemnify, defend and save harmless the State of California, CalPERS, the CalPERS Board of Administration, the California Public Employees' Retirement Fund, and all of the officers, trustees, agents and employees of the foregoing, from and against any and all losses, costs, liabilities, damages or deficiencies, including interest, penalties and attorneys' fees, which (i) arise out of or are due to a breach by Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement, or (ii) are caused by or resulting from Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement, or (iii) accrue or result to any of Contractor's subcontractors, materialmen, laborers or any other person, firm or corporation furnishing or supplying services, material or supplies in connection with the performance of this Agreement.

11. Limitation of Liability

- a) Contractor's liability for damages to CalPERS for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Total Purchase Order Amount including any change orders, for the applicable SOW as amended.
- b) The foregoing limitation of liability shall not apply (i) to liability under the General Provision in this Agreement entitled "Patent, Copyright, and Trade Secret Indemnity" 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 CalPERS for bodily injury to persons or damages to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that CalPERS becomes entitled to recover as a prevailing party in any action.
- c) CalPERS liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or tort, shall be limited to the Amount of Agreement. Nothing herein shall be construed to waive or limit CalPERS' sovereign immunity or any other immunity from suit provided by law.

- d) In no event will either Contractor or CalPERS 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 damage is specifically set forth in the Services to be Provided or (ii) to the extent that Contractor's liability for such damages arises out of SubSection 2)(i), 2)(ii), or 2)(iv) above.

12. Patent, Copyright and Trade Secret Indemnity

- a) Contractor shall indemnify, defend, and save harmless the State of California, CalPERS, the CalPERS Board of Administration, the California Public Employees' Retirement Fund, and all the officers, trustees, agents and employees of the foregoing, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State of California, CalPERS, the CalPERS Board of Administration, the California Public Employees' Retirement Fund, and all the officers, trustees, agents and employees of the foregoing, 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 of California, CalPERS, the CalPERS Board of Administration, the California Public Employees' Retirement Fund, and all the officers, trustees, agents and employees of the foregoing, 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 (C.12.a.). The provisions of the preceding sentence apply only to third party computer Hardware and Software sold as a distinct unit and accepted by CalPERS.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section (C.12.a.) will be conditional upon the following:

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

be withheld or delayed; and (iii) CalPERS will reasonably cooperate in the defense and in related settlement negotiations.

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

13. Rights in Work Product

- a) 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 of improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product") shall be Contractor's exclusive property. The provisions of this SubSection a) may be revised in a Statement of Work.
- b) 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 13 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
- c) CalPERS will have Government Purpose Rights to the Work Product as Deliverable or delivered to CalPERS 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 CalPERS for 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 diclose the Work Product for any commercial purpose.
- d) Any work products developed by the Contractor and designated confidential by CalPERS 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 CalPERS. The identification of all such confidential data and information, as well as CalPERS' procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by CalPERS in writing to the contractor.
- e) 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.

- f) This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

14. Insurance Requirements

Contractor warrants that it carries adequate liability, workers' compensation, and other necessary insurance and shall maintain such insurance at levels acceptable to CalPERS in full force and effect during the term of this Agreement. Contractor agrees to furnish satisfactory evidence of this insurance coverage to CalPERS upon request.

15. Contractor's Liability for Injury to Persons or Damage to Property

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of CalPERS, 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 CalPERS 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 CalPERS' 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.

16. Safety and Accident Prevention

In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the CalPERS 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.

17. Subcontractors

- a) Contractor shall perform the work contemplated with resources available within its own organization identified in Contractors proposal in response to RFP 2011-6339. No other portion of the work pertinent to this Agreement shall be subcontracted without written authorization by CalPERS. The subcontractor must be mutually agreed upon in advance by both parties.
- b) Contractor shall require any subcontractor to agree to be bound by all provisions of this Agreement as applicable.

18. Notice of Proceedings

Contractor shall promptly notify CalPERS in writing of any investigation, examination or other proceeding involving Contractor, or any Key Personnel, commenced by any regulatory agency which proceeding is not conducted in the ordinary course of Contractor's business.

19. Cumulative Remedies

The rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies which any party may otherwise have at law or in equity.

20. Binding Effect

This Agreement, any instrument or agreement executed pursuant to this Agreement, and the rights, covenants, conditions and obligations of Contractor and CalPERS contained therein, shall be binding upon the parties and their successors, assigns and legal representatives.

21. Gift and Political Contributions Disclosure

Contractor must comply with Government Code Section 20152.5, as it exists and as amended by the Legislature and implemented by the Board of Administration from time to time, concerning gift and campaign disclosure policies. The existing code Section is stated as follows:

“No matter involving any vendor or contractor in their individual or any other capacity shall be considered during a closed session on any transaction involving the system unless, prior to the closed session, a written disclosure has been submitted by the vendor or contractor of any campaign contributions aggregating two hundred fifty dollars (\$250) or more and any gifts aggregating fifty dollars (\$50) or more in value that the vendor or contractor has made during the preceding calendar year to any member of the board or any officer or employee of the system. Failure to disclose the campaign contributions and gifts shall provide the basis for disqualification of the contractor or the vendor.”

22. Business Continuity

- a) During the term of the contract, Contractor shall maintain a Business Continuity Plan (“Plan”) documenting disaster recovery and business resumption strategies and shall test it at least annually. The Plan shall provide at least the same level of safeguard as may be required by CalPERS from time to time, if any, otherwise at least the same level of safeguard as may be required for state agencies by State Administrative Manual Section 4843.1.
- b) Upon the occurrence of a disaster affecting the services provided pursuant to this Agreement or applicable statements of work, Contractor shall immediately implement appropriate elements of the Plan.

23. Additional Documents

Contractor and CalPERS agree to execute such additional documents, and perform such further acts, as may be reasonable and necessary to carry out the provisions of this Agreement.

D. NEGATIVE COVENANTS

1. Publicity

No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by Contractor without advance written approval by CalPERS.

2. Follow-On Contracts

Consistent with Public Contract Code section 10365.5, neither Contractor, nor any of its subsidiaries, may submit a bid or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed to be appropriate in the end product that Contractor provides under this Agreement.

E. REPRESENTATIONS AND WARRANTIES

1. Warranty

a) Unless otherwise specified in the Statement of Work, the warranties in this SubSection (a) begin upon acceptance of the Deliverables or service in question and end one (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionally required thereby. CalPERS approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

b) Contractor warrants that Deliverables furnished hereunder (i) will be free at the time of delivery, of harmful code (i.e., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to 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 CalPERS believes that harmful code may be present in any software delivered hereunder, Contractor will, upon CalPERS'

request, provide a master copy of the software for comparison and correction.

- 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 CalPERS, 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 CalPERS.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to CalPERS, its successors, assigns, customer agencies, and governmental users of the Deliverable or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, CalPERS' exclusive remedy and Contractor's sole obligation will be limited to:
 - (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - (ii) should CalPERS in its sole discretion consent, refund of all amounts paid by CalPERS for the nonconforming Deliverable or service and payment to CalPERS of any additional amounts necessary to equal CalPERS' 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."
- f) 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.

2. Agreement Does Not Violate Law

Neither the execution of this Agreement nor the acts contemplated hereby nor compliance by Contractor with any provisions hereof will:

- a) Violate any provision of the charter documents of the Contractor;

- b) Violate any statute or law or ordinance or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Contractor; or
- c) Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which Contractor may be bound, the violation of which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities or condition (financial or otherwise) of Contractor.

3. Statement of Compliance - Nondiscrimination

Contractor's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 (a-f) and Title 2, California Code of Regulations, Section 8103, et seq.

4. Americans with Disabilities Act

By signing this Agreement, Contractor assures CalPERS that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

5. National Labor Relations Board Certification

Contractor, by signature hereto, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board.

6. Due Organization

Contractor is duly organized, validly existing and in good standing under the laws of the State of its incorporation or organization.

7. Contractor's Power and Authority

Contractor represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution of this Agreement has been duly authorized by Contractor and no other proceeding on the part of Contractor is necessary to authorize this Agreement. Contractor has completed, obtained and performed all registrations, filings, approvals, authorizations, consents or examinations required by any government or governmental authority for its acts contemplated by this Agreement.

8. Drug-Free Workplace

Contractor hereby certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b) Establish a Drug-Free Awareness Program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The person's or organization's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and,
 4. Penalties that may be imposed upon employees for drug abuse violations.
- c) Every employee who works on the proposed Agreement will:
 1. Receive a copy of the company's drug-free policy statement; and,
 2. Agree to abide by the terms of the company's statements as a condition of employment on the Agreement.

CalPERS may terminate this Agreement if the Contractor fails to comply with these requirements.

9. Signature Authorization

The person signing this Agreement warrants that he/she is an agent of Contractor and is duly authorized to enter into this Agreement on behalf of Contractor.

10. Entire Agreement/Incorporated Documents/Order of Precedence

- a) This Agreement contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.
- b) This Agreement shall consist of the terms of this Agreement, and all attached documents which are expressly incorporated herein. In addition to those documents which are incorporated elsewhere in this Agreement,

the following documents are, by this reference, also incorporated herein: (i) RFP No. 2011-6339, dated May 18, 2012, including any amendments or clarification(s) issued by CalPERS (collectively "the RFP"); and (ii) Contractor's response to the RFP 2011-6339, dated July 3, 2012.

- c) In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used: (i) applicable laws; (ii) the terms and conditions of this Agreement, including attachments; (iii) the RFP, (iv) Contractor's response to the RFP, and (v) any other provisions, terms, or materials incorporated herein.

11. Complete Integration

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

12. Child Support Compliance Act

For any contract in excess of \$100,000, the contractor acknowledges in accordance therewith, that:

- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

13. Assignment of Antitrust Actions

Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a bid to CalPERS, the supplier offers and agrees that if the bid is accepted, it will assign to CalPERS all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of services by the supplier for sale to CalPERS pursuant to the solicitation. Such assignment shall be made and become effective at the time CalPERS tenders final payment to the supplier.

- b) If CalPERS receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from CalPERS any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by CalPERS as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (i) the assignee has not been injured thereby, or (ii) the assignee declines to file a court action for the cause of action.

14. Electronic Waste Recycling Act of 2003

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

15. Four-Digit Date Compliance

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to CalPERS. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

16. Sweatfree Code of Conduct

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

required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

17. Recycling

Contractor shall use, to the maximum extent economically feasible in the performance of the contract work, recycled products.

18. Expatriate Corporations

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

19. Domestic Partners

Commencing on July 1, 2004, Contractor certifies, for contracts in excess of \$100,000, that it is in compliance with PCC Section 10295.3 with regard to benefits for domestic partners.

20. Health Insurance Portability and Accountability Act Provisions

If applicable, Contractor shall be a Business Associate as that term is defined within and used throughout the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Regulations (Title 45 Code of Federal Regulations Parts 160 and 164). As a Business Associate, Contractor shall comply with the each of the privacy and health information protection provisions set forth in this section and any other applicable provisions of the HIPAA Privacy and Security Regulations and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA).

a) Use of Protected Health Information

In carrying out its responsibilities under this Agreement, Contractor shall not use and shall ensure that its directors, officers, employees, contractors and agents do not use Protected Health Information (PHI) received from CalPERS or any of its contracting health plans in any manner that would constitute a violation of the HIPAA Privacy and Security Regulations (Title 45 Code of Federal Regulations Parts 160 and 164) and the HITECH Act if used by CalPERS or any of its contracting health plans, except that Contractor may use PHI (a) for Contractor's proper management and administrative services; or (b) to carry out the legal responsibilities of Contractor.

b) Electronic Protected Health Information

Contractor agrees to carry out the requirements set forth by the Security Rule (Title 45 Code of Federal Regulations, Parts 160 and 164) of the

Health Insurance Portability and Accountability Act. EPHI is generally transmitted between CalPERS and Contractor by phone, fax, mailed written correspondence or mailed on password protected disk. **EPHI is not to be sent by email unless it meets the encryption standards of the HIPAA Security Rule** (Title 45 Code of Federal Regulations, Parts 160 and 164) and the HITECH Act. Laptops containing EPHI must be encrypted, as password and login protocol is not deemed adequate protection. Contractor shall ensure that its directors, officers, employees, contractors, and agents abide by HIPAA Security Rule standards (Title 45 Code of Federal Regulations, Parts 160 and 164) and applicable provisions of the HITECH Act.

c) Disclosure of Protected Health Information

Contractor shall not and shall ensure that its directors, officers, employees, contractors, and agents do not disclose PHI received from CalPERS or any of its contracting health plans in any manner that would constitute a violation of HIPAA and HITECH Act if disclosed by CalPERS or any of its contracting health plans, except that Contractor may disclose PHI in a manner permitted pursuant to this Agreement or as required by law. To the extent Contractor discloses PHI to a third party, Contractor must obtain, prior to making any such disclosure: (a) written approval from CalPERS and the relevant health plan for such disclosure; (b) reasonable assurances from the third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (c) an agreement from such third party to immediately notify Contractor of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

d) Safeguards Against Misuse of Information

Contractor agrees that it will implement all appropriate safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Section 20.

e) Reporting of Disclosures of Protected Health Information

In accordance with the requirements in Section 13402 of the ARRA, in the case of a breach, a contractor shall: (a) notify each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed; (b) notify CalPERS of such a breach, within four (4) calendar days of becoming aware of a disclosure of unsecured PHI in violation of this Agreement, and (c) provide any other notice that is required under Section 13402.

In any case in which there has been an unauthorized disclosure of PHI that does not rise to the level of a breach, as set forth in Section 13402 in the ARRA the Contractor shall, nevertheless report any such disclosure to

CalPERS and the relevant health plan within four (4) calendar days of becoming aware of such disclosure.

f) Duty to Mitigate

Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Section 20.

g) Agreements by Third Parties

Contractor shall enter into an agreement with any agent or subcontractor that will have access to PHI that is received from, or created or received by, Contractor on behalf of CalPERS or any of its contracting health plans pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to Contractor pursuant to this Agreement with respect to such PHI.

h) Access to Protected Health Information

Within five (5) calendar days of a request by CalPERS or any of its contracting health plans for access to PHI about an individual, Contractor shall make available to CalPERS, any of its contracting health plans, or, as directed by CalPERS, to an individual such PHI for so long as such information is maintained.

In the event any individual requests access to PHI directly from Contractor, Contractor shall within two (2) calendar days forward such request to CalPERS and the relevant health plan.

i) Availability of Protected Health Information for Amendment

Within ten (10) calendar days of receipt of a request from CalPERS, Contractor shall provide such information to CalPERS or the relevant health plan for amendment and incorporate any amendments in the PHI as directed or agreed to by CalPERS pursuant to 45 CFR Section 164.526.

j) Accounting for Disclosures

Within ten (10) calendar days of notice by CalPERS or any of its contracting health plans to Contractor that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Contractor shall make available to CalPERS or the relevant health plan such information as is in Contractor's possession and is required for CalPERS or the relevant health plan to make the accounting required by 45 CFR Section 164.528. At a minimum, Contractor shall provide

CalPERS or the relevant health plan with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

In the event the request for an accounting is delivered directly to Contractor, Contractor shall, within two (2) calendar days, forward such request to CalPERS and the relevant health plan. It shall be CalPERS' or the relevant health plan's responsibility to prepare and deliver any such accounting requested. Contractor hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section 20.

k) Availability of Books and Records

Contractor hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from CalPERS or any of its contracting health plans, or created or received by Contractor on behalf of CalPERS or any of its contracting health plans available to CalPERS, its contracting health plans, and to the Secretary of the Department of Health and Human Services (DHHS) for purposes of determining CalPERS', its contracting health plans' and Contractor's compliance with HIPAA.

l) Reporting Violations of Law

Contractor may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Section 164.502(j)(1).

m) Notice of Privacy Practices

CalPERS shall notify Contractor of any limitation(s) in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Contractor's use or disclosure of PHI.

n) Definitions

The terms used in this Section 20 shall be defined as they are defined in 45 CFR Parts 160 and 164 and the HITECH Act.

o) Term

The Term of this Section 20 shall be effective as of the term of this entire Agreement, and shall terminate when all of the PHI provided by CalPERS to Contractor, or created or received by Contractor on behalf of CalPERS, is destroyed or returned to CalPERS, in a manner that is acceptable to

CalPERS. Or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.

p) Amendment

Upon the enactment of any law or regulation affecting the use and/or disclosure of PHI, or the publication of any court decision relating to any such law, or the publication of any interpretive policy, opinion or guidance of any governmental agency charged with the enforcement of any such law or regulation, CalPERS may, by written notice to Contractor, amend this Agreement to comply with such law or regulation. If Contractor agrees with any such amendment, it shall so notify CalPERS in writing within thirty (30) calendar days of this notice. If the parties are unable to agree on an amendment within thirty (30) calendar days thereafter, CalPERS may terminate this Agreement on ten (10) calendar days written notice to Contractor.

q) Breach

Without limiting the rights of the parties pursuant to this Agreement, if Contractor breaches its obligations under this Section 20, CalPERS may, at its option: (a) exercise any of its rights of access and inspection under subsection K of this Section 20 of this Agreement; (b) require Contractor to submit to a plan of monitoring and reporting, as CalPERS may determine necessary to maintain compliance with this Agreement and such plan shall be made part of this Agreement; or (c) notwithstanding any other provisions of this Agreement, terminate this Agreement, with or without opportunity to cure the breach.

CalPERS' remedies under this Section 20 and any other part of this Agreement or provision of law shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other.

r) Procedure Upon Termination

Upon termination of this Agreement, Contractor shall return or destroy all PHI that it maintains in any form and shall retain no copies of such information or, if the parties agree that return or destruction is not feasible, Contractor shall continue to extend the protections of this Agreement to such information and limit further use of the information to those purposes that make the return or destruction of the information not feasible for so long as Contractor maintains such PHI. This provision shall apply to PHI that is in the possession of any subcontractors or agents of Contractor.

s) Survival

The respective rights and obligations of Contractor under Section 20 of this Agreement shall survive the termination of this Agreement.

t) Interpretation

Any ambiguity in this Agreement shall be resolved to permit CalPERS to comply with the HIPAA Privacy Regulations (Title 45 Code of Federal Regulations, Parts 160 and 164) and the HITECH Act.

21. Contract Related Disclosure Requirements

Contractor agrees it will be bound by and comply with the terms of title 2, California Code of Regulations (CCR) section 559.1, Required Contract-Related Disclosures ("Disclosure Requirements") effective May 8, 2012 during the term of this Agreement, and that Contractor will cooperate with CalPERS staff to meet Contractor's obligations under these Disclosure Requirements.

22. Disclosure Requirements

Contractor acknowledges receipt of a copy of CCR section 559.1, (attached hereto as Attachment C), which imposes certain disclosure requirements described therein. Contractor represents and warrants it has provided CalPERS with the Contract-Related Disclosure Form PERS01A0068, as described at CCR section 559.1, subdivision (b)(4) (attached hereto as Attachment C), including all disclosures required by CCR section 559.1, prior to the date hereof and that all information disclosed is true, correct and complete as of the date hereof. If Contractor determines at any time subsequent to filing Form PERS01A0068 that the information disclosed has become inaccurate, untrue, incomplete or misleading, Contractor will notify CalPERS and provide CalPERS with an updated Form PERS01A0068 within fourteen (14) calendar days of the date that Contractor knew or should have known of such defect in the information.

23. No Benefit from Recommendations

Contractor shall not directly or indirectly receive any benefit from recommendations made to CalPERS and shall disclose to CalPERS any personal investment or economic interest of Contractor which may be enhanced by the recommendations made to CalPERS.

Consistent with Public Contract Code Section 10365.5, neither Contractor, nor any of its subsidiaries, may submit a bid or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed to be appropriate in the end product that Contractor provides under this Agreement.

F. STOP WORK

1. CalPERS 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 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree, The stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after the Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, CalPERS shall either:
 - a) Cancel the Stop Work Order; or
 - b) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
2. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. CalPERS shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - a) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance or any part of this Contract; and
 - b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if CalPERS decides the facts justify the action, CalPERS may receive and act upon a proposal submitted at any time before final payment under this Contract.
3. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience, CalPERS shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
4. CalPERS shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

G. TERMINATION

1. Termination at Option of CalPERS
This Agreement or any SOW or purchase order issued pursuant to this Agreement may be terminated in whole or in part by CalPERS at its option at any time upon ten (10) days written notice to Contractor.

In the event CalPERS terminates all or a portion of this Agreement or any SOW or purchase order issued pursuant to this Agreement, CalPERS shall within a reasonable time thereafter pay Contractor for satisfactory services performed in accordance with this Agreement prior to the termination at the rates specified in the Agreement. CalPERS obligation to pay Contractor for services performed in such a case shall reflect Contractor's direct costs, overhead, and profit on the services satisfactorily performed in accordance with this Agreement prior to the termination and reasonable costs of demobilization (wind down) and Contract closeout to the extent not already included in Contractor's direct costs, overhead, and profit.

2. Ancillary Issues Relating to Termination at CalPERS Option

- a) In case CalPERS notifies Contractor of a termination of the Agreement at CalPERS option in whole or in part, Contractor shall use its best efforts to discontinue all services affected by the notice as soon as reasonably possible, and shall in all events discontinue all services affected by the notice no later than ten (10) days after receiving the notice, unless the notice specifies that Contractor shall stop work sooner. In addition, Contractor shall:
 - (i) Place no further subcontracts for materials, services, or facilities except as necessary to complete the continuing portion of the Agreement (if any);
 - (ii) Terminate all subcontracts to the extent they relate to the work terminated; and,
 - (iii) Settle all outstanding liabilities and resolve all termination settlement proposals arising from the termination of subcontracts.
- b) In case CalPERS terminates this Agreement in whole, and promptly after CalPERS pays Contractor all amounts due under this Agreement, CalPERS and Contractor shall execute mutual general releases and covenants not to sue; provided, however, that the CalPERS release and covenant may exclude claims for return or destruction of any CalPERS documents that Contractor had not returned or destroyed at the time the CalPERS release and covenant was executed.
- c) CalPERS shall not characterize any termination of the Agreement at CalPERS option as a termination for cause or default by Contractor.

3. Termination for Default

- a) CalPERS may, by two (2) calendar days written notice to Contractor, and without prejudice to any other of CalPERS remedies, terminate this Agreement because:

- (i) Contractor fails to fulfill its obligations under the Agreement;
 - (ii) Contractor fails to cure an inaccuracy or omission in Contractor's disclosure obligations under CCR section 559.1, Disclosure Requirements, as required and within the timeframe described in Section 22 of this Agreement pursuant to section 559.1, subdivision (c),
 - (iii) CalPERS determines that Contractor's disclosures under CCR section 559.1 contain a material inaccuracy or omission the Contractor knew or should have known existed, or
 - (iv) Contractor fails to comply with CCR section 559.1 in any other way.
- b) Upon receipt of any notice terminating this Agreement, Contractor shall immediately discontinue all services affected unless the notice directs otherwise. In such event, CalPERS shall pay Contractor at the rates specified by this Agreement for all services rendered prior to the effective date of termination. At CalPERS sole discretion, CalPERS may offer an opportunity to cure any breach(s) prior to terminating this Agreement for a breach.

4. Remedies in Case of Contractor Default

- a) CalPERS shall have all rights afforded by law in case of Contractor default, including but not limited to:
- (i) Termination of this Agreement;
 - (ii) Reformation of this Agreement to lower the price, so as to reflect the value of services actually rendered, in case CalPERS elects to accept services that do not fully meet the requirements of this Agreement;
 - (iii) Recovery of CalPERS damages caused by Contractor delay or non-performance;
 - (iv) Any liquidated damages specified in this Agreement regardless of whether CalPERS terminates the Agreement for default; and,
 - (v) Specific performance of particular covenants made by Contractor hereunder.

All remedies of CalPERS under this Agreement for Contractor default are cumulative to the extent permitted by law.

- b) In the event CalPERS terminates all or a portion of this Agreement for default by Contractor, CalPERS shall pay Contractor the lesser of

- (i) the actual value to CalPERS of services satisfactorily performed in accordance with the Agreement prior to the effective date of the termination; and,
 - (ii) Contractor's documented direct costs for supplies and labor associated with the performance, plus a reasonable allocation of overhead, but not including any profit.
- c) In the event of a termination for Contractor's default, CalPERS reserves the right to take over and complete the work by contract or other means. In such case, one element of CalPERS recoverable damages shall be any additional cost above the Agreement price incurred by CalPERS to complete the work.
- d) In case CalPERS incurs damages arising out of Contractor default, CalPERS may recover the damages by setting them off against amounts it owes Contractor under this Agreement. CalPERS may exercise its right of off set whether or not CalPERS elects to terminate this Agreement for Contractor default. In case CalPERS elects to terminate this Agreement for Contractor default and CalPERS owes a payment to Contractor under Subsection B of this Section, CalPERS may off set its damages against the payment owing to Contractor.

5. Ancillary Issues Relating to Contractor Default

- a) If CalPERS determines, based on reliable information, that there is a substantial probability that:
 - (i) Contractor will be financially unable to continue performance under this Agreement; or
 - (ii) Contractor will be in material breach of this Agreement in the next thirty (30) days.

CalPERS shall have the option to demand that Contractor provide CalPERS with a reasonable assurance of performance. Upon Contractor's receipt of such a demand from CalPERS, Contractor shall provide to CalPERS a reasonable assurance of performance responsive to CalPERS demand. If Contractor fails to provide such an assurance within ten (10) days of CalPERS demand, the failure shall constitute a breach by Contractor justifying termination of the Agreement by CalPERS.

- b) In case CalPERS elects to terminate this Agreement in whole or in part for Contractor's default, CalPERS shall give Contractor ten (10) days written notice of termination for default, specifying the default or defaults justifying the termination. The termination shall become effective after the expiration of such ten (10) day period if the defaults specified by CalPERS in its notice remain uncured at that time.
- c) In case Contractor is working on CalPERS premises or has access to CalPERS computer systems at the time CalPERS issues a notice of termination for default, CalPERS reserves the right to bar Contractor from further access to CalPERS premises or computer systems immediately upon issuance of the notice. If Contractor is so barred but nevertheless reasonably believes that it can cure the default alleged by CalPERS within ten (10) days if CalPERS provides documentation and assistance to Contractor, then CalPERS shall offer Contractor such reasonable cooperation, so as to afford Contractor a reasonable opportunity to cure the defaults alleged by CalPERS before the termination becomes effective. In addition, the ten (10) day period allowed for Contractor to attempt to cure the defaults alleged by CalPERS shall be reasonably extended to take into account the impact of Contractor's not having access to CalPERS premises and computer systems.
- d) CalPERS shall be entitled to retain any amounts that CalPERS has properly withheld from invoices rendered by Contractor until final resolution of all claims by the parties against each other arising out of any Contractor default alleged by CalPERS.

6. Contractor Insolvency

Contractor shall notify CalPERS immediately in writing in the event that Contractor files any federal bankruptcy action or state receivership action, any federal bankruptcy or state receivership action is commenced against Contractor, Contractor is adjudicated bankrupt, or a receiver is appointed and qualifies. In case any of the foregoing events occurs, CalPERS may terminate this Agreement upon five (5) days written notice. If CalPERS does so, CalPERS shall have the right to recover damages from Contractor as though the Agreement had been terminated for Contractor default, and CalPERS shall pay Contractor for satisfactory services rendered on the same basis that would apply under this Agreement in case of a termination by CalPERS for Contractor's default.

7. Legal Challenges to the Basis of Termination by CalPERS

If any termination of this Agreement by CalPERS for Contractor's default is judicially determined to have been at CalPERS option and not for Contractor's default, then CalPERS shall have no right to recover from Contractor any damages arising out of the termination, and CalPERS shall pay Contractor for

satisfactory services rendered on the basis called for under this Agreement in case of a termination of the Agreement at CalPERS option.

8. Effect of Termination

All duties and obligations of CalPERS and Contractor shall cease upon termination of this Agreement, except that:

- a) Each party shall remain liable for any rights, obligations, or liabilities arising from activities carried on by it under this Agreement prior to the effective date of termination.
- b) Any Information Assets furnished, and all copies thereof, will be returned promptly to the Disclosing Party or destroyed using reasonable measures to protect against unauthorized access to or use of the information in connection with its destruction, following the earlier of
 - (i) the termination of this Agreement,
 - (ii) receipt of a written request to return or destroy the Information Assets, or
 - (iii) the termination of the business relationship between the Parties.

If both Parties agree that return or destruction of the Information Assets is not feasible, the Receiving Party will continue to extend the protections outlined herein to all Information Assets in its possession and will limit further use of that information to those purposes that make the return or destruction of the Information Assets not feasible. CalPERS reserves the right to inspect the storage, processes, and destruction of any Information Assets provided under this Agreement.

- c) Contractor shall cooperate fully to effect an orderly transfer of services to CalPERS or another contractor if requested by CalPERS.

LIST OF APPROVED VERTICALS, SUB-VERTICALS AND CLASSIFICATIONS

The service verticals and sub-verticals for this contract are as follows:

1.0 Project Oversight Services

Senior Technical Specialist / Lead
Technical Specialist
Senior Business Analyst
Business Analyst
Senior Systems Analyst
Systems Analyst

2.0 Project Management Services

Senior Project Manager
Project Manager
Senior Technical Specialist / Lead
Technical Specialist
Senior Business Analyst
Business Analyst
Senior Systems Analyst
Systems Analyst



CalPERS Contract-Related Disclosure Form
*(To be used if Contractor is not required to file a
Placement Agent Information Disclosure Form (2 CCR § 559))*

This form is to be used for all Contract-Related Disclosures, including Proposals.
Please refer to title 2 California Code Regulations section 559.1 (b)(1) through (b)(3),
prior to completing this form.

Solicitation or Contract Number: 2012-6581

a. Proposer or Contractor Name:

Level 4 Press, Inc; dba Level 4 Ventures, Inc.

b. Name of Individual Authorized to bind the Proposer or Contractor:

William Roetzheim

c. Contact Person (if different than above):

d. E-mail Address:

william@level4ventures.com

e. Phone No:

(619) 917-4917

f. Name of CalPERS Contact (if applicable):

Have you, your firm or your firm's principals, employees, agents, or affiliates compensated or agreed to compensate, directly or indirectly, any Agent as defined in section 559.1(a)(1) (whether or not employed by you) or any entity to act as Agent in connection with this Solicitation or Contract? (§559.1 (b)(1))

Yes. No.

If you checked Yes, please respond to questions 1 through 5 below, and sign and date the Form on the final page.

If you checked No, please respond to question 5 below, and sign and date this Form on the final page.

1. Please list the names and relationships for each Agent in connection with the CalPERS Solicitation or Contract, including a description of the relationship with the Proposer or Contractor. (Add an additional page if necessary.) Please check the box to the left if the Agent is a current or former CalPERS Board Member, Staff Member, consultant, or has a Familial Relationship with any such individual.

	Name	Relationship
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		

2. Please attach a copy of all contracts, agreements, or other documents memorializing the relationship between the Proposer or Contractor and the Agent. When an *entity* is retained as an Agent, please also include the requested information for any officer, director, or employee actively providing Agent services with regard to CalPERS or receiving more than 15% of the Agent fees.
3. Provide a description of any financial or Familial Relationship(s) between the Agent and a Board Member or Staff Member, including the names of the Board Member(s) and/or Staff Members:

4. Describe any Things of Value given or offered by the Agent to a Board Member or Staff Member during the twelve (12) months preceding the date the Contract-Related Disclosure Form is due.

5. Describe any Things of Value given or offered by the Proposer or Contractor to a Board Member or Staff Member during the twelve (12) months preceding the date the Contract-Related Disclosure Form is due.

None

By executing this form the undersigned represents and warrants the information set forth herein is true and correct. The undersigned agrees to update this information within 14 calendar days of the date Proposer or Contractor knows or reasonably should have known of any defect or changes to this information.

The Contract-Related Disclosure Form and attachments shall be a public record subject to disclosure under the California Public Records Act. No confidentiality restrictions shall be placed on information submitted by the Proposer or Contractor.

The undersigned represents and agrees it shall make a representation and warranty as to the continuing accuracy of this information in any final written agreement between it and CalPERS.

I, the official named below, acknowledge and declare I have read and understand CCR section 559.1, and that the above-named firm has provided information required by section 559.1 and this Form. I am duly authorized to make this declaration on behalf of the above-named firm, and declare the foregoing is true and correct as of the date of execution of this document. I further acknowledge my firm's responsibility to provide updates in the event this information is determined to be incorrect or has changed.



Authorized Signature

William Roetzheim, CEO

Name and Title

PERS01A0068
(5/2012)

11/14/2012

Date