

SPECIAL TERMS AND CONDITIONS (STC: 11-2014)

1. Settlement of Disputes

- A. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by Agreement shall be decided by the Caltrans Contract Officer, who may consider any written or verbal evidence submitted by the Contractor. The decision of the Caltrans Contract Officer, issued in writing, shall be Caltrans' final decision on the dispute.
- B. Neither the pendency of a dispute nor its consideration by the Caltrans Contract Officer will excuse the Contractor from full and timely performance in accordance with the terms of the Agreement.

2. Termination

- A. If, after award and execution of the Agreement, the Contractor's performance is unsatisfactory, the Agreement may be terminated for default. Additionally, the Contractor may be liable to Caltrans for damages including the difference between the Contractor's original bid price and the actual cost of performing the work by another Contractor. Default is defined as the Contractor failing to perform services required by the Agreement in a satisfactory manner.
- B. Caltrans reserves the right to terminate this Agreement without cause upon thirty (30) days written notice to the Contractor or immediately in the event of default or material breach by the Contractor.
- C. The State may terminate this Agreement immediately for good cause. The term "good cause" may be defined as "impossibility of performance" or "frustration of purpose," but does not include material breach, default, or termination without cause. In this instance, the Agreement termination shall be effective as of the date indicated on the State's notification to the Contractor.
- D. In the event that the total Agreement amount is expended prior to the expiration date, Caltrans may, at its discretion, terminate this Agreement with 30 days notice to Contractor.

3. Retention of Records/Audits

For the purpose of determining compliance with Government Code Section 8546.7, the Contractor and Subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. Caltrans, the State Auditor, Federal Highway Administration (FHWA), or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to Contractor's books, records, and documents that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

4. Subcontractors

The Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted.

5. Disabled Veterans Business Enterprise (DVBE) Participation (Without Goals)

Caltrans has established no goals for the DVBE participation for this Agreement. However, the Contractor shall be fully informed respecting the California Public Contract Code Section 10115 *et seq.*, which is incorporated by reference. Contractor is urged to obtain DVBE Subcontractor participation should clearly defined portions of the work become available.

6. Laws to be Observed

The Contractor shall keep fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Contractor shall at all times observe and comply with, and shall cause all agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the work. The Contractor shall protect and indemnify the State of California and all officers and employees thereof connected with the work against any claim, injury, or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether

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by the Contractor, its Subcontractor(s), or an employee(s). If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or Agreement for the work in relation to any such law, ordinance, regulation, order, or decree, the Contractor shall immediately report the same to the Caltrans Contract Manager in writing.

7. Specific Statutory Reference

Any reference to certain statutes in this Agreement shall not relieve the Contractor from the responsibility of complying with all other statutes applicable to the service, work, or rental to be furnished thereunder.

8. Equipment Indemnification

- A. The Contractor shall indemnify Caltrans for any claims against Caltrans for loss or damage to the Contractor's property or equipment during its use under this Agreement and shall at the Contractor's own expense maintain such fire, theft, liability or other insurance as deemed necessary for this protection. The Contractor assumes all responsibility which may be imposed by law for property damage or personal injuries caused by defective equipment furnished under this Agreement or by operations of the Contractor or the Contractor's employees under this Agreement.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this clause.

9. Force Majeure

Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure." As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of God such as earthquakes, floods, and other natural disasters such that performance is impossible.

10. Employment of Undocumented Workers

By signing this Agreement, the Contractor swears or affirms that it has not, in the preceding five years, been convicted of violating a State or Federal law relative to the employment of undocumented workers.

11. Insurance -- General Requirements

- A. Deductible: Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
- B. Coverage Term: Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the Caltrans Contract Manager at least ten (10) days prior to the expiration of the insurance. Any new insurance must continue to comply with the original terms of this Agreement.
- C. Policy Cancellation or Termination and Notice of Non-Renewal: Contractor shall provide, to the Caltrans Contract Manager within five (5) business days, following receipt by Contractor, a copy of any cancellation or non-renewal of insurance required by this Agreement. In the event Contractor fails to keep, in effect at all times, the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- D. Primary Clause: Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.
- E. Inadequate Insurance: Inadequate or lack of insurance does not negate the Contractor's obligations under this Agreement.
- F. Endorsements: Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- G. Insurance Carrier Required Rating: All insurance companies must carry a rating acceptable to the Department of General Services, Office of Risk and Insurance Management (ORIM). If the Contractor is self insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. Department of General Services, ORIM Website: <http://www.dgs.ca.gov/orim/home.aspx>
- H. Contractor shall include all of its subcontractors as insured's under Contractor's insurance or supply evidence of insurance to the State equal to the policies, coverage's and limits required of Contractor.
- I. The State will not be responsible for any premiums or assessments on the policy.

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12. Insurance Requirements

A. Commercial General Liability

- 1) Contractor shall maintain general liability for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must include:
Caltrans, State of California, its officers, agents, employees and servants are included as additional insured but only with respect to work performed under this Agreement.
- 2) This endorsement must be supplied under form acceptable to the Department of General Services, Office of Risk and Insurance Management.

B. Workers' Compensation and Employer's Liability

Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. When work is performed on State owned or controlled property the workers' compensation policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided to the Caltrans Contract Manager.

C. Pollution Liability (if applicable to the work performed)

Contractor shall maintain Pollution Liability covering the Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

13. Licenses and Permits

- A. The Contractor shall be properly licensed in accordance with the laws of the State of California and shall possess an active license issued by the California Contractors State Licensing Board (CSLB) that is appropriate for the work being performed.
- B. The Contractor shall be an individual or firm licensed to do business in California and shall obtain at its expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.
- C. If Contractor is located within the State of California, the Contractor must have a business license from the city/county in which it is headquartered, however, if Contractor is a corporation, a copy of its incorporation documents/letter from the Secretary of State's Office may substitute for a business license. If Contractor is located outside the State of California, Contractor must provide a current copy of its business license or incorporation papers for its State of residence showing that the Contractor is in good standing with their State to Caltrans.
- D. In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, Contractor agrees to provide Caltrans a copy of the renewed license(s) and/or permit(s) within 30 days following the expiration date. In the event the Contractor fails to keep in effect at all times all required license(s) and permit(s), Caltrans may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

14. Licensed Contractor Standards for Quality of Work

- A. Licensed Contractors must observe professional standards for quality of work or the California Contractors State License Board (CSLB) will invoke disciplinary action.
- B. Notice is hereby given that certain actions by a Contractor, including, but not limited to the following, constitute grounds for disciplinary action by the CSLB once Caltrans has notified the license board of all violations:
 - 1) A willful departure from plans and specifications or disregard of trade standards for good and workmanlike construction in any material respect that might prejudice Caltrans, owner of the property upon which you perform work (Bus. & Prof. Code, 7109).
 - 2) The failure to observe and comply with all of the applicable labor laws (Bus. & Prof. Code 7110).

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- 3) Material failure to complete this Agreement (Bus. & Prof. Code 7113).
- C. Should Caltrans determine that the work or materials provided vary materially from the specifications, or, that defective work when completed was not performed in a workmanlike manner, then the Contractor warrants that it shall perform all necessary repairs, replacement and corrections needed to restore the property according to the Agreement plans and specifications, all at no further or additional cost to Caltrans.

15. Prohibition of Delinquent Taxpayers

Public Contract Code (PCC) Section 10295.4 prohibits the State from entering into an Agreement for goods or services with any taxpayer, whose name appears on either list maintained by the State Board of Equalization or the Franchise Tax Board pursuant to Revenue Taxation Code sections 7063 and 19195, respectively, of the 500 largest tax delinquencies. PCC Section 10295.4 provides no exceptions to these prohibitions.

16. Debarment and Suspension Certification

- A. The Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
 - 1) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - 2) has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - 3) does not have a proposed debarment pending; and
 - 4) has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to Caltrans. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

17. Interfacing with Pedestrian Vehicular Traffic

Pursuant to the authority contained in the Vehicle Code (VC), Section 591, Caltrans has determined that within such areas as are within the limits of the project and are open to public traffic, the Contractor shall comply with all of the requirements set forth in the Vehicular Code, Divisions 11, 12, 13, 14 and 15. The Contractor shall take all necessary precautions for safe operations of the Contractor's equipment and the protection of the public from injury and damage from such property.

18. Motor Carrier Permit Requirements (If applicable)

- A. Contractor must have a valid Motor Carrier Permit(s) (MCP) issued from the Department of Motor Vehicles (DMV) for its services as a Motor Carrier of Property under this Agreement. Contractor shall pay any required fees necessary to obtain and maintain in good standing the required MCP(s).
- B. The MCP(s) required for the Contractor's Motor Carriers of Property under Cal. Vehicle Code sections 34601 and 34620 shall be on file with the Contractor for the duration of this Agreement. Upon request of the Caltrans Contract Manager or his/her designee, the Contractor must immediately provide to Caltrans a copy of the required MCP(s).

19. Contractor's Reports and/or Meetings

When reports and/or meetings are required as part of this Agreement, the following shall apply:

- A. The Contractor shall submit progress reports at least once a month to allow the Contract Manager to determine if the Contractor is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so that remedies can be developed.
- B. The Contractor shall meet with the Contract Manager as needed to discuss progress on the Agreement.
- C. Prior to completion of the Agreement, the Contractor shall hold a final meeting with the Contract Manager to present findings, conclusions and recommendations and shall submit a comprehensive final report on the project.

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- D. Any document or written report prepared as a requirement of this Contract shall contain, in a separate section preceding the main body of the document, a list of all Contracts and subcontracts (including dollar amounts) relating to the preparation of those documents or reports if the combined costs for work by non-employees of the Contractor exceed \$5,000.

20. Publication - Part A:

Publication Part A is to this Agreement when a Publishable Report is a part of this Agreement.

- A. The Contractor shall not copyright any deliverable(s) developed and funded under this Agreement.
- B. The Contractor shall have the right to publish any and all information, conclusions and developments (except that which is designated as **CONFIDENTIAL** by the State) resulting from work conducted under this Agreement.
- C. Any publication by Contractor shall give proper credit to the State. All publications shall bear an appropriate inscription acknowledging the State's copyright ownership to the Work and Deliverable(s) (including but not limited to, all reports, design materials, advertisements, training materials, writings, articles, computer programs, inventions and any documentation related to the Agreement) consisting of a "c" in a circle followed by the four-digit year in which the Work or Deliverable was produced, followed by the words "California Department of Transportation. All rights reserved."
- D. The Contractor shall submit to the State any materials released for publication simultaneously with submission to the publisher for the purpose of comment and review by the State with respect to the presence of patentable, confidential and/or proprietary subject matter within the materials released for publication.
- E. The State will take all reasonable steps to have United States Patent Applications, or other appropriate protection of intellectual property, filed prior to the time the information, conclusions or developments are published or otherwise made available to the public.
- F. The Contractor agrees to keep confidential any proprietary information supplied to it by the State during the course of the Agreement and designated in writing as "**CONFIDENTIAL**". Such information will not be included in any published material without the prior written approval of the parties.
- G. All publications shall contain the following disclaimer in a separate section preceding the main body of the document:

"The contents of this report reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State of California or the Federal Highway Administration. This publication does not constitute a standard, specification or regulation."

21. Publication - Part B: Publications Part B is applicable to this Agreement when materials, written products, or documents other than "publishable reports" are part of this Agreement.

- A. The Contractor shall not copyright the training course materials or written report developed and funded from this Agreement.
- B. The training course materials/written product/report funded from this agreement shall become the property of the State, and all publication use rights are reserved to the State.
- C. The written product or title pages of the report/course outline shall bear an appropriate description acknowledging the source of funds used to produce the report/document/ training course and materials.
- D. The course outline/written product/report shall contain the following disclaimer in a separate section preceding the main body of the document:

"The contents of this training course/documentation/report reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State of California or the Federal Highway Administration. This course outline/document/report does not constitute a standard, specification, or regulation."

22. Confidentiality of Data

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- A. All financial, statistical, personal, technical, or other data and information relative to Caltrans' operations, which is designated confidential by Caltrans and made available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing held by Caltrans relating to this Agreement shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- C. The Contractor shall not comment publicly to the press or any other media regarding this Agreement or Caltrans' actions on the same, except to Caltrans' staff, Contractor's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- D. The Contractor shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by Caltrans and receipt of Caltrans' written permission.
- E. All information related to the construction estimate is confidential and shall not be disclosed by the Contractor to any entity, other than Caltrans.
- F. Any subcontract, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

23. State-Owned Data - Integrity and Security

- A. Contractor shall comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:
 - 1. Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect Caltrans data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.
Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
 - 2. Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.
 - 3. Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
 - 4. Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
 - 5. Notify the Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
 - 6. Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.
- B. Contractor shall use the State-owned data only for State purposes under this Agreement.
- C. Contractor shall not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) section 5335.1)

24. Retention of Records/Audits

For the purpose of determining compliance with GC Section 8546.7, the Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The State, the State Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

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25. Ownership of Proprietary Property:

For the purposes of this section (**Ownership of Proprietary Property**) of **this Agreement** (herein after referred to as “this Agreement”) the following definitions shall apply:

Work: As delineated in the Agreement and any referenced attachments.

Work Product: As defined as Deliverable in the Agreement and any referenced attachments including but not limited to, all Work and Deliverables conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six (6) months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. “Work Product” includes all deliverables, inventions, innovations, improvements, or other works of authorship Contractor may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret, or other legal protection.

Inventions: Any idea, methodologies, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Contractor or jointly with the Contractor’s subcontractor and/or the Contractor’s subcontractor’s employee’s with one or more employees of Caltrans, during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

26. Ownership of Work Product and Rights:

A. Ownership of Work Product: Except in regard to Pre-existing Works, all Work Product derived by the Work Performed by the Contractor, its employees or by any of the Contractor’s Subcontractor’s employees under this Agreement, shall be owned by Caltrans and shall be considered to be works made for hire by the Contractor’s Subcontractor for Caltrans. Caltrans shall own all United States and international copyrights in the Work Product.

As such, all Work Product shall contain, in a conspicuous place, a copyright designation consisting of a “c” in a circle followed by the four-digit year in which the Work Product was produced, followed by the words “California Department of Transportation.” For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California Department of Transportation.

B. Vesting of Copyright Rights: Contractor, its employees or any of Contractor’s subcontractor’s employees agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to Caltrans, its successors and assigns, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Contractor’s subcontractor from Caltrans. From time to time upon Caltrans request, the Contractor’s subcontractor and/or its employees shall confirm such assignments by execution and delivery of such assignments, confirmations or assignment, or other written instruments as Caltrans may request. Caltrans, its successors and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for Work Product. Contractor hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.

27. Inventions:

A. Vesting of Patent Rights: The Contractor, its employees and any Contractor’s Subcontractor hereby agrees to assign to Caltrans, its successors, and assigns, all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority there under, and the same shall become and remain Caltrans’ property regardless of whether such protection is sought. The Contractor, its employees and Contractor’s Subcontractor shall promptly make a complete written disclosure to Caltrans of each invention not otherwise clearly disclosed to Caltrans in the pertinent Work Product, specifically pointing out features or concepts that the Contractor, its employees and Contractor’s Subcontractor believes to be new or different. The Contractor, its employees and Contractor’s Subcontractor shall, upon Caltrans’ request and at Caltrans’ expense, cause patent applications to be filed thereon, through solicitors designated by Caltrans, and shall sign all such applications over to Caltrans, its successors, and assigns. The Contractor, its employees and Contractor’s

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Subcontractor shall give Caltrans and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as Caltrans may consider necessary or appropriate to carry out the intent on this Agreement.

- B. **Agency:** In the event that Caltrans is unable for any reason whatsoever to secure the Contractor's, its employees' and/or Contractor's Subcontractor's signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), Contractor, its employees and Contractor's Subcontractor hereby irrevocably designates and appoints Caltrans and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on Contractor, its employees and Contractor's Subcontractor's behalf and stead, to execute and file such applications and to do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks or patents thereon with the same legal force and effect as if executed by Contractor, its employees and/or Contractor's Subcontractor. Caltrans shall have no obligations to file any copyright, trademark or patent applications.
- C. **Avoidance of Infringement:** In performing services under this Agreement, Contractor and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor or its employees becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor or its employees shall immediately notify Caltrans in writing.
- D. **Pre-Existing Works and License:** Contractor acknowledges that all Work Product shall be the sole and exclusive property of Caltrans, except that any pre-existing works created by Contractor and third parties outside of the Agreement but utilized in connection with the Agreement (the "Pre-existing Works") shall continue to be owned by Contractor or such parties. Contractor agrees to notify Caltrans in writing of any Pre-existing Works used in connection with any Work Product produced under this Agreement and hereby grants to Caltrans a non-exclusive, perpetual, royalty free license to utilize the Pre-existing Works in connection with the Work Product.
28. **Subcontractors:** Contractor shall affirmatively bind by contract any of its subcontractors or service vendors (hereinafter "Contractor's Subcontractor") providing services under this Agreement to conform to the provisions of these Special Terms and Conditions. Contractor's Subcontractor shall then provide the signed contract to the Contractor, who shall provide it to the Caltrans Contract Manager prior to the commencement of any work. In performing services under this Agreement, Contractor's Subcontractor agrees to avoid designing or developing any items that infringe on or more patents or other intellectual property rights of any third party. If contractor's Subcontractor becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor's Subcontractor shall immediately notify the Contractor in writing, Contractor will then immediately notify Caltrans in writing.
29. **Confidentiality and Information:** Caltrans may provide its own intellectual property, confidential business and technical information to the Contractor in connection with the work to be performed by the Contractor under this Agreement. Such intellectual property and information shall be designated as confidential upon or prior to disclosure by Caltrans. In addition, the preparation and specifications of the deliverables shall in all instances be treated as confidential, unless and until disclosed publically by Caltrans. All confidential written materials shall be marked with the legend "California Department of Transportation-Confidential." The Contractor shall use its best efforts to prohibit any use or disclosure of Caltrans' confidential information, except as necessary to perform work under this Agreement. In the event that Contractor is an entity or otherwise will be causing individuals in its employ or under its supervision to participate in the rendering of the work, Contractor warrants that it shall cause each of such individuals to execute a Confidentiality Agreement.