



REQUEST FOR PROPOSALS

NEXT GENERATION COMMUNITY TRANSPORTATION BENEFITS PROGRAM MANAGEMENT PLATFORM FOR THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY

Date Released: October 7, 2024

San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA)
555 County Center, 5th Floor, Redwood City, CA 94063

Closing Date/Time for Requests for Clarifications:
Friday, October 18, 2024, at 4:00 P.M. PDT

Proposals are due prior to Friday, November 8, 2024, at 12:00 P.M. Noon PST

Late proposals will not be considered.

STRUCTURE AND LIST OF SOLICITATION DOCUMENTATION

Request for Proposals
Next Generation (Next Gen) Community Transportation Benefits Program Management
Platform for the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA)

Table 1: Structure and List of Solicitation Documentation

Document	Page #	Description	Proposer Response Instructions
Request for Proposals	3	Provides title, important dates, evaluation information, and contact information for competing the solicitation.	Informational.
Appendix A – Scope of Work	17	Scope of work details.	Informational.
Appendix B – Operational Requirements Worksheet	30	Operational requirements to be addressed by the proposer’s solution.	Proposer must complete and submit by proposal deadline.
Appendix C – Project Budget Proposal Template	50	A template for documenting pricing for goods and services sought by SMCEL-JPA through this RFP.	Proposer must complete and submit by proposal deadline.
Appendix D – Sample Agreement Template	55	Sample contract with SMCEL-JPA.	Informational.
Appendix E – California Levine Act Statement	113	The California Levine Act.	Proposer must complete and submit by proposal deadline.
Appendix F – Service Level Agreement	114	Service Level Agreement for any contract awarded from this RFP.	Deemed acceptable by Proposer unless written exceptions are provided to SMCEL-JPA with proposal.
Appendix G – SMCEL-JPA Privacy Policy	124	SMCEL-JPA Privacy Policy that the selected Vendor must adhere to.	Informational.

**REQUEST FOR PROPOSALS
FOR
VENDOR SERVICES TO PROVIDE A NEXT GEN COMMUNITY
TRANSPORTATION BENEFITS PROGRAM MANAGEMENT PLATFORM TO
THE SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY**

1. INTRODUCTION

1.1. BACKGROUND

The San Mateo County US 101 Express Lanes Project is a multi-agency project initiated to reduce traffic congestion and encourage carpooling and transit use on US Highway 101 (US 101) in San Mateo County. The San Mateo City/County Association of Governments (C/CAG) and the San Mateo County Transportation Authority (TA) formed the San Mateo County Express Lanes Joint Powers Authority (SMCEL- JPA) that owns the Express Lanes.

The SMCEL-JPA operates the San Mateo 101 Express Lanes Community Transportation Benefits (CTB) Program. The CTB Program helps cover some transportation costs for qualifying individuals who live in San Mateo County. Currently, participants can choose from one of two transportation benefit options: 1) A \$200 transit credit on a Clipper Card or 2) A \$200 toll credit on a FasTrak® transponder. After evaluating the first year of the CTB Program, the SMCEL-JPA is advancing key improvements in an augmented program called the Next Gen CTB Program. These improvements include increasing the benefit amount from \$100 to \$200, adding an online enrollment option, and providing the benefit on a mobility debit card instead of a transit card and toll transponder.

The SMCEL-JPA seeks a vendor (“Proposer” or “Vendor”) to provide a customizable-off-the-shelf (COTS) platform on which to administer the proposed Next Gen CTB Program. This system is referred to as the “Next Gen CTB Program Management Platform” in all subsequent documents. The SMCEL-JPA plans to deploy the system no later than July 2025.

1.2. GENERAL CONDITIONS

- a) This RFP does not commit the SMCEL-JPA to award a contract or to pay any costs incurred by any Proposer in the preparation of a proposal in response to this RFP.
- b) Only one proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
- c) The SMCEL-JPA reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Proposers.
- d) The SMCEL-JPA reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified Proposer, or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the SMCEL-JPA to do so. Furthermore, the SMCEL-JPA reserves the right to select a Proposal and make a contract award not solely based on price.

- e) The Proposer is advised that should this RFP result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the SMCEL-JPA.
- f) If the selected Proposer fails to enter into a contract with the SMCEL-JPA in a timely manner as determined by the SMCEL-JPA, the SMCEL-JPA reserves the right to reject the proposal and enter into a contract with the next highest scoring Proposer.
- g) Proposers shall allow other California public entities to utilize this agreement to obtain goods and/or services at the same terms and conditions during the period of time that the agreement is in effect.
- h) The work shall comply with the requirements of all federal, state and local laws without limitation, and shall apply to this RFP and any subsequent contract as though incorporated herein by reference.
- i) The Proposer shall comply with all insurance requirements of the SMCEL-JPA, included in the sample agreement in Appendix D - Sample Agreement Template.

1.3. MINIMUM QUALIFICATIONS

Proposals must demonstrate that the Vendor or team submitting the proposal (“Proposer”) meets the following Minimum Qualifications to be eligible for consideration for this project.

1. Proposer must demonstrate to SMCEL-JPA’s satisfaction that the Proposer, a subcontractor, or a key staff member from either the Vendor submitting a proposal, or a subcontractor who shall be assigned to this project, have deployed at least five (5) systems in the past ten (10) years that demonstrate significant similarities to the Next Gen CTB Program Management Platform.
2. The Proposer’s Project Manager must have at least five (5) years of experience managing system deployments that demonstrate significant similarities to the Next Gen CTB Program Management Platform.

1.4. PROPOSAL DEADLINE AND SCHEDULE

Interested Proposers must submit their response electronically no later than the closing date/time listed below, and in accordance with the requirements of *Section 2.1: Proposal Requirements - Form of Response* to be considered. Responses received after that date and time will not be considered. Additional schedule details are listed below.

Table 2: Tentative Schedule for Review Process

Date	Description
Monday, October 7, 2024	Issue RFP
Friday, October 18, 2024 at 4:00 P.M PDT	Closing Date/Time for Requests for Clarifications
Wednesday, October 30, 2024	SMCEL-JPA Responses to Questions
Friday, November 8, 2024 at 12:00 P.M. Noon PST	Response to RFP Due
Week of December 16, 2024	Proposer Interviews (If Necessary)
Friday, January 10, 2024	Contract Award Announcement at Board Meeting
Week of January 13, 2024	Notice to Proceed and Project Kick-off
July 2025	Production Deployment of System

SMCEL-JPA will host virtual session via Microsoft Teams to provided interested Proposers with an overview of the solicited system and the opportunity to connect with potential partners on Wednesday, October 16, 2024, at 3:00 P.M. PDT. Participation is encouraged but not required to respond to the RFP. To participate in the presentation, registration using the following link is required (<https://events.teams.microsoft.com/event/e1f52416-4c19-44a1-a63e-2d849174a0b8@bf1bfd05-3107-4bf6-84cd-92ce598ea9cd>). Once registered, an appointment will be sent to the e-mail addressed used for registration with the virtual meeting link.

Any questions related to this RFP shall be submitted in writing to the attention of Kim Wever via email at kwever@smcgov.org. Questions shall be submitted before Friday, October 18, 2024 at 4:00 P.M PDT. Answers to questions shall be provided in writing and posted to the procurement website (<https://ccag.ca.gov/opportunities/rfpsrfsqs/>) no later than Wednesday, October 30, 2024.

1.5. PERIOD OF PERFORMANCE AND BUDGET

The SMCEL-JPA Next Gen CTB Program Management Platform will be funded with local funds. The SMCEL-JPA plans to award a contract that includes the development of Next Gen CTB Program Management Platform and five (5) years of Licensing & Support that includes all system support, maintenance, and debit card processing fees. The first year of Licensing and Support will begin after Go Live of the Next Gen CTB Program Management Platform. The SMCEL-JPA may also award up to five one-year option terms for Licensing and Support services to the successful Proposer at its sole discretion, which will not be part of the initial contract. Please refer to *Appendix D – Sample Contract* for the full Milestone Payment Schedule.

The SMCEL-JPA expects the work to commence in early 2025 and to take roughly six (6) months from notice-to-proceed to production deployment.

2. PROPOSAL REQUIREMENTS

These guidelines are provided for standardizing the preparation and submission of proposals by all Proposers. The intent of these guidelines is to assist Proposers in preparation of their proposals, to simplify the review process, and to help assure consistency in format and content. Interested Proposers must submit an electronic copy of the proposal to the Project Manager in accordance with the instructions contained in the RFP. The SMCEL-JPA is not responsible for submissions or deliveries delayed for any reason. Any Proposals received after said date and time cannot be considered. The SMCEL-JPA reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Proposers. The SMCEL-JPA reserves the right in its sole discretion not to enter into any contract as a result of this RFP.

Each submittal must include a clear and concise response to the items listed in *the Form of Response* section below. Each page shall be 8.5” x 11” or 11” x 17”. Each page shall be sequentially numbered and a table of contents shall be provided. Proposals should be limited to no more than 20 pages, not including the cover, cover letter, resumes, and cost estimates. Page limits, where specified, are not strict limitations and are recommendations only; however, brevity and succinctness will be evaluated in overall presentation. Acknowledge the receipt of this RFP and any Addendum to the RFP by emailing kcheung1@smcgov.org.

Proposers must submit one (1) electronic copy of the RFP response to:

Kim Wever

kwever@smcgov.org

The subject line of the email submission shall read “SM 101 NEXT GEN RFP”. Proposals shall be in a PDF format, exclusive of the Project Budget Proposal, which shall be submitted as an Excel file.

Any proposals received prior to the “RFP Due” date and time, specified above, may be withdrawn or modified by written request of the Proposer. To be considered, however, a modified Proposal must be received prior to the “RFP Due” date and time. No modified proposals will be accepted after this date.

Unsigned proposals or proposals signed by an individual not authorized to bind the prospective Proposer will be considered nonresponsive and rejected.

2.1. FORM OF RESPONSE

Proposers should provide information on the following:

Authorized Signatory:

The proposal must be signed by an official authorized to solicit business and enter into contracts for the Proposer.

Point of Contact:

Proposals must identify a point of contact who will be notified should the SMCEL-JPA staff have any follow-up questions regarding the proposal. At a minimum, Proposals shall indicate a contact person's name, title, telephone number, and email address.

Project Understanding and Work Plan:

Describe the Proposer's understanding of project objectives for all tasks described in *Appendix A – Scope of Work*. Provide the Proposer's or team's experience in completing projects that are similar to *Appendix A – Scope of Work*. Develop a project work plan with identified staff, along with a project schedule. Identified key staff must individually demonstrate experiences similar to the work outlined in *Appendix A – Scope of Work*. Include an organizational chart of the proposed organization of prime and sub-contractors involved in providing all functions of the system.

The Proposers should provide a detailed description of the proposed solution and include the names of any specific software platforms to be included. Please also include supporting information such as functionality maps, architectural maps, training materials, visual aids including screen shots, actions performed by the system, and any behind the scenes processing, optional add-on modules and plugins. The level of detail provided will be such so that anyone is able to read it and understand how the software works. The Proposer should indicate key challenges that may be faced in completing the work and suggest how it plans to overcome such challenges. The Proposer may suggest additional items not specifically requested as clearly marked "additional" or "optional tasks". Indicate that the proposal is a firm offer to enter into a contract to perform work related to this RFP within thirty (30) days of the contract award announcement.

This section of the proposal should also provide the following information:

1. Description of the licensing structure (Perpetual vs Subscription) for each software title purchased.
2. Explanation of how the data retention, deletion and retrieval requirements will be met and describe its data management capabilities (storage limitations, duration, etc.)
3. Identification of any vendor systems and/or subcontractor(s) that it intends to use to meet the requirements included in Appendix B – Operational Requirements Workbook.
4. Explanation of how the Proposer will be able to support the expected number of concurrent Users. Proposer must also explain whether the Solution can scale up or down without affecting performance.
5. Description of the process that will be used when enhancements are requested from the SMCEL-JPA.
6. Description of how the Proposer's solution is hosted and secured.
7. Description of how user access to the solution is authenticated and secured.
8. Description of the Proposer's approach to on-call support during the initial transition to the new system and on-going support afterwards.

Schedule of Work:

Using a Gantt chart, provide a detailed schedule for all phases of the project and the proposing Proposer's services including time for reviews and approvals. The schedule shall include all deliverables outlined in *Appendix A – Scope of Work*.

Operational Requirements Worksheet:

Using the template provided, complete *Appendix B - Operational Requirements Worksheet* to document your Proposer's ability to meet the requirements of the Next Gen CTB Program. Full instructions for how to complete the form are available in *Appendix B – Operational Requirements Worksheet*.

Resumes:

As an Appendix that does not count against the page limit, provide detailed staff resumes for each key personnel, limited to no more than two (2) pages per staff member. Resumes will not count against the recommended page limit and can be submitted in the Proposer's native format. At a minimum, Proposers must submit resumes for the following roles:

1. Project Manager
2. Solution Architect
3. Technical Lead
4. Security Specialist
5. Customer Service/Training Lead

Project Budget Proposal:

Proposer shall provide a detailed cost proposal for the project. The cost proposal shall be provided in the form of a Base Contract of five years and an Optional Contract extension for an additional five years. Proposers shall complete the Project Budget Proposal excel spreadsheet provided via a link in *Appendix C – Project Budget Proposal Template*. It must provide all costs associated with the system, licensing and usage, access, support and maintenance, and variable processing fees. In an appendix to the Project Budget Proposal, Proposers shall submit a description of their cost control and budgeting methodology for the project. Rates shall include all direct and indirect costs, fully loaded hourly rate means an hourly rate that includes all applicable surcharges such as taxes, insurance, and fringe benefits as well as indirect costs, overhead and profit allowance, and ordinary materials and supplies. Rates indicated shall be firm for the initial contract term and any annual rate escalation shall not exceed 3%. SMCEL-JPA reserves the right to negotiate with or to decline to enter into a contract with a Proposer whose rates are unreasonable to SMCEL-JPA's sole discretion.

Full instructions for how to complete the Project Budget Proposal are described in *Appendix C – Project Budget Proposal Template*.

Litigation:

Indicate if the Proposer was involved with any litigation in connection with prior projects. If yes, briefly describe the nature of the litigation and its current status and/or the result as applicable.

Contract Agreement:

Indicate if the Proposer has any issues or needed changes to the proposed contract agreement included as *Appendix D – Sample Agreement Template*. The Proposer shall provide a brief statement affirming that the proposal terms shall remain in effect for one-hundred twenty (120) days following the date proposal submittals are due.

Conflict of Interest Statement

Provide a statement that discloses any financial, business or other relationship with the SMCEL-JPA that may have an impact upon the outcome of the contract.

California Levine Act Statement:

The prime Proposer only must submit a completed and signed *Appendix E – California Levine Act Statement*.

3. EVALUATION

A selection committee will evaluate proposals received. SMCEL-JPA reserves the right to request additional information and clarification during the evaluation and selection process from any or all Proposers regarding their respective proposals. By responding to this RFP, Proposers agree and acknowledge that SMCEL-JPA has the sole right of decision as to award of an Agreement(s), or not, in this matter.

SMCEL-JPA reserves the right to disqualify any, and all, responses to this RFP based on the accuracy of the information provided in the submittal, as well as potential conflict of interest.

SMCEL-JPA seeks the best combination of value and service. This information is provided for general guidance only, and SMCEL-JPA reserves the unqualified right to modify or eliminate any aspect of this process at any time, without notice to Proposers.

A selection committee will review all responses to the RFP and may or may not meet with selected Proposers. The granting of interviews shall be in the sole and unfettered discretion of SMCEL-JPA staff. If invited, only the personnel that make-up the project team are invited to the interview. Also, submission of a proposal does not assure an interview will be granted, nor shall the failure to grant an interview necessarily disqualify a respondent from further consideration. Proposers shall be responsible for all travel and related costs involved in attendance for an interview.

SMCEL-JPA may enter negotiations with one or more Proposers, at SMCEL-JPA staff's sole and unfettered discretion. SMCEL-JPA staff reserves the right to negotiate with more than one Proposer concurrently or consecutively and to add to or delete from the submission any particular item or items required in the RFP.

If SMCEL-JPA and the selected Proposers are unable to negotiate an agreement, SMCEL-JPA may begin or continue negotiations with any other proponent, at any time. Negotiations may take place with selected Proposers without the obligation to re-call submissions or provide an

opportunity for other respondents to submit proposals based on the same changes. No proponent shall have any rights against SMCEL-JPA arising from such negotiations.

Evaluation Criteria:

The proposal that offers the greatest overall benefit to the organization and balances quality, performance, and cost will be selected.

Proposals will be evaluated according to each evaluation criteria and scored on a zero-to-five-point rating (see table below). The scores for all the evaluation criteria will then be multiplied according to their assigned weight to arrive at a weighted score for each proposal. A proposal with a high-weighted total will be deemed of higher quality than a proposal with a lesser-weighted total. The final maximum score for any project is five hundred (500) points.

Evaluation criteria and the associated score are as follows:

No.	Rating Scale	Description
0	Not Acceptable	Non-responsive, fails to meet RFP specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of proposal.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving project objectives per RFP.
2	Fair	Has a reasonable probability of success, however, some objectives may not be met.
3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFP specification.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFP requirements and expectations.
5	Excellent/Exceptional	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success and in achieving all objectives and meeting RFP specification.

The Evaluation Criteria Summary and their respective weights are included in the table below, followed by a detailed description of the criteria.

No.	Evaluation Criteria	Weight
1	Proposer Qualifications and Team Experience <i>(Project Understanding and Resumes)</i>	40

No.	Evaluation Criteria	Weight
2	Demonstrated Ability to Meet the Operational Requirements <i>(Appendix B – Operational Requirements Worksheet)</i>	25
3	Approach to completing the Project and Schedule <i>(Work Plan & Project Schedule)</i>	15
4	Cost Effectiveness <i>(System costs, maintenance costs, processing costs, and methodologies in Project Budget Proposal)</i>	10
5	Presentation <i>(as evidenced in the written proposal and interviews, if held)</i>	10
6	Conflict of Interest Statement	Pass/Fail
	Total:	100

1. Proposer Qualifications and Team Experience (40 points)

- Relevant experience, specific qualifications, and technical expertise of the Proposer and sub-Proposers.
- Describes familiarity of project and demonstrates understanding of work completed to date and project objectives moving forward
- Roles and Organization of Proposed Team
 - Proposes adequate and appropriate disciplines of project team.
 - Some or all of team members have previously worked together on similar project(s).
 - Overall organization of the team is relevant to the SMCEL-JPA’s needs.
- Roles of Key Individuals on the Team
 - Proposed team members, as demonstrated by enclosed resumes, have relevant experience for their role in the project.
 - Key positions required to execute the project team’s responsibilities are appropriately staffed.
- Working Relationship with SMCEL-JPA
 - Team and its leaders have experience working in the public sector and knowledge of public sector procurement process.
 - Team leadership understands the nature of public sector work and its decision-making process.

2. Demonstrated ability to meet the Operational Requirements listed in Operational Requirements Matrix (25 points)

- Proposers are required to complete *Appendix B – Operational Requirements Worksheet*, provided as an excel file. It includes two elements: response to the ability to meet the requirement and a narrative explanation. Proposers will receive a scaling score for each individual requirement depending on their response. Requirements that are marked as a Current Capability will receive the highest score with gradually lower scores awarded to requirements marked as Needs Configuration, Needs Customization, Future Enhancements, and Not Available.
- The total point score will be multiplied by the weight (25) for this section.

3. Approach to completing the Project and Schedule (15 points)

- Detailed Scope of Services to be Provided
 - Proposed scope of services is appropriate for all phases of the work.
 - Scope addresses all known project needs and appears achievable in the timeframes set forth in the project schedule.
 - The proposal includes a detailed work plan.
- Project Deliverables
 - Understanding of the Project scope and ability to meet program objectives.
- Project and Management Approach
 - Team is managed by an individual with appropriate experience in similar projects. This person's time is appropriately committed to the project.
 - Project team and management approach responds to project issues. Team structure provides adequate capability to perform both volume and quality of needed work within project schedule milestones.
- Schedule of Work
 - Schedule shows completion of the work within or preferably prior to the SMCEL-JPA's overall time limits as specified in this RFP. The schedule serves as a project timeline, stating all major milestones and required submittals for project management.
 - The schedule addresses all knowable phases of the project, in accordance with the general requirements of this RFP.

4. Cost Effectiveness (10 points)

- Cost Control and Budgeting Methodology
- Proposer has a system or process for managing cost and budget.
- Evidence of successful budget management for a similar project.
- Proposal clearly defines cost in spreadsheet format.
- Reasonableness of hourly rates and other expenses;

- Allocation of resources for each task and activity.

5. Presentation (10 points)

- Presentation based on written proposals and sample reports.
- If interviews are held:
 - Team presentation conveying project understanding, communication skills, innovative ideas, critical issues and solutions.
 - Proposer provides responses to various interview panel questions.

6. Conflict of Interest Statement (Pass/Fail)

- Discloses any current financial, business or other relationship with the C/CAG, TA, and SMCEL-JPA that may have an impact upon the outcome of the contract.

Proposer Discussions:

Following the initial evaluation, the evaluation panel may elect to recommend award to a particular Proposer (with or without interviews), or to enter into discussions with a “short list” of Proposers, consisting of those Proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

The purpose of discussions with a Proposer on the “short list” will be to identify that Proposer’s specific deficiencies and weaknesses in its proposal and to provide the Proposer with the opportunity to consider possible approaches to alleviating or eliminating them. These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written correspondence and/or during face-to-face interviews. The Proposer’s project manager, as well as other key personnel identified by the evaluation panel, will be expected to participate in any discussions. A Proposer on the “short list” invited to participate in discussions will be expected to provide a presentation consisting of an overview of its approach to the Project.

Recommendation for Contract Award:

The panel will recommend the selected Proposer to the SMCEL-JPA Board, based on their evaluation of the written proposals or oral interviews or discussions (if held). The Board will review the recommendation and, if they agree, they will approve the award.

Any award made will be to the Proposer whose proposal is most advantageous to SMCEL-JPA based on the evaluation criteria. If the selected Proposer fails to enter into a contract with SMCEL- JPA in a timely manner as determined by SMCEL-JPA, in accordance with the terms and conditions of this procurement, SMCEL-JPA reserves the right to reject the proposal of the selected Proposer and enter into a contract with the next highest ranking Proposer and so forth until a Proposer is selected under the Terms of the procurement. SMCEL-JPA also reserves the right to cancel this procurement and re-procure for this project if it is determined to be in its best interest to do so.

Selection Disputes:

A Proposer may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Proposer on the grounds that SMCEL-JPA procedures, the provisions of the RFP or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

No later than 5:00 p.m. on the third business day prior to the date Responses to RFP are due, for objections to RFP provisions; or

No later than 5:00 p.m. on the third business day after the date the Proposer is notified that it did not meet the minimum qualifications or was found to be non-responsive; or

No later than 5:00 p.m. on the third business day after the date on which the Proposer is notified that it was not selected, or if applicable the date the appropriate committee authorizes award, whichever is later, for objections to Proposer selection.

Except with regards to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the SMCEL-JPA Board authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for SMCEL-JPA staff to recommend a resolution to the SMCEL-JPA Executive Council.

The SMCEL-JPA Executive Council will respond to the protest in writing, based on the recommendation of staff. Should a Proposer wish to appeal the decision of the SMCEL-JPA Executive Council, it may file a written appeal with the SMCEL-JPA Board no later than 4:00 p.m. on the third business day after receipt of the written response from the SMCEL-JPA Executive Council. The SMCEL-JPA Board's decision will be the final agency decision.

Authorization to award an agreement to a particular Proposer by SMCEL-JPA shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the SMCEL-JPA Executive Council or, if the decision of the SMCEL-JPA Executive Council is appealed, the issuance of the SMCEL-JPA Boards' decision.

Public Records:

This RFP and any material submitted in response to this RFP are subject to public inspection under the California Public Records Act (Government Code §6250 et seq.), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of proposals submitted to SMCEL-JPA will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the Proposer believes any proposal content contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer may request that SMCEL-JPA withhold from disclosure such proprietary materials by marking each page containing proprietary information,

including financial information, if any, required to be submitted under Section II, *Proposal Requirements*, as confidential and shall include the following notice at the front of its proposal:

“The data on the following pages of this proposal, including financial information submitted under Section II, *Proposal Requirements: Form of Responses*, of this RFP marked along the right margin with a vertical line, contain technical or financial information that constitute trade secrets and/or that, if disclosed, would cause substantial injury to the Proposer’s competitive position.

The Proposer requests that such data be used for review by SMCEL-JPA only but understands that exemption from disclosure will be limited by SMCEL-JPA’s obligations under the California Public Records Act. If an agreement is awarded to the Proposer submitting this proposal, SMCEL-JPA shall have the right to use or disclose the data, unless otherwise provided by law. [List pages].”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. By submitting a proposal with portions marked as confidential or proprietary, a Proposer represents it has a good faith belief that such portions are exempt from disclosure under the California Public Records Act. Any language purporting to render the entire proposal confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the Proposer may not designate any required proposal forms or the project budget proposal as confidential. Consequently, any language purporting to render any proposal forms or the project budget proposal (including price or rate terms of the Proposal) as confidential or proprietary will be regarded as ineffective and will be disregarded.

In the event properly marked data is requested pursuant to the California Public Records Act, the Proposer will be advised of the request. If the proposal requests that SMCEL-JPA withhold such data from disclosure and SMCEL-JPA complies with the Proposer’s request, the Proposer shall assume all responsibility for redacting the proposal; defending any challenges resulting from the non-disclosure; indemnifying, defending SMCEL-JPA and holding SMCEL-JPA harmless from and against all claims, legal proceedings, and resulting damages and costs (including but not limited to attorneys’ fees that may be awarded to the party requesting such Proposer information); and paying any and all costs and expenses relating to the withholding of the Proposer information. Proposer agrees that SMCEL-JPA’s sole involvement in any litigation resulting from SMCEL-JPA’s withholding of records shall be to retain the records until otherwise ordered by a court.

If the Proposer does not follow all of the requirements in this section for withholding proprietary information as exempt from disclosure under the California Public Records Act, SMCEL-JPA shall have no obligation to withhold the information from disclosure, and the Proposer shall not have a right to make a claim or maintain any legal action against SMCEL-JPA or its Board Members, committee members, employees or agents in connection with such disclosure.

Organizational Conflict of Interest:

By submitting a proposal, the Proposer represents and warrants that no Board, or employee of SMCEL-JPA is in any manner interested directly or indirectly in the proposal or in the contract

that may be made under it or in any profits expected to arise therefrom, as set forth in California Government Code Section 1090.

The Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 et seq. or 87100 et seq. during the performance of services under any contract resulting from this procurement and that it will not knowingly employ any person having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

APPENDIX A

SCOPE OF WORK

1. Joint Powers Authority History and Development

In December of 2018, both the City/County Association of Governments (C/CAG) and the San Mateo County Transportation Authority (TA) Boards formed a Joint Ad Hoc Committee (JAHC) to make owner and operator recommendations, including governance and staffing, for the San Mateo County US 101 Express Lanes (101 Express Lanes). The 101 Express Lanes are 22 miles of express lanes in both directions on U.S. 101 from San Mateo County/Santa Clara County Line to I-380 in South San Francisco. Around the same time, the Bay Area Infrastructure Financing Authority (BAIFA) offered an option for C/CAG and TA to retain ownership of the Express Lanes by entering into an agreement with BAIFA to operate the Express Lanes, subject to the approval of the California Transportation Commission (CTC), per Assembly Bill AB 194 (Frazier), Chapter 687.

The SMCEL-JPA has an Executive Council that consists of the Executive Director of the San Mateo County Transportation Authority and the Executive Director of C/CAG. Each Executive Director may have one designee who will have full authority to act on behalf of the appointing Executive Director. The Executive Council may make recommendations to the SMCEL-JPA Board directly or coordinate with the Policy/Program Manager (PPM) on joint recommendations to the SMCEL-JPA Board. The same is expected of the PPM. The Executive Council is responsible for negotiation of agreements with agencies that support the operations of the Express Lanes. This includes, but is not limited to, the following: BAIFA to provide overall operations and maintenance of the express lanes; Bay Area Toll Authority (BATA) to provide FasTrak® services; Caltrans for civil road maintenance; and California Highway Patrol (CHP) for enforcement.

2. Community Transportation Benefits Program Background

As part of 101 Express Lanes, the SMCEL-JPA operates the 101 Express Lanes Community Transportation Benefits (CTB) Program. The CTB Program helps cover some transportation costs for qualifying individuals in San Mateo County. The current CTB Program offers qualifying participants the choice between two benefits: 1) a \$200 transit credit on a Clipper Card, or 2) a \$200 toll credit on a FasTrak® transponder. To qualify for the Program, a participant must meet the following qualifications:

- Be a resident of San Mateo County.
- Be 18 years or older.
- Earn an income at or below 60% of San Mateo County's area median income (\$82,260 for a one-person household in 2024); or
- Already receive one or more benefits or services through San Mateo County's Core Service Agencies (Core Agencies) Network.

After evaluating the first year of the CTB Program, SMCEL-JPA is advancing key improvements to the CTB Program, referred to as the Next Gen CTB Program. These improvements include increasing the benefit amount from \$100 to \$200, adding an online enrollment option, and transitioning the benefit from a transit card and toll transponder to a mobility debit card.

The primary aim of the Next Gen CTB Program is to increase participation by removing barriers to enrollment and refining the benefit such that it can leverage other regional program and better meet participants' mobility needs. Consequently, the Next Gen CTB Program expects enrollment to increase from 2,000 participants in its first year to 3,000-6,000 participants enrolled annually once the Next Gen CTB Program is launched. These improvements necessitate the procurement of a program management platform to manage the program applications and the distribution of the mobility debit cards.

3. Next Gen CTB Program Management Platform

The selected Vendor will provide a commercial-off-the-shelf (COTS) platform on which the SMCEL-JPA can manage the Next Gen Community Transportation Benefits (Next Gen-CTB) Program. The Next Gen CTB Program will provide transportation benefits through a mobility debit card that can only be used on transportation-related purchases with merchants identified by the SMCEL-JPA. Individuals will apply for the Next Gen CTB Program via an accessible online enrollment portal on their own or with the assistance of a Case Manager at a San Mateo County Core Service Agency (Core Agency).

A successful implementation of a platform to manage the Next Gen CTB Program (Next Gen CTB Program Management Platform) will include an online enrollment portal, a program management portal, and a debit card processor. The three core components of the Next Gen CTB Program Management Platform can be provided by a single Vendor or a primary Vendor and Sub-Contractors. Proposals must clearly identify the parties responsible for each component and organization of the partnering parties.

During the enrollment process, individuals will fill out an application and submit documentation that demonstrates their eligibility for the Next Gen CTB Program, or they will demonstrate their existing participation in a social service provided by the Core Agencies. Applications submitted will be assessed against the eligibility requirements to determine eligibility. Upon acceptance into the Next Gen CTB Program, a prepaid debit card will be automatically loaded and sent to the participant's home address or distributed directly to the individual if they applied for the Next Gen CTB Program in person.

3.1. User Types and Capacity

a. Program Participants (~15,000 applied, ~6,000 enrolled in the first year)

Program participants engage with the proposed system to apply for transportation benefits. They can either apply for the Next Gen CTB Program in-person with a Case Manager or via an online portal. If they apply via the online portal, they will answer a series of "pre-screening" questions to determine if they are likely to be eligible and submit required eligibility information. After submitting their eligibility information, individuals (referred to as "participants" once accepted to the program), will receive notifications via email or mobile devices. Notifications will be sent for

status changes such as acceptance to the Next Gen CTB Program, rejection from the Next Gen CTB Program, and mailing of their mobility debit card.

b. Case Managers (~15 – 20 users)

Case managers will engage with the Next Gen CTB Program by assisting individuals through the application process and processing applications. If an individual applies for the program in-person, a Case Manager will assist them by either guiding them through the process, assessing their eligibility and, if eligible, enrolling the individual in the program. To verify eligibility, Case Managers are responsible for reviewing eligibility documentation provided by program applicants. If an individual applies for the program via the online portal, they will review the applicant's information within their program management platform to determine eligibility. If they are eligible, the Case Manager will indicate their acceptance in the program management platform so the applicant can be enrolled in the Next Gen CTB Program and distributed a debit card.

c. System Administrators (~ 1 – 3 users)

System administrators will set universal system configurations and monitor system participation and performance for the Next Gen CTB Program. System configuration set by the system administrators will include the specific eligibility requirements that an individual is judged against, configuring default benefit amounts and schedules, and managing the addition or removal of Case Managers.

d. Program Manager (~ 1 – 2 users)

The Program Manager (PM) will utilize the proposed system to track and analyze statistics regarding Next Gen CTB Program usage. These metrics will include the demographic data of program participants, the frequency of mobility debit card usage, and the range of transportation vendors accessed through the card. The PM will leverage this information to identify trends, assess program effectiveness, and make data-driven decisions to optimize service delivery and meet the evolving needs of program participants.

3.2. System Core Components

The Next Gen CTB Program Management Platform will include an online enrollment portal, a program management portal, and a debit card processor. The components interact with each other to collectively manage enrollment into the Next Gen CTB Program and distribute mobility debit cards.

The remainder of this section describes each component, and all operational requirements are identified in *Appendix B – Operational Requirements Matrix*.

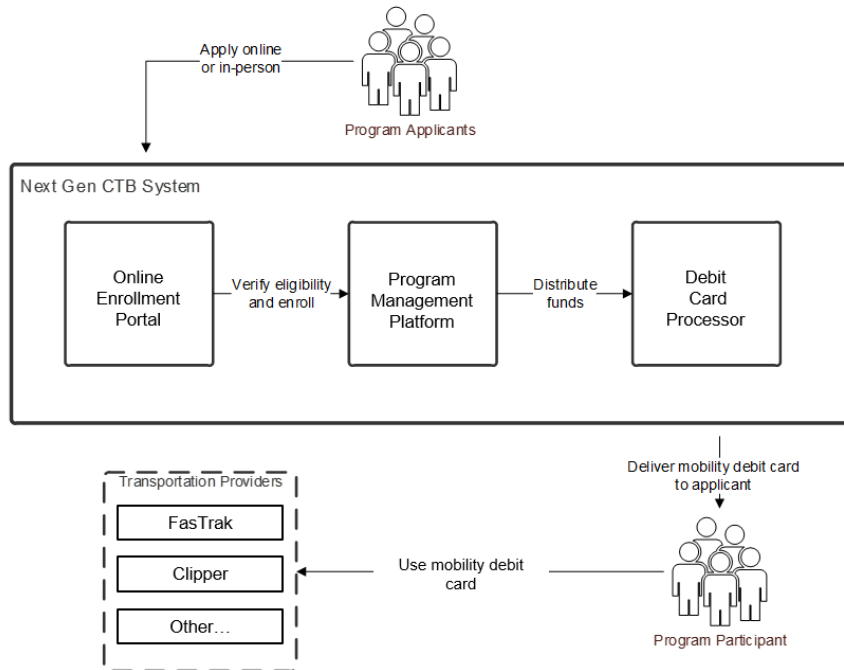


Figure 1: Next Gen CTB Program Management Platform High-Level Overview

Online Enrollment Portal

The online enrollment portal administers the initial collection of an individual’s eligibility information to determine if they are eligible for the Next Gen CTB Program. It will be a front-end application that an individual can access via mobile device or computer.

Once at the enrollment portal, individuals can move forward in two ways:

- If an individual is already receiving benefits through a Core Agency, they will indicate their existing enrollment which the Case Manager will verify within the Program Management Portal.
- If they are not already receiving existing benefits, individuals will use the enrollment portal to submit required application information such as household income, residence, age, address, and contact information.

The online enrollment portal will be a public web address for applicants to use the enrollment portal on a dedicated webpage. Links may be added to the Core Agency and SMCEL-JPA websites. Applicants can also apply with the assistance of a Case Manager.

Program Management Portal

The Program Management Portal is the primary hub for the storage of applicant/participant information and managing enrollment in the Next Gen CTB Program Management Platform. The application information collected in the Enrollment Portal will be visible for review within the Program Management Portal. While in the Program Management Portal, Case Managers will review program applications, determine eligibility for the program, and register applicates for the program if they are deemed to be eligible. The Debit Card Processor will receive information

about enrolled participants so accounts can be opened for new participants or funds can be distributed to participants who re-apply.

The Program Management Portal will be used by all user classes except for program participants. Case Managers will review the information provided by individuals to confirm it is accurate and that the individuals' financial, age, and residential status is within the Next Gen Program's requirements. Case Managers will enroll verified participants into the program and manage the distribution of funds to their mobility debit cards. System Administrators will use the component to manage access in the system and set default parameters such as the eligibility requirements and default funds to be distributed to mobility debit cards. Finally, Program Managers will use the program management component to view high-level statistics about program usage.

Debit Card Processor Service

The debit card processor component is responsible for facilitating the authorization, processing, and settling of transactions made using the mobility debit card. The card distribution component will manage the distribution of mobility debit cards to eligible applicants and the Core Agencies. The debit card processor component will provide the following services:

- **Account Management:** The debit card processor will manage and maintain all participant accounts, ensuring accurate and timely updates to account information, including balance inquiries, transaction history, and account status. This includes providing customer service support for account-related queries and managing account closures or transfers when necessary.
- **Card Activation/Creation:** The debit card processor is responsible for the creation and activation of debit cards for approved applicants. This involves generating unique card numbers, encoding card information, and securely distributing activation instructions to participants. The processor must ensure that cards are activated in a timely manner, enabling participants to begin using their mobility benefits without delay.
- **Funds Management:** The debit card processor will manage the allocation and disbursement of funds to participant accounts. This includes ensuring that funds are correctly loaded onto the cards in accordance with program guidelines and monitoring fund balances to prevent overdrafts or unauthorized usage. The processor will also handle any necessary adjustments or reconciliations of participant accounts.
- **Transaction Processing:** The debit card processor will facilitate and manage all transactions made using the mobility debit cards. This includes processing payments at approved locations, ensuring accurate and secure transaction recording, and providing real-time transaction data to the program administrators. The processor must also resolve any disputes or issues related to transactions.
- **Security and Compliance:** The debit card processor must adhere to all relevant security and compliance standards, ensuring that participant data and financial information are protected. This includes implementing robust encryption methods, regular security audits, and compliance with industry regulations such as PCI DSS. The processor must also provide regular reports to the program administrators to demonstrate ongoing compliance.

- **Card Distribution:** The debit card processor will manage the distribution of physical and virtual debit cards to approved participants. This includes ensuring that cards are securely delivered to participants' addresses or designated pick-up locations, managing any returns or undeliverable cards, and coordinating with Case Managers to confirm successful distribution. Virtual debit cards, digital version of a standard debit card, have the same card number, expiration date, and CVV code as a physical card but exists only in digital form. They can be issued to participants digitally, without having to mail a physical card, which allows for instant use. The debit card processor will also handle any card replacement requests due to loss or damage.

Customer Support: The debit card processor will provide dedicated customer support services to assist participants with any issues or inquiries related to their mobility debit cards. This includes addressing concerns such as lost or stolen cards, transaction disputes, balance inquiries, and card activation assistance. The processor must ensure that support is accessible through multiple channels, such as phone, email, and online chat, with prompt response times and effective resolution of participant issues. The support team should also be trained to handle sensitive situations with professionalism and care.

All operational requirements are identified in *Appendix B – Operational Requirements Worksheet*. Provisions related to data security requirements and software terms and conditions are included in *Appendix D – Sample Agreement Template* and *Appendix G – SMCEL-JPA Privacy Policy*. Terms of the Service Level Agreement are enumerated in *Appendix F*.

3.3. Enrollment, Verification, and Distribution

The three components of the Next Gen CTB Program Management Platform will function to collectively manage the enrollment and re-enrollment of applicants to the Next Gen CTB Program. Figure 2 outlines the high-level process for how the functions required for enrolling participants in the program are distributed amongst the three components.

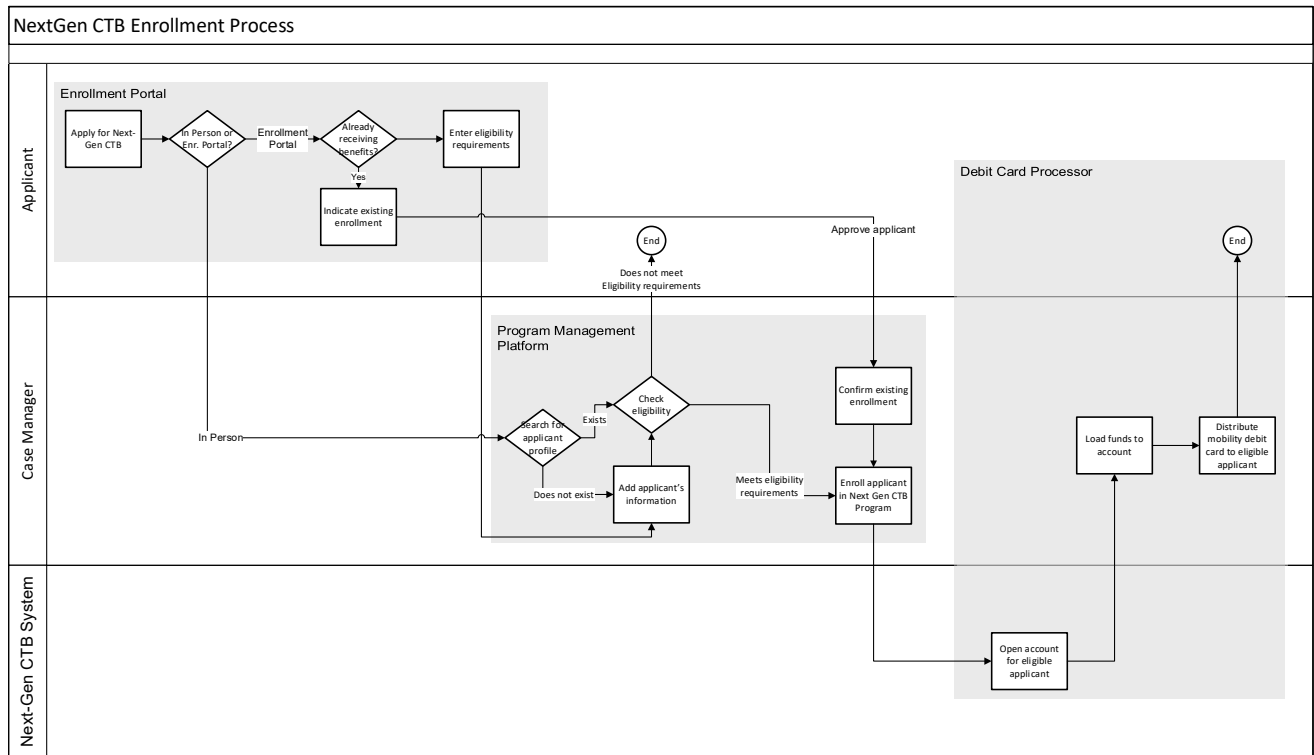


Figure 2: Next Gen CTB Program Enrollment Process

4. Scope of Work Tasks

The tasks involved for the Next Gen Community Benefits Platform may include, but is not limited to:

4.1. Task 1: General Project Management

The selected Vendor will be responsible for maintaining a project schedule (or approved alternative) identifying tasks, durations, forecasted dates and resources. Both the Vendor and SMCEL-JPA are required to meet the timeframes as agreed by both parties.

The selected Vendor shall perform the following tasks to kick-off the project and monitor progress throughout the life of the project. Once the project kick-off meeting has occurred, the Vendor's project manager will monitor project implementation progress and report on a bi-weekly basis to the SMCEL-JPA with the following information.

Progress on complete milestones, comparing forecasted completion dates to planned and actual completion dates.

Accomplishments during the reporting period, what was worked on and what was completed during the current reporting period.

Tasks planned for the next reporting period.

Identify any existing issues which are impacting the project and the steps being taken to address those issues.

Task 1 Deliverables

- a. Project Schedule:
 - i. Shall include project tasks, including inputs, approach, outputs, constraints, and critical path items.
 - ii. Shall include a Work Breakdown Structure (WBS) in chart format illustrating tasks, sub-tasks, predecessors, meetings, trainings, workshops, and deliverables in a timeline.
 - iii. Shall detail through all project phases, including documentation, software development, testing, integration, transition, and training.
- b. Project Plan:
 - i. Shall define how the Vendor's Project Manager (PM) will manage the project scope, timeline/schedule, risks, and anticipated issues or risks with SMCEL-JPA staff. The plan shall also define how the PM will facilitate the decision-making process among all stakeholders and foster consensus building.
- c. Requirements Confirmation
 - i. Shall include meetings where the Vendor must review each requirement and demonstrate how each requirement will be met. All requirement adjustments and/or proposed alternatives must be approved by the SMCEL-JPA.
- d. Kick-off Meeting with SMCEL-JPA Executive Council
 - i. Shall include one meeting with SMCEL-JPA Executive Council in which the Vendor reviews project plan, project schedule, and establishes communication channels between all involved stakeholders.
- e. Bi-Weekly Project Reporting
 - i. Shall include bi-weekly meetings and meeting documentation that identify completed milestones, upcoming milestones/tasks, and existing issues.

4.2. Task 2: System Documentation

In managing its obligation to successfully deploy the Next Gen CTB Program Management Platform, the selected Vendor is required to submit system documentation throughout the project.

Acceptance of the documents shall not relieve or limit the Vendor's responsibility to provide a system in full compliance with the Contract (*Appendix D*). Deviations from the RFP requirements that may be contained within the Proposer's submitted documents, even though the document may be accepted by the SMCEL-JPA, shall not have the effect of modifying Contract requirements. All Plans, Documentation, Manuals, and updates shall be submitted in soft copy (latest version of the appropriate Microsoft application (Word, Excel, Access, Power Point, Visio, Project) and PDF. Final accepted versions of all documentation shall be delivered in soft copy in a format that is acceptable to the SMCEL-JPA.

Task 2 Deliverables:

- a. System Architecture and Design Plan:

- i. Shall include detailed descriptions of:
 - i. All servers such as application servers, database servers, communication servers, Internet Information Services (IIS) servers, and others.
 - ii. Shall include interfaces between subsystems and external systems.
 - iii. Shall include security compliance.
- b. Software Development and Configuration Management Plan
 - i. Shall include narrative descriptions and screenshots for functionality that, if applicable, must be custom developed.
 - ii. Shall define the set-up and configuration of the COTS solution to meet the Next Gen CTB Program Management Platform requirements.
 - iii. Shall outline processes, procedures, and responsibilities for documenting and implementing changes, modifications, and enhancements.
- c. Cyber Security Plan
 - i. Shall identify all Personally Identifiable Information (PII) that is stored within the system, how the information is accessible by user group, and how PII is disposed, when applicable.

4.3. Task 3: Environments

Vendor must provide a development environment, hosted by the Vendor. Vendor must provide environments for system training, testing, and production. The testing and production environments must have redundancy with automatic failover for all infrastructure resources (per environment), including database, application server, and other required infrastructure such that if a single server fails, the environment (testing or production) continues to function without human intervention. All development must be conducted by the Vendor in the Vendor's development environment before being published to the SMCEL-JPA's testing environment.

The testing environment must be available for testing and demonstrating all system functionalities and upgrades prior to being moved to the production environment, without impacting the performance or functionality of the production system. The training environment, which can be served by the testing environment, must be available for training without impacting the performance or functionality of the production system. The Next Gen CTB Program Management Platform must have a production environment that provides the most recent version of all approved and tested system functionalities.

Task 3 Deliverables:

- a. Development Environment
 - i. Shall be hosted and configured by the Vendor.
 - ii. Shall host all platform development conducted by the Vendor before being published to the testing environment.
- b. Testing Environment
 - i. Shall be hosted and configured by the Vendor.

- ii. Shall be used for User Acceptance Testing and training.
- c. Production Environment
 - i. Shall be hosted and configured by the Vendor.

4.4. Task 4: System Development, Configuration, and Testing

The selected Vendor is responsible for designing, developing, and testing Next Gen CTB Program Management Platform. This includes the development/configuration of user interfaces, back-end systems, and integration with third-party services. The selected Vendor shall demonstrate progress during bi-weekly meetings to ensure alignment with project goals and timelines.

Deployment of the developed system will be governed by the successful completion of User Acceptance Testing, to be conducted by the SMCEL-JPA with assistance of the Vendor. Prior to entering user acceptance testing, the selected Vendor must perform vulnerability testing and provide results to SMCEL-JPA indicating that the solution is secure. Procedures and standards pertaining to the failure, acceptance, and notices of completion and non-conformities are identified in *Appendix D – Sample Agreement Template*. Procedures for identifying and addressing vulnerabilities are identified in the Service Level Agreement section of the *Appendix D – Sample Agreement Template*.

Task 4 Deliverables:

- a. User Acceptance Testing Plan
 - i. Shall verify complete system functionality in accordance with each requirement in *Appendix B – Operational Requirements Worksheet*.
 - ii. Shall include a written plan outlining the schedule and the acceptance tests to be conducted in the testing environment.
 - iii. Shall include the purpose of each test and the passing criteria.
- b. User Acceptance Testing Results
 - i. Shall include documentation of all acceptance tests performed and the cumulative results of the testing.
 - ii. A resolution plan shall be identified for all failed acceptance tests.
- c. Vulnerability Testing Plan
 - i. Shall identify specific testing methodologies, including the types of vulnerability scans, penetration testing, and tools and software to be used.
 - ii. Shall, at a minimum, include the following types of vulnerability tests:
 - i. Network Vulnerability Scanning
 - ii. Application Security Testing
 - iii. Penetration Testing
- d. Vulnerability Testing Results

- i. Shall include a detailed report of all vulnerabilities discovered, categorized by severity, and potential impact on the system.
- ii. Results of each test shall be categorized as follows:
 - i. Critical: Vulnerabilities that allow attackers to gain immediate and full control over the system. They often require urgent remediation as they pose the highest risk.
 - ii. High: Vulnerabilities that could lead to significant impact if exploited, but may require some level of user interaction or specific conditions to be met.
 - iii. Medium: These vulnerabilities might lead to moderate impact but typically require more complex exploitation scenarios.
 - iv. Low: Vulnerabilities that have minimal impact or are difficult to exploit. These are generally less urgent but still warrant attention.
- iii. Shall include the planned remedy for all Critical, High, and Medium vulnerabilities.
- e. Vulnerability Testing Remediation
 - i. All Critical, High, and Medium vulnerabilities shall be addressed prior to entering Final Acceptance Testing.
- f. Final Acceptance Testing
 - i. All acceptance tests identified in the User Acceptance Testing Plan shall be performed in the production environment to verify the full functionality of all components of the system.
 - ii. All vulnerability tests identified in Vulnerability Testing Plan shall be performed in the production environment to verify that all previously-identified vulnerabilities have been addressed.
- g. Final Acceptance Testing Results
 - i. Shall include documentation of all acceptance tests performed in the production environment and the cumulative results of the testing.
 - ii. Shall include a detailed report of all vulnerabilities discovered in the Production Environment, categorized by severity, and potential impact on the system. The system shall not be deployed until all Critical, High and Medium vulnerabilities have been addressed.

4.5. Task 5: Training Services

The selected Vendor will provide comprehensive training for Case Managers, program managers, and system administrators of the platform. This includes developing training materials and standard operating procedures, conducting live training sessions, and offering ongoing support as needed. Training should cover all aspects of platform usage, including enrollment processes, eligibility validation, benefits distribution, and troubleshooting common issues. The Vendor must ensure that all users are proficient in using the platform and can perform their tasks efficiently. Standard operating procedures must outline, for each user type, the step-by-step

processes for using the Next Gen CTB Program Management Platform. They must also include clear guidance for resolving common errors or issues including the processes for escalating the issue to support if the issue cannot be resolved at the user level.

The selected Vendor must provide a basic training course, to be conducted annually or upon request, which includes at least one 4-hour training. These trainings are intended for new users with little or no familiarization of the system.

Task 5 Deliverables:

- a. Agenda and Materials for Administrative and End-User Training for Implementation
- b. Up to 4 Initial Training Sessions
- c. 1 Yearly Training Session after Initial Training Sessions
 - i. Training shall be recorded for future reference.
- d. User Manuals and Standard Operating Procedures
 - i. Shall include all instructions, specifications, and materials that describe the functionality, operation, use, maintenance, and technical troubleshooting for operating the system.

4.6. Task 6: Production Deployment

The selected Vendor will manage the production deployment of the Next Gen CTB Program Management Platform, ensuring a smooth transition to live operation. This includes planning and executing a deployment strategy, addressing any issues that arise during the initial launch, and providing enhanced support during the initial transition to the system to ensure the platform operates effectively and meets all performance benchmarks.

During the initial deployment of the system, the Vendor must provide the following levels of service for issues:

1. **Critical Support:** Support for system failures, sever performance issues, or security breaches that cause significant disruption to the system’s operation. Response time must be within 15 minutes and resolution or mitigation must be within two hours.
2. **High-Priority Support:** Support for significant issues that impact user experience or system functionality but do not cause a complete outage (e.g., degraded performance, partial service outages). Response within 15 minutes and resolution or workaround within four hours.
3. **Medium-Priority Support:** Support for issues that affect specific functionalities or features but have a limited impact on overall system operations (e.g., non-critical bugs, minor user interface issues). Response within 15 minutes and resolution within 24 hours.
4. **Low-Priority Support:** Support for minor issues, questions, or requests for information that do not impact the immediate functionality of the system (e.g., documentation requests, minor aesthetic changes). Response within 4 hours and resolution within 5-7 business days.

See Section 5.4 (“Support Service Level Requirements”) of *Appendix F – Service Level Agreement* for full-service level expectations outside of the initial deployment.

Task 6 Deliverables:

- a. Deployment Plan
 - a. Shall specify the goals, timeline, approach, and resources allocated to the planned deployment of the system.
 - b. Shall identify the approach to categorizing and providing support during the initial deployment of the system and afterwards.
 - c. Shall identify specific human resources that will support the system deployment.
 - d. Shall identify potential risks and include steps to mitigate them.
- b. Enhanced On-Call Support During First Three Weeks of System Deployment
 - a. Shall be available between 6am – 8pm to address issues, questions, and emergencies related to the system.
 - b. Shall meet the Level of Service described above.
- c. Production System Architecture and Design
 - a. Shall include detailed descriptions of:
 - i. All production servers such as application servers, database servers, communication servers, Internet Information Services (IIS) servers, and others.
 - b. Shall include interfaces between subsystems and external systems in the final production environment.
 - c. Shall include final security compliance.

4.7. Task 7: Access, Maintenance and Support

The selected Vendor will provide ongoing maintenance and support services after the platform is deployed. This includes regular system updates, bug fixes, and performance improvements to keep the platform running smoothly. The Vendor must also offer technical support to address any issues that users or administrators may encounter, ensuring timely resolution of problems in accordance with the required times and contract terms set forth in Section 5.4 (“Support Service Level Requirements”) of *Appendix F – Service Level Agreement*. Additionally, the Vendor will monitor the platform's performance and security, proactively addressing potential issues before they impact users.

Task 7 Deliverables:

None specified.

APPENDIX B

OPERATIONAL REQUIREMENTS WORKSHEET

Proposers must respond to each Operational Requirement on how well they will meet the requirements in the document provided. Proposers must not alter the document.

The Operational Requirements Worksheet contains columns that are defined as follows:

Column 1: Operational Requirement identifier.

Column 2: Operational Requirement Description.

Column 3: Operational Requirement Type – (R) Required, (O) Optional, and (F) Future.

NOTE: Required are considered essential functionality and Proposers that cannot satisfy these requirements may be considered less competitive or unresponsive. Those designated as Optional provide desired functionality but may be beyond the scope of the Next Gen CTB Program Management Platform due to complexity or system restraints; but a Proposer's ability to deliver them will make them more competitive. Those designated as Future provide functionality that is recognized as out of the scope of the Next Gen CTB Program Management Platform but is desirable and may be appropriate for future phases.

Columns 4-8: Proposer must indicate how it will comply with the requirement.

- **Current Capability** – This capability is available in the proposed Solution with no additional configuration or cost.
- **Requires Configuration** – This capability can be met through Vendor-supported changes to existing settings and application options as part of the initial implementation at no additional cost (e.g., setting naming conventions, creating user-defined fields).
- **Requires Customization** – The requirement can be met through Vendor modifying the underlying source code, which can be completed as part of the initial implementation.
- **Future Enhancement** – This capability is a planned enhancement to the base software and will be available within the next 12 months of contract execution at no additional cost.
- **Not Available** – This capability is not currently available, and a future enhancement is not planned.

NOTE: Configuration is referred to as a change to the Solution that must be completed by the awarded Vendor prior to Go-Live but allows an IT or non-IT end user to maintain or modify thereafter (i.e. no source code or structural data model changes occurring).

NOTE: Customization is referred to a modification to the Solution's underlying source code, which can be completed as part of the initial implementation. All configuration changes or customization modifications made during the term of the awarded contract must be forward-compatible with future releases and be fully supported by the awarded Vendor without additional costs.

Column 9: The Proposer must also fully disclose how they will meet the requirements in their proposal response. This column is for the Proposer to describe how they will deliver the

business Specification. If the Proposer describes configurations or customizations, the Proposer must explain the details of any risks that may be caused by configuring or customizing the platform to meet the Operational Requirement. Description must be no more than 250 words for each business Specification (may include references to proposal).

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
	Enrollment Functional Requirements							
ER-1	The system must provide an accessible online enrollment portal for applicants to submit their eligibility information for the Next Gen CTB program.	R						
ER-2	The online enrollment portal must be accessible via a dedicated webpage that can be linked on Core Agencies' websites	R						
ER-3	The online enrollment portal may be embedded directly within Core Agencies' websites so it can be completed without opening a new webpage.	O						
ER-4	The system's online enrollment portal must allow multiple input workflows (i.e., downstream questions and prompts depend on answers to initial questions).	R						
ER-5	The system must allow applicants to indicate whether they are currently receiving benefits from one or more social services.	R						
ER-6	The system must include form fields for, at a minimum, photo identification, proof of address, and proof of income.	R						
ER-7	The system must integrate an eligibility verification system that cross-references	O						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
	applicants with existing community benefit enrollments through the Core Agencies.							
ER-8	The system must accept and verify uploaded documentation, such as ID, proof of address, and income verification.	R						
ER-9	The system must comply with the System Environment Requirements listed in <i>Appendix D – Sample Agreement</i> .	R						
	Program Management Functional Requirements							
PM-1	The system must accept all incoming applications submitted by the system’s online enrollment, including supporting documents attached to an application.	R						
PM-2	The system must enable Core Agency Case Managers to review submitted applications and documents for eligibility assessment and approval.	R						
PM-3	The system must allow Case Managers to verify applicants not enrolled in community benefits against income levels up to 60% San Mateo County Area Median Income (AMI) (\$82,260 for a household of one in 2024).	R						
PM-4	The system must provide an initial assessment of the participant’s eligibility	O						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <u>how</u> they will deliver the Operational Requirement. (Limit 250 words.)
	based on the uploaded information and documentation.							
PM-5	The system must allow Case Managers to update the status of applications from, at a minimum, Received, Under Review, Reviewed, Approved, and Rejected.	R						
PM-6	The system must automate email and SMS notifications to applicants regarding the status of their application.	R						
PM-7	The system must include a mechanism to view all applications at each assigned status.	R						
PM-8	The system must track and store the date of all status changes for each applicant.	R						
PM-9	The system must allow Core Agency Case Managers to manually review applications and documentation provided by applicants through the program management portal.	R						
PM-10	The system must include a mechanism to detect duplicative applicants to ensure the Next Gen CTB Program benefit is not distributed to the same person multiple times.	R						
PM-11	The system must support Core Agency Case Managers' ability to add eligible applicants directly to the Next Gen CTB Program that	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <u>how</u> they will deliver the Operational Requirement. (Limit 250 words.)
	apply in-person at a participating core agency.							
PM-12	The system must allow Case Managers to electronically distribute a self-declaration of income form to applicants to be completed that indicate that they do not have the required documentation in their application.	R						
PM-13	The system must include the ability to integrate with a debit card processor so that information about program applicants enrolled into the Next Gen CTB Program is automatically transferred to the debit card processor.	R						
PM-14	The system must include the ability to populate information in the program management platform regarding the status of distributed cards. Status updates may include, but are not limited to, Account Funded, Debit Card Sent, Debit Card Delivered, and Debit Card Returned to Sender	R						
PM-15	The system must automatically transfer eligible applicant information to the debit card payment processor to fund and distribute cards to applicants when the applicant's application status has been changed to Approved.”	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
PM-16	The system must allow Case Managers to distribute pre-funded mobility debit cards to eligible applicants that apply for the Next Gen CTB program in-person.	R						
PM-17	The system must allow Core Agency Case Managers to link a pre-funded mobility debit card to an applicant's profile in the program management portal for reporting purposes.	R						
PM-18	The system must allow Core Agency Case Managers to distribute a mobility debit card to an eligible participant's home address even if they apply for the program in-person.	R						
PM-19	The system must allow participants to re-apply for the mobility debit card benefit after their first year of Next Gen CTB Program participation ends.	R						
PM-20	The system must automatically notify Core Agency Case Managers and participants when participants have been enrolled for 11 months and that they will soon be eligible to re-apply for the Next Gen CTB Program.	R						
PM-21	The system must retain applicant data for up to 18 months and allow applicants to update their original application when re-applying for the Next Gen CTB Program.	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <u>how</u> they will deliver the Operational Requirement. (Limit 250 words.)
PM-22	The system must restrict individuals from re-enrolling in the program before they are eligible for re-enrollment.	R						
PM-23	The system must include the ability to distribute funds to an existing participant's mobility debit card upon re-enrollment.	R						
PM-24	The system shall allow Core Agency Case Managers to select multiple applicants and distribute funds in bulk.	O						
PM-25	The system must allow Core Agency Case Managers and system administrators to view aggregated statistics about application submittals (e.g., number of submitted applications; number of rejected applications).	R						
PM-26	The program management portal must allow system administrators to add new Core Agency Case Managers to the portal.	R						
	Debit Card Processor Functional Requirements							
DC-1	The system must limit debit card transaction to transportation-related merchants defined by SMCEL-JPA.	R						
DC-2	The system must have the ability to pull funds from a participant's account, and return them to a master account, if their funds have	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
	not been used in more than one year without penalty to the participant.							
DC-3	The system must provide customer service to participants for initial activation of the mobility debit card and troubleshooting such as a lost or stolen cards or freezing accounts.	R						
DC-4	The system must provide 24/7 customer service availability through multiple channels (e.g., phone, email, and web chat) to assist participants with card activation, troubleshooting, lost or stolen cards, and freezing accounts.	R						
DC-5	A live representative must be available during business hours (Monday through Friday, 8 a.m. to 6 p.m. local time), and automated support (e.g., self-service options or chatbot) must be accessible outside these hours.	R						
DC-6	The system must limit participants from loading their own additional funds on the mobility debit card.	R						
DC-7	The system must have the capacity to deactivate a card, and return unused funds to the program, if a participant has not activated their card within one year of its distribution.	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
DC-8	The system must have the capacity to deactivate a card, and return unused funds to the program, if a participant has activated their account but as not used any of the available funds within one year.	R						
DC-9	The system must limit participants from transferring funds from their mobility debit card account to a different account.	R						
DC-10	The system must limit participants from cashing out the funds in their mobility debit card account.	R						
DC-11	The system must be able to mail mobility debit cards to a home address or a Core Agency address, depending on the location chosen by the applicant during enrollment.	R						
DC-12	The mobility debit cards must be EMV compliant.	R						
DC-13	The mobility debit cards must be open-payment ready.	R						
DC-14	The mobility debit card provider must have the capability to generate pre-funded debit cards that can be pried to applicants' account in the program management platform and distributed to the applicant when they apply in-person at a Core Agency.	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
DC-15	The system must support the issuance and distribution of virtual debit cards.	R						
	Analytics Functional Requirements							
AN-1	The system must collect data on applicant demographics, program uptake, card usage patterns, and fund utilization.	R						
AN-2	The system must include the capability to develop dashboards and reports for internal stakeholders to monitor program performance and identify areas for improvement.	R						
AN-3	The system must include the ability to capture dates that are relevant to the program's management such as, but not limited to: application completion date, eligibility verification date, enrollment date, date of benefit distribution, and date of card activation.	R						
AN-4	The system must enable system administrators to view details about individual transactions, including merchants, transaction amount, and transaction date.	R						
AN-5	Data about system usage is available via API for external reporting.	F						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <u>how</u> they will deliver the Operational Requirement. (Limit 250 words.)
AN-6	A report displaying the number of enrollees and accompanying data (including personal identifiable information, enrollment date, and mobility debit card number) must be configured by the Vendor upon deployment.	R						
AN-7	A report displaying enrollment statistics over time may be developed by the Vendor upon deployment.	O						
	Deployment Requirements							
DE-1	The Vendor must participate in a user acceptance testing phase to validate that requirements have been achieved.	R						
DE-2	The Vendor must provide a detailed deployment plan that outlines the steps to be taken from the initial deployment of the solution to its stable operation. This plan should include timelines, milestones, and responsible parties for each phase of the transition.	R						
DE-3	The Vendor must provide comprehensive training for our team to ensure they are fully capable of operating and maintaining the new system. This training should include both initial training sessions at deployment and ongoing support as needed.	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <u>how</u> they will deliver the Operational Requirement. (Limit 250 words.)
DE-4	The Vendor must supply thorough and clear documentation for the deployed solution. This documentation should cover all aspects of the system, including but not limited to user manuals, system architecture, maintenance procedures, troubleshooting guides, and any other relevant information.	R						
DE-5	The Vendor will support a data migration to an alternative system if a new Vendor is selected to support the Next Gen CTB Program in future years.	F						
	System Environment Variables							
SE-1	The system shall comply with industry-standard security protocols to protect personal and financial data of applicants. This includes encryption of sensitive information, secure authentication mechanisms, and adherence to regulatory requirements such as General Data Protection Regulation (GDPR) or Health Insurance Portability and Accountability Act (HIPAA).	R						
SE-2	The system shall be designed to handle varying loads of applicants and verifiers, ensuring scalability to accommodate growth in user base without compromising performance.	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
SE-3	The system shall guarantee high availability and reliability to prevent service disruptions. This includes implementing redundancy measures, failover mechanisms, and regular backups.	R						
SE-4	The system must maintain 99.9% uptime, excluding scheduled maintenance, and have a recovery time objective (RTO) of less than 30 minutes for critical functions.	R						
SE-5	The system must handle a load increase of 500% during special enrollment periods or program announcements without performance degradation, assuming a base enrollment of roughly 350 members per month.	R						
SE-6	The system must scale horizontally to support up to 30,000 program applicants.							
SE-7	The system must scale horizontally to support up to 10,000 enrolled program participants.	R						
SE-8	The platform must support at least 100 concurrent users without performance degradation and process at least 1000 transactions per minute during peak times.	R						
SE-9	The system must be accessible to users with disabilities, adhering to accessibility	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
	standards such as the latest WCAG (Web Content Accessibility Guidelines) version at the time of contract execution. This includes providing alternative formats for information and ensuring compatibility with assistive technologies.							
SE-10	The system must incorporate logging and auditing mechanisms to track system activities and maintain a record of transactions. This facilitates monitoring user actions, identifying security breaches, and ensuring compliance with regulatory requirements.	R						
SE-11	The system must provide an intuitive and user-friendly interface for both applicants and verifiers, considering diverse user demographics and varying levels of technical proficiency. Usability testing shall be conducted by the Vendor to gather feedback and iteratively improve the user experience.	R						
SE-12	Data supplied by SMCEL-JPA shall not be shared by the Vendor or used for any purpose other than to configure and maintain the System, unless granted approval by SMCEL-JPA on a case-by-case basis.	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <u>how</u> they will deliver the Operational Requirement. (Limit 250 words.)
SE-13	The Vendor must accommodate the latest browser versions (including mobile browsers) as well as pre-existing browsers.	R						
SE-14	The Vendor must provide and maintain, at a minimum, a Test environment and Production environment, hosted by the Vendor.	R						
SE-15	All System development must be conducted by the Vendor in the Vendor's Development environment before being published to the Test environment.	R						
SE-16	The Vendor shall provide a list of any third-party components and open-source components included with or used in connection with the deliverables defined within this Contract.	R						
SE-17	The Vendor's support services team shall work with SMCEL-JPA to determine the appropriate standard windows for upgrades, required maintenance, and changes to the System.	R						
	Personally Identifiable Information (PII) Requirements							
PR-1	The system must ensure compliance with relevant regulations and standards governing financial transactions, privacy, and	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
	accessibility. This includes staying updated on evolving regulatory requirements and adapting the system accordingly to mitigate legal and regulatory risks.							
PR-2	All data, including but not limited to PII, must be stored in the Continental United States.	R						
PR-3	PII and program data must only be used for the specific purposes of the Next Gen CTB Program outlined in <i>Appendix A – Scope of Work</i> .	R						
PR-4	PII and program data must not be shared with any third parties that fall outside of the specific purposes of the Next Gen CTB Program outlined in <i>Appendix A – Scope of Work</i> .	R						
PR-5	PII collected to document proof of identity and proof of income must be discarded no more than eighteen months after approval, denial, or issuance of final notice of incomplete applications.	R						
PR-6	The Vendor must provide quarterly documentation showing that PII that required disposal has been properly disposed.	R						
PR-7	PII must be stored on computer servers that are located in the United States in secure, controlled facilities.	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <i>how</i> they will deliver the Operational Requirement. (Limit 250 words.)
PR-8	Access to PII must be limited based on user access roles and credentials.	R						
PR-9	Electronic communications containing PII must be transmitted via encrypted channels or encrypted format to prevent unauthorized access.	R						
PR-10	<p>In the event of any act, error or omission, negligence, misconduct, or breach on the part of the Vendor that compromises or is suspected to compromise the security, confidentiality, integrity, or availability of SMCEL-JPA Data or the physical, technical, administrative, or organizational safeguards put in place by the Vendor that relate to the protection of the security, confidentiality, or integrity of SMCEL-JPA Data, the Vendor must, as applicable:</p> <p>Notify SMCEL-JPA as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence;</p> <p>Cooperate with SMCEL-JPA in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by SMCEL-JPA.</p>	R						

Op. Req. Number	Operational Requirement	Op. Req. Type	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Proposer to explain <u>how</u> they will deliver the Operational Requirement. (Limit 250 words.)
PR-11	<p>Throughout the Contract term and at all times in connection with its actual or required performance of the Services, Vendor shall:</p> <p>If cloud hosted services are provided by a Hosting Provider (defined as an entity which provides a network of connected virtual and physical cloud servers to host the application), ensure each Hosting Provider maintains either a FedRAMP authorization or SOC 2 Type II certification for all cloud hosted service environments throughout the contract term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization, the SMCEL-JPA, at its sole discretion, may either require the Vendor to move the System and data to an alternative Hosting Provider selected and approved by the SMCEL-JPA at Vendor's sole cost and expense without any increase in Fees, or immediately terminate this Contract for cause pursuant to the Contract;</p> <p>Ensure that the System and SMCEL-JPA data is securely hosted, supported, administered, accessed, and backed up in a data center(s) that resides in the continental United States;</p>	R						

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APPENDIX C

PROJECT BUDGET PROPOSAL TEMPLATE

Price proposals must include all costs for the implementation, testing, licensing, ongoing support, and debit card processing to provide a fully functioning Next Gen CTB Program Management Platform.

The Project Budget Proposal Template is available for download here:

<https://ccag.ca.gov/opportunities/rfpsrfqs/>

Proposers should generate a pricing scheduled as follows:

1. General Instructions

- a) Proposers shall submit their Project Budget Proposal on the Project Budget Proposal Forms available for download in the link above. Price Proposals shall be submitted in the quantities and manner identified in the body of the RFP.
- b) The Project Budget Proposal shall constitute the full and complete Project Budget Proposal for compensation for the Vendor's obligations and work as defined in *Appendix A – Scope of Work* for the Next Gen CTB Program Management Platform.
- c) Proposers must complete the Project Budget Proposal in its entirety. The Project Budget Proposal includes the following sections to be completed:
 - o 1 – Cost Summary
 - o 2 – System Costs
 - o 3 – Maintenance & Licensing
 - o 3-1 – Maintenance & Licensing Detail
 - o 4 – Debit Card Costs
 - o 4-1 – Debit Card Detail
 - o 5 – Additional Services Rates
 - o 6 – Milestone Payment Schedule
- d) Proposers should not fill in any grayed-out cells on the Price Proposal Forms, nor shall the Proposer make any other entry on or alteration to the Price Proposal Forms other than in accordance with these Price Proposal Instructions.
- e) An officer of the Proposer or an individual otherwise authorized in writing by an officer of the Proposer must sign and date Sheet 1 Project Cost Summary in the appropriate place as identified.
- f) All elements of the Price Proposal must be completed. If zero quantities are included for a line item in the Proposal, a zero must be entered into the corresponding cell. In addition, all items identified by the SMCEL-JPA in the Price Proposal Forms will be assumed to be included in the Price Proposal.

- g) The SMCEL-JPA reserves the right to reject Price Proposals that are not completed in accordance with the instructions set forth herein.
- h) The Price Proposal Forms are provided in Excel format worksheets for ease of completion and checking. Instructions for completion of each of the Price Proposal Forms are provided in Sections 2 of these Price Proposal Instructions.
- i) The Price Proposal shall be inclusive of all costs, fees and applicable taxes needed to meet the requirements of the RFP, including the *Appendix A – Scope of Work*. No price escalation will be allowed above the costs provided on the Price Proposal Forms to complete the Work.

2. Instructions for Completing the Project Budget Proposal Template

- a) On most sheets there are formulas that are automatically calculated based on data entered from elsewhere in the sheet or workbook. Font and background colors are used to indicate different types of cells as follows:
 - **Black font** – Indicates the cell cannot be altered by Proposer.
 - **Red font** – Indicates the Proposer should enter data.
 - **Light yellow background** – Indicates input required. All such cells should be completed accordingly. All input fields are assumed required unless they are indicated as Optional in the worksheet or in the instructions.
 - **Light green background** – Indicates that data has been entered into the cell. Light red text and light-yellow background will change to black text and light green background when any non-zero data is entered. The background for any cells where the Proposer enters zero (0) will not change colors in this manner.
- b) While the SMCEL-JPA has made every effort to ensure the Project Budget Proposal Template contain accurate formulas and calculation, Proposers are required to independently verify that formulas and calculations are being performed correctly to represent their proposed costs.
- c) The SMCEL-JPA Recommends completing the form in the following order:
 - a. Sheet 2 – System Costs
 - b. Sheet 3-1 – Maintenance & Licensing Detail
 - c. Sheet 4-1 – Debit Card Details
 - d. Sheet 4 – Debit Card Costs
 - e. Sheet 5 – Additional Service Rates
 - f. Validate the summarized information on Sheet 3 – Maintenance & Licensing
 - g. Validate the summarized information on Sheet 1 – Cost Summary.
 - h. Review Milestone Payment Schedule on Sheet 6 – Milestone Payment Schedule.

2.1. Sheet 2 – System Costs

The Proposer’s total price for the System costs shall be the aggregate of all costs included in Sheet 2 – System Costs Summary. Sheet 2 covers all costs associated with the Next Gen CTB Program Management Platform. The costs shall also include without limitation, all System, Software, Hardware, Equipment, supplies, parts and materials, overhead, burden, profit, taxes, duties, fees, Vendor-acquired permits, licenses, warranties and other items necessary to meet the Contract requirements.

- a) Enter in a lump sum value for items #1 – 6.
- b) If the Proposer wishes to provide more detail about specific Third-Party Costs, they can provide itemized values and a description of the costs in items #7 – 11. These costs should be included in the Base Contract Costs – they are not considered additional line items that contribute to the total project budget proposal.
- c) The “Total Base Contract System Costs” should account for all costs from Notice to Proceed through Go Live.

2.2. Sheet 3-1 – Maintenance & Licensing Detail

- a) In column (B), enter the total monthly cost associated with the Item for the Base Contract Years. If additional items are required by the Proposer, enter each element name using the optional spaces provided. For all additional items entered, the Proposer must also enter the total monthly cost as described above.
- b) In column (B) enter the total monthly cost associated with the Item for the Optional Contract Years. If additional items are required by the Proposer, enter each element name using the optional spaces provided. For all additional items entered, the Proposer must also enter the total monthly cost as described above.
- c) In column (C), enter optional contextual details.
- d) The combined costs for each Item in the “Base Contract – Monthly Maintenance and Software Support Service Fees” represents one calendar year of maintenance. The combined costs for each Item in the “Optional Years – Monthly Maintenance and Software Support Service Fees” represents one calendar year of optional maintenance after the completion of the base contract. The first year of maintenance begins after Go Live.

2.3. Sheet 4-1 – Debit Card Detail

This sheet collects the variable costs associated with the creation, distribution, and use of the mobility debit cards. The costs entered are used to populate all remaining values in the sheet to forecast costs based on anticipated enrollment in the Next Gen CTB Program. The anticipated enrollment throughout the life of the contract is based on assumptions about the percentage of participants that receive a physical debit card, virtual debit card, and the percentage that re-enroll each year. The percentages are for cost comparison purposes only and the actual amounts are subject to change.

- a) In column (B), enter the “per card” cost associated with each of the Items listed in the Description of Services.

- b) All remaining cells are populated to provide an anticipated yearly cost for each year of the base contract and optional contract. The first year of service makes the following assumptions about the Description of Services:
 - a. Physical Card Production Fees: 70% of cards will be distributed as physical cards.
 - b. Virtual Card Production Fees: 30% of cards will be distributed as virtual cards.
 - c. Card Reload/Unload Processing Fees: 10% of cards will need to have funds unloaded.
- c) Each year’s cost, after the first year, makes the following assumptions about the Description of Services:
 - a. Physical Card Production Fees: 70% of all new cards will be distributed as physical cards.
 - b. Virtual Card Production Fees: 30% of cards will be distributed as virtual cards.
 - c. Card Reload/Unload Processing Fees: All existing cards from previous years will need to be reloaded with funds and 10% of all cards will need to have funds unloaded.

2.4. Sheet 4 – Debit Card Costs

This sheet is organized to provide the combined lump sum costs for the debit card component of the Next Gen CTB Program Management Platform and anticipated Production and Processing Fees for the Base Contract and Optional Years, for evaluation purposes. The total yearly fees are calculated for evaluation purposes only. Proposers will be evaluated on the Basic Platform Set Up, Card Branding, and “per card” fee for the initial five-year contract.

- a) In column (C), enter the total cost associated with the Item.
- b) The Production and Processing Fees – For Evaluation Purposes” Item will populate automatically. Review and validate the information in these cells to ensure they are accurate.

2.5. Sheet 5 – Additional Service Rates

The Proposer shall complete this sheet by providing loaded hourly labor rates for each staff position/classification for any additional work on this Project not included in *Appendix A – Scope of Work*. All changes to the Contract involving labor shall be based on the hourly labor rates in this table. All hourly labor rates shall be stated for the year 2024 and be inclusive of burden, overhead, and profit. Hourly labor rates for work provided after 2024 shall be adjusted based on average PPI/CPI Percentage Change of 0.43.

2.6. Sheet 3 – Maintenance & Licensing

Sheet 3 will automatically summarize the costs and pricing detailed in Sheet 3-1. The proposer is not required to enter any information on this sheet but should review and validate the summarized values.

2.7. Sheet 1 – Cost Summary

Sheet 1 will automatically summarize the costs and pricing detailed in Sheet 2 through Sheet 4. To complete Sheet 1, Proposers must do the following:

- a) List the “Total Base Contract Cost” in words in Row 17. This cost should match the value in cell C9.
- b) Provide a Signature and Date in Row 19.
- c) Provide a Typed Name and Title of the signer in Row 21.

2.8. Sheet 6 – Milestone Payment Schedule

The Milestone Payment Schedule outlines the Proposer’s the anticipated payment amounts for the System Costs according to the milestone payment schedule provided in *Appendix A – Scope of Work*. This sheet populates automatically and does not include the payment schedule for Maintenance and Licensing.

APPENDIX D

SAMPLE AGREEMENT TEMPLATE

SAMPLE AGREEMENT BETWEEN SAN MATEO COUNTY EXPRESS LANES JOINT POWERS AUTHORITY AND (VENDOR NAME)

TO DEVELOP A NEXT GENERATION COMMUNITY TRANSPORTATION BENEFITS PROGRAM MANAGEMENT PLATFORM THAT MANAGES PARTICIPATION AND FUNDS DISTRIBUTION

This Agreement entered this ___ day of _____ 20XX, by and between the San Mateo County Express Lanes Joint Powers Authority hereinafter called “SMCEL-JPA” and (Name of Company), hereinafter called “Vendor”.

WHEREAS, the Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes was approved by the City/County Association of Governments (C/CAG) Board and the San Mateo County Transportation Authority (SMCTA) Board at their board meetings on April 11, 2019 and May 2, 2019, respectively; and

WHEREAS, the First Amended and Restated Joint Exercise of Powers Agreement (JEPA) for the San Mateo County Express Lanes was approved by the C/CAG Board and the SMCTA Board at their respective board meetings on June 13, 2019 and July 11, 2019; and

WHEREAS, the JEPA created the San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA), a joint powers agency to: apply to the California Transportation Commission in order to own, administer, and manage the operations of the San Mateo County Express Lanes; to share in the ownership, administration, and management of any potential future express lanes within San Mateo County; to set forth the terms and conditions governing the management, operation, financing, and expenditure of revenues generated by express lanes in San Mateo County; and to exercise the powers as provided by law (including but not limited to California Streets and Highways Code Section 149.7, as it now exists and may hereafter be amended); and

WHEREAS, the pilot year of the San Mateo US 101 Community Transportation Benefits Program (Program) has been evaluated and the SMCEL-JPA Board has approved key updates to the Program including implementing an online enrollment option and providing a benefit amount of \$200 on a debit card for transportation-related purposes; and

WHEREAS, the Board of the SMCEL-JPA desires to retain a Vendor to perform said Scope of Work set forth in **Appendix A** that adheres to the operational requirements set forth in **Appendix B**; and

WHEREAS, the Vendor represents that it is able to provide said services as described in Appendix A that adhere to operational requirements set forth in Appendix B; and

WHEREAS, the parties hereto now wish to enter into this Agreement pursuant to which Vendor will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. Vendor shall provide the following services set forth in **Appendix A** (SCOPE OF WORK) that adhere to operational requirements set forth in **Appendix B** (OPERATIONAL REQUIREMENTS). The Vendor will provide the SMCEL-JPA with a project budget proposal in **Appendix C** (PROJECT BUDGET PROPOSAL) that applies specific personnel billing rates for the tasks outlined in **Appendix A**. The Vendor shall agree to the provisions included in this Appendix D, and those listed in Exhibits I, II, and III. In addition, and as needs are identified, the SMCEL-JPA will present the Vendor with a proposed amendment for any additional work or specific task/s not listed in **Appendix A** and request a cost proposal.

The specific scope of work and payment may be negotiated between the parties and a final contract defining cost and schedule ("Contract") will be prepared for execution. The SMCEL-JPA Board must approve the Contract before it becomes effective, and Vendor shall perform the Contract work for the cost specified therein. Vendor shall provide services consistent with **Appendix A** and in adherence to the operational requirements set forth in **Appendix B**, herein incorporated by references, and with specific Scopes of Services to be contained in the Contract entered into under this Agreement.

2. **Compensation and Method of Payments.** Subject to duly executed amendments, the SMCEL-JPA will pay Vendor for completion of tasks described in Appendix A. Compensation will be provided based on milestones, defined in Table 3: Milestone Payment Plan, during the system development and deployment (Phase 1) and will be provided on a quarterly basis for ongoing system support and maintenance (Phase 2).

First Phase: System Development and Deployment. Payment for the initial development of the system will be distributed on a milestone-based payment schedule. Payments will be disbursed upon the successful completion and written acceptance of each milestone by SMCEL-JPA in the table below. The payment for each milestone shall be a fixed amount, predetermined and agreed upon by both parties.

Table 3: Milestone Payment Plan

Milestone	Deliverables	Payment Percentage
Baseline Project Management Plan	<ul style="list-style-type: none"> - Project Schedule - Project Plan - Requirements Confirmation - Kick-Off Meeting with SMCEL-JPA Executive Council 	10%
Initial Systems Documentation	<ul style="list-style-type: none"> - System Architecture and Design Plan - Software Development and Configuration Management Plan - Cyber Security Plan 	20%
Development and Initial Testing I	<ul style="list-style-type: none"> - Test Environment - User Acceptance Testing Plan 	20%

Milestone	Deliverables	Payment Percentage
	- Three core modules developed/configured.	
User Acceptance Testing	- User Acceptance Testing Results - Vulnerability Testing Plan	5%
User Acceptance Testing Remediation	- Vulnerability Testing Remediation - User Acceptance Testing Remediation	5%
Final Acceptance Testing	- Production Environment - Final Acceptance Testing Results - Final Vulnerability Testing Remediation	10%
Training Services and Documentation	- Agenda and Materials for Administrative and End-User Training. - Up to 4 Initial Training Sessions. - User Manuals and Standard Operating Procedures.	10%
Deployment	- Deployment Plan. - Full deployment of system to public. - On-call support during first three weeks of system deployment. - Updated System Architecture and Design.	20%
TOTAL		100%

The Vendor shall submit an invoice upon the completion and acceptance of each milestone. The invoice must reference the specific milestone, include a detailed description of the work completed, and the amount due. The Agency will process payments within 30 business days of receiving a valid invoice.

Second Phase: Ongoing System Access, Support, and Maintenance. After the initial development phase is completed and the system goes live, the Vendor will provide ongoing access, support, and maintenance as described in **Appendix A**. Payments for system access, support, and maintenance will be made on a quarterly basis. The Vendor shall submit an invoice for access, support, and maintenance services and each invoice must include a detailed description of the services provided during the billing period. The Agency will process payments within 30 business days of receiving a valid invoice.

The SMCEL-JPA shall have the right to receive, upon request, documentation substantiating charges billed to the SMCEL-JPA.

All invoices and/or requests for payments shall be submitted to:

San Mateo County Express Lanes Joint Powers Authority
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Kaki Cheung

3. **Key Personnel.** The key personnel to be assigned to this contract by Vendor, their hourly rates, and the estimated hours should be detailed in **Appendix C**, attached hereto and incorporated herein by this reference. Substitution of any key personnel named in **Appendix C** or decrease in the hours provided to the project by such key personnel will require the prior written approval of the SMCEL-JPA. Any substitution shall be with a person of commensurate knowledge and experience, unless otherwise approved by the SMCEL-JPA. Vendor shall maintain records documenting compliance with this Article, and such records shall be subject to audit. Vendor agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. SMCEL-JPA reserves the right to direct removal of any individual, including key personnel, assigned to this work.
4. **Amendments.** SMCEL-JPA reserves the right to request changes in the services to be performed by Vendor. All such changes shall be incorporated in written amendments that specify the changes in work to be performed and any adjustments in compensation and schedule. All amendments shall be executed by an Executive Council of SMCEL-JPA and Vendor, and specifically identified as amendments to this Agreement. Either of the two SMCEL-JPA Executive Councils are designated as representative of the SMCEL-JPA Board, for purposes of approving an amendment. Should circumstances arise which, in the opinion of the Vendor, justify additional compensation or time or require changes in the Work specified by the Agreement, Vendor may propose a Change Order by written request, including sufficient information regarding cost and schedule to provide a basis for negotiation with SMCEL-JPA, as provided in this section, including references to applicable provisions of the Agreement; the factual reasons for which Vendor believes a revision to the Work, additional compensation, or a schedule extension is called for; and an estimate of any cost increase or schedule extension.

Where applicable and whenever possible, Vendor shall also include a line-by-line cost estimate with detail provided on all labor and materials. Vendor shall use the costs and rates included in the **Appendix C**, in preparing its Change Order. If cost reasonableness cannot be established on the basis of a catalog or market price of a commercial product sold in substantial quantities, or on the basis of prices set by law or regulation, Vendor is required to submit detailed cost breakdowns, including information on labor and materials costs, overhead and other indirect costs. If Vendor believes the changed Work will have a schedule impact, the proposal must include details on schedule changes in the Change Order.

If requested by SMCEL-JPA, Vendor shall promptly meet with the SMCEL-JPA Project Manager or any other designated representative of SMCEL-JPA involved in evaluating the Vendor's proposed Change Order. Following such discussion(s), and not later than 30 Calendar Days after submission of the proposed Change Order, SMCEL-JPA will either: (i) initiate a Change Order for Vendor's signature (ii) issue a written denial of Vendor's

proposed Change Order; or (iii) accept the proposal in part and deny it in part, initiating a Change Order for those portions accepted. If Vendor agrees with the terms and conditions of any such Change Order, Vendor shall sign a copy of the Change Order and return it to the SMCEL-JPA Project Manager, and Vendor shall promptly proceed with the Work as indicated therein. If Vendor disagrees with SMCEL-JPA's action, it may file a protest. If the Vendor fails to protest in accordance with the applicable procedures, Vendor shall not be entitled to file a claim for additional compensation or schedule extension or other remedy. Notwithstanding any request for a Change Order, Vendor's duty to complete the Work in accordance with the provisions of the Agreement shall not be postponed or abated.

- 5. Relationship of the Parties.** It is understood that Vendor is an Independent Vendor and this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Vendor. Vendor has no authority to contract or enter into any agreement without the prior approval of the SMCEL-JPA Board. Vendor has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by Vendor who are assisting in the performance of services under this Agreement. Vendor shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Vendor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.
- 6. Non-Assignability.** Vendor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the SMCEL-JPA.
- 7. Period of Performance.** Vendor's services hereunder shall commence on the date of execution of this agreement and shall be in effect until all tasks have been completed in a timely manner or after five (5) years, unless terminated by the SMCEL-JPA Board at any time for any reason by providing 30 days' notice to Vendor. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, Vendor shall be paid for all services provided to the date of termination. The SMCEL-JPA may also award up to five one-year option terms for Licensing and Support services to the successful Proposer at its sole discretion, which will not be part of the initial contract.
- 8. Hold Harmless / Indemnity.** Vendor shall indemnify and hold harmless the SMCEL-JPA, its board members, agents, officers, and employees from both C/CAG and the TA involved the project, against all claims, suits or actions to the extent caused by the negligence, errors, acts or omissions of the Vendor, its agents, sub-consultants, officers, or employees related to or resulting from the performance, or non-performance, under this Agreement. The duty to indemnify and hold harmless as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- 9. Insurance and Financial Security Requirements.** Vendor shall, at its own expense, obtain and maintain in effect at all times for the duration of this Agreement the types of insurance and financial security listed in **Appendix D, Exhibit I**, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims,

damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All policies will be issued by insurers acceptable to the SMCEL-JPA, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better.

Vendor or its Sub-consultants performing the services on behalf of Vendor shall not commence work under this Agreement until all insurance required under this section has been obtained. Vendor shall furnish the SMCEL-JPA with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Vendor's coverage to include the contractual liability assumed by Vendor pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the SMCEL-JPA of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.

Workers' Compensation and Employer Liability Insurance: The Vendor shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage.

Liability Insurance: Vendor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect Vendor, its employees, officers and agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by Vendor or by any Sub-consultant or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than \$1,000,000 unless another amount is specified below and shows approval by the SMCEL-JPA. **Exhibit I** includes specific insurance requirements.

The SMCEL-JPA and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the SMCEL-JPA, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if SMCEL-JPA, or its officers and employees have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the SMCEL-JPA may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

- 10. Non-discrimination.** No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related) military service, or genetic information.

- 11. Compliance with All Laws.** Vendor shall at all times comply with all applicable laws and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973.
- 12. Sole Property of the SMCEL-JPA.** Work products of Vendor which are delivered under this Agreement, or which are developed, produced and paid for under this Agreement, shall be and become the sole property of the SMCEL-JPA. The SMCEL-JPA may request a log of modifications made to work products following this completion of the Project. Vendor shall not be liable for the SMCEL-JPA's use, modification or re-use of products without Vendor's participation or for purpose other than those specifically intended pursuant to this Agreement.
- 13. Access to Records.** The SMCEL-JPA, or any of their duly authorized representatives, shall have access to any books, documents (including electronic), emails, papers, videos, voice recording, and records of Vendor, which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. The Vendor shall maintain all required records for three years after the SMCEL-JPA makes final payments and all other pending matters are closed.
- 14. Merger Clause.** This Agreement, including all Appendices are hereto added and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties, and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding. All subsequent modifications shall be in writing and signed by the SMCEL-JPA Exec. Council. In the event of a conflict between the terms, conditions or operational requirements set forth herein and those in **Appendix B** attached hereto, the terms, conditions or specifications set forth herein shall prevail.
- 15. Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.
- 16. Termination and Default.**
- 16.1 This Agreement may be cancelled by SMCEL-JPA in whole or in part at any time the interest of SMCEL-JPA requires such termination. SMCEL-JPA reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- 16.2 If SMCEL-JPA determines that the performance of the Vendor is not satisfactory, SMCEL-JPA shall have the option of (a) immediately terminating the Agreement, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by SMCEL-JPA.
- 16.3 If SMCEL-JPA requires termination of the Agreement for reasons other than unsatisfactory performance of the Vendor, SMCEL-JPA shall notify the Vendor of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

16.4 If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of SMCEL-JPA and shall be turned over promptly by the Vendor.

17. Disentanglement.

17.1 Vendor acknowledges that the Services provided under the terms of this Agreement and Scope of Work and Requirements are vital to SMCEL-JPA and must be continued without interruption. Upon termination of the Agreement, a successor (SMCEL-JPA or a new Vendor) may be responsible for providing these Services. The Vendor agrees to exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor.

- a. **General Transition Obligations:** Upon termination of the Agreement, whether for cause or convenience, Vendor shall accomplish a complete transition of the Services being terminated from Vendor and any Sub-consultants to SMCEL-JPA, or to any replacement provider designated by SMCEL-JPA, without any interruption of or adverse impact on the Services or any other services provided by third parties (the “Disentanglement”). Vendor shall cooperate with SMCEL-JPA and any new service provider and otherwise promptly take all steps required to assist SMCEL-JPA in effecting a complete Disentanglement. Vendor shall provide all information regarding the Services or as otherwise needed for Disentanglement, including data conversion, files, interface specifications, training staff assuming responsibility, and related professional services. Vendor shall provide for the prompt and orderly conclusion of all Work, as SMCEL-JPA may direct, including completion or partial completion of Projects, documentation of Work in process, and other measures to assure an orderly transition to SMCEL-JPA or the SMCEL-JPA’s designee. All Services related to Disentanglement shall be deemed a part of the base Services and shall be performed by Vendor at no additional cost to SMCEL-JPA beyond what SMCEL-JPA would pay for the base Services absent the performance of the Disentanglement Services. Vendor’s obligation to provide the Services shall not cease until Disentanglement is satisfactory to SMCEL-JPA, including the performance by Vendor of all asset-transfers and other obligations of Vendor provided in this section, has been completed.
- b. **Disentanglement Process:** The Disentanglement process shall begin on any of the following dates: (i) the date SMCEL-JPA notifies Vendor that no funds or insufficient funds have been appropriated so that the Agreement shall be terminated for convenience; (ii) the date designated by SMCEL-JPA not earlier than sixty (60) days prior to the end of any initial or extended term that SMCEL-JPA has not elected to extend pursuant to the Agreement or Task Order; or (iii) the date any Termination Notice is delivered, if SMCEL-JPA elects to terminate any or all of the Services pursuant to this Agreement. Subject to **Appendix A**, Scope of Work Vendor’s obligation to perform Services, and SMCEL-JPA’s

obligation to pay for Services, shall expire upon termination except that Vendor shall remain obligated to provide Disentanglement Services at SMCEL-JPA's request for up to twelve (12) months after any such termination date, and SMCEL-JPA shall pay for those Services at the rates set forth in the Agreement. Vendor and SMCEL-JPA shall discuss in good faith a plan for determining the nature and extent of Vendor's Disentanglement obligations and for the transfer of Services in process provided, however, that Vendor's obligation under this Agreement to provide all Services necessary for Disentanglement shall not be lessened in any respect. Vendor shall develop with the successor Vendor or SMCEL-JPA staff, a Contract Transition Plan describing the nature and extent of transition Services required in accordance with the requirements for the End of Contract Transition Plan set forth in **Appendix A**, Scope of Work. This Contract Transition Plan and dates for transferring responsibilities for each division of Work shall be submitted within 30 days of such Termination Notice. Upon completion of SMCEL-JPA review, both parties will meet and resolve any additional requirements/differences. Vendor shall be required to perform its Disentanglement obligations on an expedited basis, as determined by SMCEL-JPA, if SMCEL-JPA terminates the Agreement for cause.

17.2 The Disentanglement shall include the performance of the following specific obligations:

- a. Full Cooperation and Information: Upon Disentanglement, the parties shall cooperate fully with one another to facilitate a smooth transition of the Services being terminated from Vendor to SMCEL-JPA or the SMCEL-JPA's designated replacement provider. Such cooperation shall include the provision (both before and after the cessation of Vendor's providing all or any part of the Services under this Agreement) by Vendor to SMCEL-JPA of full, complete, detailed, and sufficient information (including all information then being utilized by Vendor) to enable SMCEL-JPA's personnel (or that of third parties) to fully assume and continue without interruption the provision of the Services.
- b. No Interruption or Adverse Impact: Vendor shall cooperate with SMCEL-JPA and all of the SMCEL-JPA's other service providers to ensure a smooth transition at the time of Disentanglement, with no interruption of Services, no adverse impact on the provision of Services or SMCEL-JPA's activities, no interruption of any Services provided by third parties, and no adverse impact on the provision of Services provided by third parties.
- c. Third-Party Authorizations: Without limiting the obligations of Vendor pursuant to any other clause herein, Vendor shall, subject to the terms of any third-party contracts and licenses provided by the Vendor, procure at no charge to SMCEL-JPA any third-party authorizations necessary to grant SMCEL-JPA the use and benefit of any third-party contracts and licenses between Vendor and third-party Consultants used to provide the Services, pending their assignment to SMCEL-JPA.
- d. Licenses to Proprietary Software: For any Software programs developed for use under SMCEL-JPA's Agreement, Vendor shall provide a nonexclusive,

nontransferable, fully-paid, perpetual, irrevocable, royalty-free worldwide license to SMCEL-JPA (or other service provider, as the case may be), at no charge to SMCEL-JPA, to use, copy, and modify, all Vendor underlying works and Vendor derivatives that would be needed in order to allow SMCEL-JPA to continue to perform for itself, or obtain from other providers, the Services as the same might exist at the time of Disentanglement. Vendor shall also provide SMCEL-JPA with a copy of each such program, in such media as requested by SMCEL-JPA, together with object code, source code, and appropriate documentation. Vendor shall also offer to SMCEL-JPA the right to receive Maintenance (including all Enhancements and Upgrades) and support with respect to such Vendor underlying works and Vendor derivatives for so long as SMCEL-JPA requires, at the best rates Vendor is offering to other major customers for services of a similar nature and scope. The terms of the license agreement and the associated escrow are included in **Appendix D, Exhibit III**. The terms of the license agreement for Software provided and/or developed under this Agreement and the associated escrow requirements are included in **Appendix D, Exhibit III**. Vendor shall offer to SMCEL-JPA the right to receive Maintenance (including all Enhancements and Upgrades) and support with respect to such Vendor underlying works and Vendor derivatives for so long as SMCEL-JPA requires, at the best rates Vendor is offering to other major customers for services of a similar nature and scope.

- e. **Transfer of Assets:** Vendor shall convey to SMCEL-JPA all SMCEL-JPA assets in Vendor's possession and other Vendor Project assets as SMCEL-JPA may select, at a price consisting of the net book value. Vendor shall promptly remove from SMCEL-JPA's premises any Vendor assets that SMCEL-JPA, or its designee, chooses not to purchase.
- f. **Transfer of Leases, Licenses, and Contracts:** Vendor, at its expense, shall convey or assign to SMCEL-JPA or its designee such leases, licenses, and other contracts used by Vendor, SMCEL-JPA, or any other person in connection with the Services, as SMCEL-JPA may select. Vendor's obligation described herein, shall include Vendor's performance of all obligations under such leases, licenses, and other contracts to be performed by it with respect to periods prior to the date of conveyance or assignment and Vendor shall reimburse SMCEL-JPA for any losses resulting from any claim that Vendor did not perform any such obligations.
- g. **Delivery of Documentation:** Vendor shall deliver to SMCEL-JPA or its designee all documentation and data related to SMCEL-JPA, including the SMCEL-JPA data held by Vendor. Vendor shall retain all data necessary to comply with the requirements of **Section 12.4 Reporting, Record Retention and Audit**.
- h. **Hiring of Employees:** Vendor shall cooperate with and assist (and shall cause its Sub-consultants to cooperate with and assist) SMCEL-JPA (or the SMCEL-JPA's designee) in offering employment, at the sole discretion of SMCEL-JPA, to any or all skilled or specially trained Vendor employees (and to any or all employees of Vendor's Sub-consultants) that are substantially involved in the provision of Services whether such offers are made at the time of, after, or in anticipation of expiration or termination of the Agreement term. Vendor shall be solely responsible for, and shall pay, all severance and related payments, if any are

payable pursuant to Vendor's standard policies, to any such employees of Vendor hired by SMCEL-JPA or its designee, and shall cause the relevant Sub-consultant of Vendor to pay severance and related payments, if any are payable pursuant to such Sub-consultant's standard policies, to any such employee of a Sub-consultant hired by SMCEL-JPA or its designee.

17.3 Preparation for Disentanglement

- a. **Complete Documentation.** Vendor shall provide to SMCEL-JPA complete information, including complete documentation, as required to be provided under this Agreement, in accordance with the standards and methodologies to be implemented by Vendor, for all Software (including applications developed as part of the Services) and Hardware, that is sufficient to enable SMCEL-JPA, or another service provider, to fully assume the provision of the Services to SMCEL-JPA. Vendor shall provide such documentation for all Updates, Upgrades, Enhancements to or replacements of Software or Hardware, concurrently with the installation thereof.
- b. **Maintenance of Assets:** Vendor shall maintain all Hardware, Software, Systems, networks, technologies, and other assets utilized in providing Services to SMCEL-JPA (including leased and licensed assets) in good condition and in such locations and configurations as to be readily identifiable and transferable to SMCEL-JPA or its designees in accordance with the provisions of this Agreement; additionally, Vendor shall insure such assets in accordance with this Agreement.
- c. **Advance Written Consents:** Vendor shall obtain advance written consents from all licensors and lessors to the conveyance or assignment of licenses and leases to SMCEL-JPA or its designee upon Disentanglement. Vendor shall also obtain for SMCEL-JPA the right, upon Disentanglement, to obtain maintenance (including all Enhancements, Updates and Upgrades) and support with respect to the assets that are the subject of such leases and licenses at the price at which, and for so long as, such maintenance and support is made commercially available to other customers of such third parties whose consent is being procured hereunder.
- d. **All Necessary Cooperation and Actions:** Vendor shall provide all cooperation, take such additional actions, and perform such additional tasks, as may be necessary to ensure a timely Disentanglement in compliance with the provisions of this section, including full performance, on or before the expiration date, of Vendor's obligations under this section.

Vendor shall provide sufficient experienced personnel in each division of Work during the entire transition period to ensure that the Services are maintained at the level of proficiency required by the Agreement. Vendor shall also provide sufficient staff to help the successor maintain the continuity and consistency of the services required by this Agreement and Scope of Work. The Vendor shall allow the successor to conduct on-site interviews with the employees.

- 18. Notices.** All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and addressed as follows:

San Mateo County Express Lanes Joint Powers Authority
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Sean Charpentier – Executive Council

Notices required to be given to the Vendor shall be addressed as follows:

Name of Person
Title
CONSULTANT NAME
Address

IN WITNESS WHEREOF, the parties hereto have affixed their hands on the day and year first above written.

NAME of Vendor (Vendor)

By: _____

Authorized Person to sign – Title

San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA)

By: _____

Rico Medina – Chair

Date

Approved as to form:

By: _____

Timothy Fox, SMCEL-JPA

Date

EXHIBIT I

INSURANCE AND FINANCIAL SECURITY (BOND) PROVISION

1. **General Requirements.** Vendor, at its sole expense, must maintain the insurance coverage as specified herein for the duration of the Term. Minimum limits may be satisfied by any combination of primary liability, umbrella or excess liability, and self-insurance coverage. To the extent damages are covered by any required insurance, Vendor waives all rights against the SMCEL-JPA for such damages. Failure to maintain required insurance does not limit this waiver.
2. **Qualification of Insurers.** Except for self-insured coverage, all policies must be written by an insurer with an A.M. Best rating of A- VII or higher unless otherwise approved by SMCEL-JPA staff.
3. **Primary and Non-Contributory Coverage.** All policies for which the SMCEL-JPA is required to be named as an additional insured must be on a primary and non-contributory basis.
4. **Waiver of Subrogation.** A waiver of subrogation endorsement applies to Commercial General Liability and Workers' Compensation.
5. **Claims-Made Coverage.** If any required policies provide claims-made coverage, Vendor must:
 - a. Maintain coverage and provide evidence of coverage for at least 3 years after the later of the expiration or termination of the Contract or the completion of all its duties under the Contract;
 - b. Purchase extended reporting coverage for a minimum of 3 years after completion of work if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Contract.
6. **Proof of Insurance.**
 - a. Insurance certificates showing evidence of coverage as required herein must be submitted with the response to this RFP.
 - b. Renewal insurance certificates must be provided on annual basis or as otherwise commensurate with the effective dates of coverage for any insurance required herein.
 - c. Insurance certificates must be in the form of a standard ACORD Insurance Certificate unless otherwise approved by SMCEL-JPA.
 - d. All insurance certificates must clearly identify the Contract Number (e.g., notated under the Description of Operations on an ACORD form).

- e. The SMCEL-JPA may require additional proofs of insurance or solvency, including but not limited to policy declarations, policy endorsements, policy schedules, self-insured certification/authorization, and balance sheets.
 - f. In the event any required coverage is cancelled or not renewed, Vendor must provide written notice to SMCEL-JPA no later than five (5) business days following such cancellation or nonrenewal.
7. **Sub-consultants.** Vendor is responsible for ensuring its Sub-consultants carry and maintain insurance coverage.

8. Limits of Coverage & Specific Endorsements.

Required insurance shall include:	Requirement Amount
a. Comprehensive General Liability	\$2,000,000
b. Workers Compensation/ER's Liability	Statutory/\$2,000,000
c. Professional Liability w Cyber Security	\$2,000,000
d. Crime Insurance, including third party coverage	\$500,000

9. **Non-Waiver.** This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract, including any provisions hereof requiring Vendor to indemnify, defend and hold harmless the SMCEL-JPA.

EXHIBIT II

DATA SECURITY REQUIREMENTS

1. **Definitions.** For purposes of this Exhibit, the following terms have the meanings set forth below. All initial capitalized terms in this Exhibit that are not defined in this Exhibit shall have the respective meanings given to them in the Contract.

“**Vendor Security Officer**” has the meaning set forth in **Section 2** of this Exhibit.

“**FedRAMP**” means the Federal Risk and Authorization Management Program, which is a federally approved risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

“**FISMA**” means The Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283 (Dec. 18, 2014)).

“**Hosting Provider**” means any Permitted Sub-consultant that is providing any or all of the Hosted Services under this Contract.

“**NIST**” means the National Institute of Standards and Technology.

“**PCI**” means the Payment Card Industry.

“**PSP**” or “**PSPs**” means the SMCEL-JPA’s IT Policies, Standards and Procedures.

“**SSAE**” means Statement on Standards for Attestation Engagements.

“**Security Accreditation Process**” has the meaning set forth in **Section 6** of this Exhibit.

2. **Security Officer.** Vendor will appoint a Vendor employee to respond to the SMCEL-JPA’s inquiries regarding the security of the Hosted Services who has sufficient knowledge of the security of the Hosted Services and the authority to act on behalf of Vendor in matters pertaining thereto (“**Vendor Security Officer**”).
3. **Vendor Responsibilities.** Vendor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to:
 - a. ensure the security and confidentiality of the SMCEL-JPA Data;
 - b. protect against any anticipated threats or hazards to the security or integrity of the SMCEL-JPA Data;
 - c. protect against unauthorized disclosure, access to, or use of the SMCEL-JPA Data;
 - d. ensure the proper disposal of any Next Gen CTB Program data in Vendor’s or its Sub-consultant’s possession; and
 - e. ensure that all Vendor Personnel comply with the foregoing.

The SMCEL-JPA has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching California Consumer Privacy Act (CPR) of 2018 and associated amendments. In no case will the safeguards of Vendor’s data privacy and information security program be less stringent than the safeguards used by the SMCEL-

JPA, and Vendor must at all times comply with all applicable public and non-public CPRA standards which can be found here:

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=3.&part=4.&lawCode=CIV&title=1.81.5

This responsibility also extends to all service providers and Sub-consultants with access to Next Gen CTB Program data or an ability to impact the contracted Platform. Vendor responsibilities are determined from the PSPs based on the services being provided to the SMCEL-JPA, the type of IT solution, and the applicable laws and regulations.

4. **Acceptable Use Standard.** To the extent that Vendor has access to the SMCEL-JPA's IT environment, Vendor must comply with both the SMCEL-JPA and CPRA's Acceptable Use Standards. All Vendor Personnel will be required, in writing, to agree to the SMCEL-JPA and CPRA's Acceptable Use Standard before accessing Next Gen CTB Program data. The SMCEL-JPA reserves the right to terminate Vendor's and/or Sub-consultant(s) or any Vendor Personnel's access to Next Gen CTB Program data if the SMCEL-JPA determines a violation has occurred.
5. **Protection of Next Gen Program data.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Vendor will:
 - 5.1. If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization for all Hosted Services environments throughout the Term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization, the SMCEL-JPA, at its sole discretion, may either a) require the Vendor to move the Software and Next Gen CTB Program data to an alternative Hosting Provider selected and approved by the SMCEL-JPA at Vendor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause.
 - 5.2. For Hosted Services provided by the Vendor, maintain either a FedRAMP authorization or an annual SSAE 18 SOC 2 Type II audit based on State required NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs.
 - 5.3. Ensure that the Software and Next Gen CTB Program data is securely stored, hosted, supported, administered, accessed, developed and backed up in the continental United States, and the data center(s) in which Next Gen CTB Program data resides minimally meets Uptime Institute Tier 3 standards (<https://www.uptimeinstitute.com>), or its equivalent;
 - 5.4. Maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the SMCEL-JPA Data that complies with the requirements of the SMCEL-JPA's data security policies as set forth in this Contract, and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;
 - 5.5. Throughout the Term, Vendor must not provide Hardware or Services from the list of excluded parties in the System for Award Management (SAM) for entities excluded from receiving federal government awards for "covered telecommunications equipment or services.

- 5.6. Provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of Next Gen CTB Program data and the nature of such Next Gen CTB Program data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);
- 5.7. Take all reasonable measures to:
 - a. Secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against “malicious actors” and others who may seek, without authorization, to destroy, disrupt, damage, encrypt, modify, copy, access or otherwise use Hosted Services or the information found therein; and
 - b. Prevent (i) the SMCEL-JPA and its Authorized Users from having access to the data of other customers or such other customer’s users of the Services; (ii) Next Gen CTB Program data from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the SMCEL-JPA Data;
- 5.8. Ensure that Next Gen CTB Program data is encrypted in transit and at rest using FIPS validated AES encryption modules and a key size of 128 bits or higher;
- 5.9. Ensure the Hosted Services support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML), Open Authentication (OAuth) or comparable State approved mechanisms;
- 5.10. Ensure the Hosted Services implements NIST compliant multi-factor authentication for privileged/administrative and other identified access.
- 5.11. Vendor must permanently sanitize or destroy the SMCEL-JPA’s information, including Next Gen CTB Program data, from all media both digital and nondigital including backups using National Security Agency (“NSA”) and/or National Institute of Standards and Technology (“NIST”) (NIST Guide for Media Sanitization 800-88) data sanitization methods or as otherwise instructed by the SMCEL-JPA. Vendor must sanitize information system media, both digital and non-digital, prior to disposal, release out of its control, or release for reuse as specified above.
6. **Security Accreditation Process.** Throughout the Term, Vendor will assist the SMCEL-JPA, at no additional cost, with **its Security Accreditation Process**, which includes the development, completion and on-going maintenance of a system security plan (SSP) using the SMCEL-JPA’s automated governance, risk and compliance (GRC) platform, which requires Vendor to submit evidence, upon request from the SMCEL-JPA, in order to validate Vendor’s security controls within two weeks of the SMCEL-JPA’s request. On an annual basis, or as otherwise required by the SMCEL-JPA such as for significant changes, re-assessment of the system’s controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames and required evidence based on the risk level of the identified risk. For all findings associated with the Vendor’s Platform, at no additional cost, Vendor will be required to create or assist with the creation of State

approved POAMs, perform related remediation activities, and provide evidence of compliance. The SMCEL-JPA will make any decisions on acceptable risk, Vendor may request risk acceptance, supported by compensating controls, however only the SMCEL-JPA may formally accept risk. Failure to comply with this Section will be deemed a material breach of the Contract.

7. **Unauthorized Access.** Vendor may not access, and must not permit any access to, State systems, in whole or in part, whether through the Hosted Services or otherwise, without the SMCEL-JPA's express prior written authorization. Such authorization may be revoked by the SMCEL-JPA in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Exhibit, and in no case exceed the scope of the SMCEL-JPA's authorization pursuant to this Section. All State-authorized connectivity or attempted connectivity to State systems shall be only through the SMCEL-JPA's security gateways and firewalls and in compliance with the SMCEL-JPA's security policies set forth in the Contract as the same may be supplemented or amended by the SMCEL-JPA and provided to Vendor from time to time.

8. Security Audits.

- 8.1. During the Term, Vendor will maintain complete and accurate records of its data protection practices, IT security controls, and the security logs relating to Next Gen CTB Program data, including but not limited to any backup, disaster recovery or other policies, practices or procedures relating to the SMCEL-JPA Data and any other information relevant to its compliance with this Contract.
- 8.2. Without limiting any other audit rights of the SMCEL-JPA, the SMCEL-JPA has the right to review Vendor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Contract. The SMCEL-JPA, at its own expense, is entitled to perform, or to have performed, an on-site audit of Vendor's data privacy and information security program. If the SMCEL-JPA chooses to perform an on-site audit, Vendor will, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the SMCEL-JPA or an independent data security expert that is reasonably acceptable to Vendor, provided that the SMCEL-JPA: (i) gives Vendor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Vendor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The SMCEL-JPA may, but is not obligated to, perform such security audits, which shall, at the SMCEL-JPA's option and request, include penetration and security tests, of any and all Hosted Services and their housing facilities and operating environments.
- 8.3. During the Term, Vendor will, when requested by the SMCEL-JPA, provide a copy of Vendor's and Hosting Provider's FedRAMP System Security Plan(s) or SOC 2 Type 2 report(s) to the SMCEL-JPA within two weeks of the SMCEL-JPA's request. The System Security Plan and SSAE audit reports will be recognized as Vendor's Confidential Information.

- 8.4. With respect to Next Gen CTB Program data, Vendor must implement any required safeguards as identified by the SMCEL-JPA or by any audit of Vendor's data privacy and information security program.
- 8.5. The SMCEL-JPA reserves the right, at its sole election, to immediately terminate this Contract or a Scope of Work without limitation and without liability if the SMCEL-JPA determines that Vendor fails or has failed to meet its obligations under this **Section 8**.
9. **Application Scanning.** During the Term, Vendor must, at its sole cost and expense, scan all Vendor provided applications, and must analyze, remediate, and validate all vulnerabilities identified by the scans as required by the SMCEL-JPA Web Application Security Standard and other applicable PSPs.

Vendor's application scanning and remediation must include each of the following types of scans and activities:

- 9.1. Dynamic Application Security Testing (DAST) – Authenticated interactive scanning of application for vulnerabilities, analysis, remediation, and validation (may include Interactive Application Security Testing (IAST)).
 - a. Vendor must either a) grant the SMCEL-JPA the right to dynamically scan a deployed version of the Software; or b) in lieu of the SMCEL-JPA performing the scan, Vendor must dynamically scan a deployed version of the Software using a State approved application scanning tool, and provide the SMCEL-JPA with a vulnerabilities assessment after Vendor has completed such scan. These scans and assessments i) must be completed and provided to the SMCEL-JPA quarterly (dates to be provided by the SMCEL-JPA) and for each major release; and ii) scans must be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations or the actual production environment.
- 9.2. Static Application Security Testing (SAST) - Scanning source code for vulnerabilities, analysis, remediation, and validation.
 - a. For Vendor provided applications, Vendor, at its sole expense, must provide resources to complete static application source code scanning, including the analysis, remediation and validation of vulnerabilities identified by application source code scans. These scans must be completed for all source code initially, for all updated source code, and for all source code for each major release and Vendor must provide the SMCEL-JPA with a vulnerability assessment after Vendor has completed the required scans.
- 9.3. Software Composition Analysis (SCA) – Third Party and/or Open-Source Scanning for vulnerabilities, analysis, remediation, and validation.
 - a. For Software that includes third party and open-source software, all included third party and open-source software must be documented and the source supplier must be monitored by the Vendor for notification of identified vulnerabilities and remediation. SCA scans may be included as part of SAST and DAST scanning or employ the use of an SCA tool to meet the scanning requirements. These scans must be completed for all third party and open source software initially, for all updated third party and

open source software, and for all third party and open source software in each major release and Vendor must provide the SMCEL-JPA with a vulnerability assessment after Vendor has completed the required scans if not provided as part of SAST and/or DAST reporting.

9.4. In addition, application scanning and remediation may include the following types of scans and activities if required by regulatory or industry requirements, data classification or otherwise identified by the SMCEL-JPA.

- a. If provided as part of the platform, all native mobile application software must meet these scanning requirements including any interaction with an application programming interface (API).
- b. Penetration Testing – Simulated attack on the application and infrastructure to identify security weaknesses.

10. Infrastructure Scanning. For Hosted Services, Vendor must ensure the infrastructure and applications are scanned using an approved scanning tool (Qualys, Tenable, or other PCI Approved Vulnerability Scanning Tool) at least monthly and provide the scan's assessments to the SMCEL-JPA in a format that is specified by the SMCEL-JPA and used to track the remediation. Vendor will ensure the remediation of issues identified in the scan according to the remediation time requirements documented in the SMCEL-JPA's PSPs.

11. Nonexclusive Remedy for Security Breach. Any failure of the Services to meet the requirements of this Exhibit with respect to the security of any Next Gen CTB Program data or other Confidential Information of the SMCEL-JPA, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the SMCEL-JPA, at its option, may terminate the Contract immediately upon written notice to Vendor without any notice or cure period, and Vendor must promptly reimburse to the SMCEL-JPA any Fees prepaid by the SMCEL-JPA prorated to the date of such termination.

EXHIBIT III

SOFTWARE CONTRACT TERMS AND CONDITIONS

These Terms and Conditions, together with all Appendices (including the Statement(s) of Work) and any other applicable appendices or addenda (Collectively this “Contract”) are agreed to between the SMCEL-JPA (the “”) and [INSERT COMPANY NAME] (“**Vendor**”), a [INSERT STATE & ENTITY STATUS, E.G., A MICHIGAN CORPORATION OR A TEXAS LIMITED LIABILITY COMPANY]. This Contract is effective on [MONTH, DAY, YEAR] (“**Effective Date**”), and unless terminated, will expire on [MONTH, DAY, YEAR] (the “**Term**”).

This Contract may be renewed for up to [Insert # of Renewal Options] additional [Insert # of Years Per Renewal Option] year period(s). Renewal is at the sole discretion of the SMCEL-JPA and will automatically extend the Term of this Contract. The SMCEL-JPA will document its exercise of renewal options via a Change Notice.]

1. **Definitions.** For the purposes of this Contract, the following terms have the following meanings:

“**Acceptance**” has the meaning set forth in **Section 9**.

“**Acceptance Tests**” means such tests as may be conducted in as described in **Section 9** and any applicable Scope of Work to determine whether the Software meets the requirements of this Contract and the Documentation.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of a Person.

“**Allegedly Infringing Materials**” has the meaning set forth in **Section 18**.

“**Approved Third Party Components**” means all third-party components, including Open-Source Components, that are included in or used in connection with the Software and are specifically identified by Vendor in the Vendor’s Bid Response or as part of the SMCEL-JPA’s Security Accreditation Process defined in **Appendix D, Exhibit II – Data Security Requirements**.

“**Authorized Users**” means all Persons authorized by the SMCEL-JPA to access and use the Software under this Contract, subject to the maximum number of users specified in the applicable Scope of Work.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which the SMCEL-JPA is authorized or required by law to be closed for business.

“**Business Requirements Specification**” means the initial specification setting forth the SMCEL-JPA’s business requirements regarding the features and functionality of the Software, as set forth in a Scope of Work.

“**Contract Change**” has the meaning set forth in **Subsection 2.2**.

“**Change Notice**” means a writing executed by the parties to the Contract memorializing a change to the Contract.

“**Change Proposal**” has the meaning set forth in **Subsection 2.2**.

“**Change Request**” has the meaning set forth in **Subsection 2.2**.

“**Confidential Information**” has the meaning set forth in **Subsection 22.1**.

“**Configuration**” means State-specific changes made to the Software without Source Code or structural data model changes occurring.

“**Contract**” has the meaning set forth in the preamble.

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (b) approve any Change Notices under this Contract. Each party’s Contract Administrator will be identified in **Appendix A** or subsequent Change Notices.

“**Vendor**” has the meaning set forth in the preamble.

“**Vendor’s Bid Response**” means the Vendor’s proposal submitted in response to the Solicitation Type.

“**Vendor Hosted**” means the Hosted Services are provided by Vendor or one or more of its Permitted Sub-consultants.

“**Vendor Personnel**” means all employees of Vendor or any Sub-consultants or Permitted Sub-consultants involved in the performance of Services hereunder.

“**Vendor Project Manager**” means the individual appointed by Vendor and identified in the project budget proposal (**see Appendix C**) or subsequent Change Notices to serve as the primary contact with regard to services, to monitor and coordinate the day-to-day activities of this Contract, and to perform other duties as may be further defined in this Contract, including an applicable Scope of Work.

“**Customization**” means State-specific changes to the Software's underlying Source Code or structural data model changes.

“**Deliverables**” means the Software, Services, Documentation, any Hardware, and all other documents and other materials that Vendor is required to or otherwise does provide to the SMCEL-JPA under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in a Scope of Work and all Work Product.

“**Deposit Material**” refers to material required to be deposited pursuant to **Section 28**.

“**Disaster Recovery Plan**” refers to the set(s) of documents, instructions, and procedures which enable the Vendor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations and to the actions the Vendor takes to meet the Recovery Point and Recovery Time Objectives.

“**Documentation**” means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents, or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Deliverable.

“**Effective Date**” has the meaning set forth in the preamble.

“**Fees**” means the costs defined by the Vendor in **Appendix C** for performing the scope of work defined in **Appendix A**.

“**Financial Audit Period**” has the meaning set forth in **Subsection 23.1**.

“**Hardware**” means all computer hardware or other equipment provided by Vendor under this Contract, if any, including but not limited to any related accessories.

“**Harmful Code**” means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, encrypt, modify, copy, or otherwise harm or impede in any manner, any (i) computer, software, firmware, data, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data Processed thereby; or (b) prevent the SMCEL-JPA or any Authorized User from accessing or using the Services as intended by this Contract, and includes any virus, bug, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

“**Hosted Services**” means the hosting, management and operation of the Operating Environment, Software, other services (including support and subcontracted services), and related resources for access and use by the SMCEL-JPA and its Authorized Users, including any services and facilities related to disaster recovery obligations.

“**Implementation Plan**” means the schedule included in a Scope of Work setting forth the sequence of events for the performance of Services under a Scope of Work, including the Milestones and Milestone Dates.

“**Integration Testing**” has the meaning set forth in **Section 9**.

“**Intellectual Property Rights**” means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the associated goodwill; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.

“**Key Personnel**” means any Vendor Personnel identified as key personnel in the Contract.

“**Loss or Losses**” means all losses, including but not limited to, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Maintenance Release**” means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Vendor may generally provide to its licensees from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software.

“**Milestone**” means an event or task described in the Implementation Plan under a Scope of Work that must be completed by the corresponding Milestone Date.

“**Milestone Date**” means the date by which a particular Milestone must be completed as set forth in the Implementation Plan under a Scope of Work.

“**New Version**” means any new version of the Software, including any updated Documentation, that the Vendor may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Vendor's designation of a new version number.

“**Next Gen CTB Program data**” has the meaning set forth in **Section 21**.

“**Nonconformity**” or “**Nonconformities**” means any failure or failures of a Deliverable, to conform to the requirements of this Contract.

“**Open-Source Components**” means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

“**Operating Environment**” means, collectively, the platform, environment and conditions on, in or under which the Software is intended to be installed and operate, as set forth in a Scope of Work, including such structural, functional and other features, conditions and components as hardware, operating software, system architecture, configuration, computing hardware, ancillary equipment, networking, software, firmware, databases, data, and electronic systems (including database management systems).

“**PAT**” means a document or product accessibility template, including any Information Technology Industry Council Voluntary Product Accessibility Template or VPAT®, that specifies how information and software products, such as websites, applications, software, and associated content, conform to WCAG 2.0 Level AA.

“**Permitted Sub-consultant**” means any third party hired by Vendor to perform Services for the SMCEL-JPA under this Contract, have access to or have the ability to control access to CTB Program data.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**Process**” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. “Processing” and “Processed” have correlative meanings.

“**Program Managers**” are the individuals appointed by the SMCEL-JPA, or their designees, to (a) monitor and coordinate the day-to-day activities of this Contract; (b) co-sign off on

Acceptance of the Deliverables; and (c) perform other duties as may be specified in a Scope of Work. Program Managers will be identified in **Appendix A** or subsequent Change Notices.

“**Representatives**” means a party's employees, officers, directors, partners, shareholders, agents, attorneys, successors and permitted assigns.

“**RFP**” means the SMCEL-JPA’s request for proposal designed to solicit responses for Services under this Contract.

“**Services**” means any of the services, including but not limited to, Hosted Services, Vendor is required to or otherwise does provide under this Contract.

“**Service Level Agreement**” means the appendix attached as **Appendix F**, setting forth the Support Services Vendor will provide to the SMCEL-JPA, and the parties' additional rights and obligations with respect thereto.

“**Site**” means any physical location(s) designated by the SMCEL-JPA in, or in accordance with, this Contract or a Scope of Work for delivery and installation of the Deliverable, if applicable.

“**Software**” means Vendor’s software as set forth in a Scope of Work, and any Maintenance Releases or New Versions provided to the SMCEL-JPA and any Customizations or Configurations made by or for the SMCEL-JPA pursuant to this Contract, and all copies of the foregoing permitted under this Contract.

“**Software Integration Testing**” has the meaning set forth in **Section 9**.

“**Source Code**” means the human readable source code of the Software to which it relates, in the programming language in which the Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Software.

“**Specifications**” means, for the Software, the specifications collectively set forth in the Business Requirements Specification, Technical Specification, Documentation, Solicitation Type or Vendor’s Bid Response, if any, for such Software, or elsewhere in a Scope of Work.

“**SMCEL-JPA**” means the joint powers authority between the San Mateo County Transportation Authority and the City/County Association of Governments of San Mateo County.

“**SMCEL-JPA Hosted**” means the Hosted Services are not provided by Vendor or one or more of its Permitted Sub-consultants.

“**SMCEL-JPA Materials**” means all materials and information, including but not limited to documents, data, know-how, ideas, methodologies, specifications, software, hardware, content, and technology, in any form or media, directly or indirectly provided or made available to Vendor by or on behalf of the SMCEL-JPA in connection with this Contract.

“**SMCEL-JPA Systems**” means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the SMCEL-JPA or any of its designees.

“**Scope of Work**” means any scope of work entered into by the parties and incorporated into this Contract. The initial Scope of Work is attached as **Appendix A**.

“**Stop Work Order**” has the meaning set forth in **Section 15**.

“**Support Services**” means the maintenance and support services Vendor is required to or otherwise does provide to the SMCEL-JPA under the Service Level Agreement.

“**System**” has the meaning and operational requirements set forth in **Appendix B**.

“**System Acceptance**” has the meaning set forth in **Section 9**.

“**Technical Specification**” means, with respect to any Software, the document setting forth the technical specifications for such Software and included in a Scope of Work.

“**Term**” has the meaning set forth in the preamble.

“**Testing Period**” has the meaning set forth in **Section 9**.

“**Transition Period**” has the meaning set forth in **Section 16**.

“**Transition Responsibilities**” has the meaning set forth in **Section 16**.

“**Unauthorized Removal**” has the meaning set forth in **Subsection 2.5**.

“**Unauthorized Removal Credit**” has the meaning set forth in **Subsection 2.5**.

“**User Data**” means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, Processed, generated or output by any device, system or network by or on behalf of the SMCEL-JPA, including any and all works, inventions, data, analyses and other information and materials resulting from any use of the Software by or on behalf of the SMCEL-JPA under this Contract, except that User Data does not include the Software or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input without the inclusion of user derived Information or additional user input.

“**Warranty Period**” means the 90 calendar-day period commencing on the date of the SMCEL-JPA's Acceptance of the Software or System (if Vendor is providing Hardware under this Contract) for which Support Services are provided free of charge.

“**WCAG 2.0 Level AA**” means level AA of the World Wide Web Consortium Web Content Accessibility Guidelines version 2.0.

“**Work Product**” means all State-specific deliverables that Vendor is required to, or otherwise does, provide to the SMCEL-JPA under this Contract including but not limited to Customizations, application programming interfaces, computer scripts, macros, user interfaces, reports, project management documents, forms, templates, and other State-specific documents and related materials together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract.

2. **Duties of Vendor.** Vendor will provide Deliverables pursuant to Scope of Work entered into under this Contract. Vendor will provide all Deliverables in a timely, professional manner and in accordance with the terms, conditions, and Specifications set forth in this Contract and the Scope of Work.
 - 2.1. **Scope of Work Requirements.** No Scope of Work will be effective unless signed by each party's Contract Administrator. The term of each Scope of Work will commence on the parties' full execution of a Scope of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and incorporated into this Contract. The SMCEL-JPA will have the right to terminate such Scope of Work as set forth in **Section 16**. Vendor acknowledges that time is of the essence with respect to Vendor's obligations under each Scope of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Scope of Work (including the Implementation Plan and all Milestone Dates) is strictly required.
 - 2.2. **Change Control Process.** The SMCEL-JPA may at any time request in writing (each, a "**Change Request**") changes to the Contract generally or any Scope of Work, including changes to the Services and Implementation Plan (each, a "**Contract Change**"). Upon the SMCEL-JPA's submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this Section.
 - a. As soon as reasonably practicable, and in any case within 20 Business Days following receipt of a Change Request, Vendor will provide the SMCEL-JPA with a written proposal for implementing the requested Change ("**Change Proposal**"), setting forth:
 - i. a written description of the proposed Changes to any Deliverables;
 - ii. an amended Implementation Plan reflecting: (A) the schedule for commencing and completing any additional or modified Deliverables; and (B) the effect of such Changes, if any, on completing any other Services under a Scope of Work;
 - iii. any additional State Resources Vendor deems necessary to carry out such Changes; and
 - iv. any increase or decrease in Fees resulting from the proposed Changes, which increase or decrease will reflect only the increase or decrease in time and expenses Vendor requires to carry out the Change.
 - b. Within 30 Business Days following the SMCEL-JPA's receipt of a Change Proposal, the SMCEL-JPA will by written notice to Vendor, approve, reject, or propose modifications to such Change Proposal. If the SMCEL-JPA proposes modifications, Vendor must modify and re-deliver the Change Proposal reflecting such modifications, or notify the SMCEL-JPA of any disagreement, in which event the parties will negotiate in good faith to resolve their disagreement. Upon the SMCEL-JPA's approval of the Change Proposal or the parties' agreement on all proposed modifications, as the case may be, each parties' Vendor Administrator will sign a Change Notice.
 - c. However, if the parties fail to enter into a Change Notice within 15 Business Days following the SMCEL-JPA's response to a Change Proposal, the SMCEL-JPA may, in its discretion:

- d. require Vendor to perform or provide the Deliverables under the existing Scope of Work without the Change;
- e. require Vendor to continue to negotiate a Change Notice;
- f. initiate a Dispute Resolution Procedure; or
- g. notwithstanding any provision to the contrary in a Scope of Work, terminate this Contract under **Subsection 16. 1.**
- h. No Change will be effective until the parties have executed a Change Notice. Notwithstanding the foregoing, no Scope of Work or Change Notice executed after the Effective Date will be construed to amend or modify this Contract in any way, unless it specifically states its intent to do so and cites the section or sections amended. Except as the SMCEL-JPA may request in its Change Request or otherwise in writing, Vendor must continue to perform its obligations in accordance with a Scope of Work pending negotiation and execution of a Change Notice. Vendor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Each party is responsible for its own costs and expenses of preparing, evaluating, negotiating, and otherwise processing any Change Request, Change Proposal, and Change Notice.
- i. The performance of any functions, activities, tasks, obligations, roles, and responsibilities comprising the Services as described in this Contract are considered part of the Services and, thus, will not be considered a Change. This includes the delivery of all Deliverables in accordance with their respective Specifications, and the diagnosis and correction of Nonconformities discovered in Deliverables prior to their Acceptance by the SMCEL-JPA or, subsequent to their Acceptance by the SMCEL-JPA, as necessary for Vendor to fulfill its associated warranty requirements and its Support Services under this Contract.
- j. Vendor may, on its own initiative and at its own expense, prepare and submit its own Change Request to the SMCEL-JPA. However, the SMCEL-JPA will be under no obligation to approve or otherwise respond to a Change Request initiated by Vendor.

2.3. Vendor Personnel.

- a. Vendor is solely responsible for all Vendor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.
- b. Prior to any Vendor Personnel performing any Services, Vendor will:
 - i. Ensure that such Vendor Personnel have the legal right to work in the United States;
 - ii. Upon request, require such Vendor Personnel to execute written agreements, in form and substance acceptable to the SMCEL-JPA, that bind such Vendor Personnel to confidentiality provisions that are at least as protective of the SMCEL-JPA's information (including all Confidential Information) as those contained in this Contract; and

- iii. Upon request, or as otherwise specified in a Scope of Work, perform background checks on all Vendor Personnel prior to their assignment. The scope is at the discretion of the SMCEL-JPA and documentation must be provided as requested. Vendor is responsible for all costs associated with the requested background checks. The SMCEL-JPA, in its sole discretion, may also perform background checks, pursuant to California's AB 152.
 - c. Vendor and all Vendor Personnel will comply with all rules, regulations, and policies of the SMCEL-JPA that are communicated to Vendor in writing, including security procedures concerning systems and data and remote access, building security procedures, including the restriction of access by the SMCEL-JPA to certain areas of its premises or systems, and general health and safety practices and procedures.
 - d. The SMCEL-JPA reserves the right to require the removal of any Vendor Personnel found, in the judgment of the SMCEL-JPA, to be unacceptable. The SMCEL-JPA's request must be written with reasonable detail outlining the reasons for the removal request. Replacement personnel for the removed person must be fully qualified for the position. If the SMCEL-JPA exercises this right, and Vendor cannot immediately replace the removed personnel, the SMCEL-JPA agrees to negotiate an equitable adjustment in schedule or other terms that may be affected by the SMCEL-JPA's required removal.
- 2.4. Vendor Project Manager. Throughout the Term of this Contract, Vendor must maintain a Vendor employee acceptable to the SMCEL-JPA to serve as Vendor Project Manager, who will be considered Key Personnel of Vendor.
- a. Vendor Project Manager must:
 - i. Have the requisite authority, and necessary skill, experience, and qualifications, to perform in such capacity;
 - ii. Be responsible for overall management and supervision of Vendor's performance under this Contract; and
 - iii. Be the SMCEL-JPA's primary point of contact for communications with respect to this Contract, including with respect to giving and receiving all day-to-day approvals and consents.
 - b. Vendor Project Manager must attend all regularly scheduled meetings as set forth in the Implementation Plan and will otherwise be available as set forth in a Scope of Work.
 - c. Vendor will maintain the same Vendor Project Manager throughout the Term of this Contract, unless:
 - i. The SMCEL-JPA requests in writing the removal of Vendor Project Manager;
 - ii. The SMCEL-JPA consents in writing to any removal requested by Vendor in writing;
 - iii. Vendor Project Manager ceases to be employed by Vendor, whether by resignation, involuntary termination or otherwise.

- d. Upon the occurrence of any event set forth in **Subsections 2. 4(c)(i-iii)** above, Vendor will promptly replace its Vendor Project Manager. Such replacement will be subject to the SMCEL-JPA's prior written approval.
- e. The Project Manager will monitor project implementation progress and report on a weekly/monthly basis to the SMCEL-JPA Project Manager on the following:
 - i. Progress to complete milestones, comparing forecasted completion dates to planned and actual completion dates
 - ii. Accomplishments during the reporting period, what was worked on and what was completed during the current reporting period
 - iii. Indicate the number of hours expended during the past week, and the cumulative total to date for the project. Also, state whether the remaining hours are sufficient to complete the project
 - iv. Tasks planned for the next reporting period
 - v. Identify any existing issues which are impacting the project and the steps being taken to address those issues
 - vi. Identify any new risks and describe progress in mitigating high impact/high probability risks previously identified

2.5. Vendor's Key Personnel.

- a. The SMCEL-JPA has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Vendor will notify the SMCEL-JPA of the proposed assignment, introduce the individual to the SMCEL-JPA Program Managers or their designees, and provide the SMCEL-JPA with a resume and any other information about the individual reasonably requested by the SMCEL-JPA. The SMCEL-JPA reserves the right to interview the individual before granting written approval. In the event the SMCEL-JPA finds a proposed individual unacceptable, the SMCEL-JPA will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- b. Vendor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the SMCEL-JPA. The Vendor's removal of Key Personnel without the prior written consent of the SMCEL-JPA is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Vendor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the SMCEL-JPA to be a material breach of this Contract.
- c. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the SMCEL-JPA, and that it would be impracticable and extremely difficult to determine and remedy the actual damage sustained by the SMCEL-JPA as a result of any Unauthorized Removal. Therefore, Vendor and the SMCEL-JPA agree that in the

case of any Unauthorized Removal in respect of which the SMCEL-JPA does not elect to exercise its rights under **Section 16**, Vendor will issue to the SMCEL-JPA an amount equal to \$25,000 per individual (each, an “Unauthorized Removal Credit”).

- d. Vendor acknowledges and agrees that each of the Unauthorized Removal Credits assessed under **Subsection 2. 5(c)** above:
 - i. is a reasonable estimate of and compensation for the anticipated or actual harm to the SMCEL-JPA that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and
 - ii. may, at the SMCEL-JPA’s option, be credited or set off against any Fees or other charges payable to Vendor under this Contract.

2.6. Sub-consultants. Vendor must obtain prior written approval of the SMCEL-JPA, which consent may be given or withheld in the SMCEL-JPA’s sole discretion, before engaging any Permitted Sub-consultant to provide Services to the SMCEL-JPA under this Contract. Third parties otherwise retained by Vendor to provide Vendor or other clients of Vendor with services are not Permitted Sub-consultants, and therefore do not require prior approval by the SMCEL-JPA. Engagement of any Sub-consultant or Permitted Sub-consultant by Vendor does not relieve Vendor of its representations, warranties, or obligations under this Contract. Without limiting the foregoing, Vendor will:

- a. Be responsible and liable for the acts and omissions of each such Sub-consultant (including such Permitted Sub-consultant and Permitted Sub-consultant's employees who, to the extent providing Deliverables, will be deemed Vendor Personnel) to the same extent as if such acts or omissions were by Vendor or its employees;
- b. Name the SMCEL-JPA a third-party beneficiary under Vendor’s Contract with each Permitted Sub-consultant with respect to the Services;
- c. Be responsible for all fees and expenses payable to, by or on behalf of each Permitted Sub-consultant in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and
- d. Notify the SMCEL-JPA of the location of the Permitted Sub-consultant and indicate if it is located within the continental United States.

3. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Vendor:
[Name]	[Name]
[Street Address]	[Street Address]
[City, State, Zip]	[City, State, Zip]
[Email]	[Email]
[Phone]	[Phone]

4. **Insurance.** Vendor must maintain the minimum insurances identified in the Insurance Schedule attached as **Appendix D, Exhibit I.**

5. **Software License.**

5.1. Perpetual License. If Vendor is providing the SMCEL-JPA with a license to use its Software indefinitely, then Vendor hereby grants to the SMCEL-JPA and its Authorized Users a non-exclusive, royalty-free, perpetual, irrevocable right, and license to use the Software and Documentation in accordance with the terms and conditions of this Contract, provided that:

- a. The SMCEL-JPA is prohibited from reverse engineering or decompiling the Software, making derivative works, modifying, adapting, or copying the Software except as is expressly permitted by this Contract or required to be permitted by law;
- b. The SMCEL-JPA is authorized to make copies of the Software for backup, disaster recovery, and archival purposes;
- c. The SMCEL-JPA is authorized to make copies of the Software to establish a test environment to conduct Acceptance Testing;
- d. Title to and ownership of the Software shall at all times remain with Vendor and/or its licensors, as applicable; and
- e. Except as expressly agreed in writing, the SMCEL-JPA is not permitted to sub-license the use of the Software or any accompanying Documentation.

5.2. Subscription License. If the Software is Vendor Hosted and Vendor is providing the SMCEL-JPA access to use its Software during the Term of the Contract only, then:

- a. Vendor hereby grants to the SMCEL-JPA, exercisable by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable right and license during the Term and such additional periods, if any, as Vendor is required to perform Services under this Contract or any Scope of Work, to:
 - i. access and use the Software, including in operation with other software, hardware, systems, networks, and services, for the SMCEL-JPA’s governmental purposes, including for Processing Next Gen CTB Program data;
 - ii. generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital, and other output, displays and other content as may result from any access to or use of the Software;

- iii. prepare, reproduce, print, download and use a reasonable number of copies of the Specifications and Documentation for any use of the Software under this Contract; and
 - iv. access and use the Software for all such non-production uses and applications as may be necessary or useful for the effective use of the Software hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the SMCEL-JPA's or its Authorized Users' use of the Software, including for purposes of assessing any Fees or other consideration payable to Vendor or determining any excess use of the Software as described in **Subsection 5. 2(c)** below.
- b. License Restrictions. The SMCEL-JPA will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make the Software available to any third party, except as expressly permitted by this Contract or in any Scope of Work; or (b) use or authorize the use of the Software or Documentation in any manner or for any purpose that is unlawful under applicable Law.
 - c. Use. The SMCEL-JPA will pay Vendor the corresponding Fees set forth in a Scope of Work or Project Budget Proposal for all Authorized Users access and use of the Software. Such Fees will be Vendor's sole and exclusive remedy for use of the Software, including any excess use.
- 5.3. Certification. To the extent that a License granted to the SMCEL-JPA is not unlimited, Vendor may request written certification from the SMCEL-JPA regarding use of the Software for the sole purpose of verifying compliance with this Section. Such written certification may occur no more than once in any 24-month period during the Term of the Contract. The SMCEL-JPA will respond to any such request within 45 calendar days of receipt. If the SMCEL-JPA's use is greater than contracted, Vendor may invoice the SMCEL-JPA for any unlicensed use (and related support) pursuant to the terms of this Contract at the rates set forth in Appendix C, and the unpaid license and support fees shall be payable in accordance with the terms of the Contract. Payment under this provision shall be Vendor's sole and exclusive remedy to cure these issues.
- 5.4. State License Grant to Vendor. The SMCEL-JPA hereby grants to Vendor a limited, non-exclusive, non-transferable license (i) to use the SMCEL-JPA's (or individual agency's, department's or division's) name, trademarks, service marks or logos, solely in accordance with the SMCEL-JPA's specifications, and (ii) to display, reproduce, distribute and transmit in digital form the SMCEL-JPA's (or individual agency's, department's or division's) name, trademarks, service marks or logos in connection with promotion of the Services as communicated to Vendor by the SMCEL-JPA. Use of the SMCEL-JPA's (or individual agency's, department's or division's) name, trademarks, service marks or logos will be specified in the applicable Scope of Work. Vendor is provided a limited license to State Materials for the sole and exclusive purpose of providing the Services.
6. **Third Party Components.** At least 30 days prior to adding new Third Party Components, Vendor will provide the SMCEL-JPA with notification information identifying and

describing the addition. Throughout the Term, on an annual basis, Vendor will provide updated information identifying and describing any Approved Third-Party Components included in the Software.

7. Intellectual Property Rights.

7.1. Ownership Rights in Software

- a. For purposes of this **Section 7** only, the term “Software” does not include Customizations.
- b. Subject to the rights and licenses granted by Vendor in this Contract and the provisions of **Subsection 7. 1(c)**:
- c. Vendor reserves and retains its entire right, title, and interest in and to all Intellectual Property Rights arising out of or relating to the Software; and
- d. none of the SMCEL-JPA or Authorized Users acquire any ownership of Intellectual Property Rights in or to the Software or Documentation as a result of this Contract.
- e. As between the SMCEL-JPA, on the one hand, and Vendor, on the other hand, the SMCEL-JPA has, reserves and retains, sole and exclusive ownership of all right, title and interest in and to SMCEL-JPA Materials, User Data, including all Intellectual Property Rights arising therefrom or relating thereto.

7.2. The SMCEL-JPA is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product developed exclusively for the SMCEL-JPA under this Contract, including all Intellectual Property Rights. In furtherance of the foregoing:

- a. Vendor will create all Work Product as work made for hire as defined in Section 101 of the Copyright Act of 1976; and
- b. to the extent any Work Product, or Intellectual Property Rights do not qualify as, or otherwise fails to be, work made for hire, Vendor hereby:
 - i. assigns, transfers, and otherwise conveys to the SMCEL-JPA, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Work Product, including all Intellectual Property Rights; and
 - ii. irrevocably waives any and all claims Vendor may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to the Work Product.

8. Software Implementation.

8.1 Implementation. Vendor will as applicable; deliver, install, configure, integrate, and otherwise provide and make fully operational the Software on or prior to the applicable Milestone Date in accordance with the criteria set forth in a Scope of Work and the Implementation Plan.

8.2 Site Preparation. Unless otherwise set forth in a Scope of Work, Vendor is responsible for ensuring the relevant Operating Environment is set up and in working order to allow Vendor to deliver and install the Software on or prior to the applicable Milestone Date. Vendor will provide the SMCEL-JPA with such notice as is specified in a Scope of Work, prior to delivery of the Software to give the SMCEL-JPA sufficient time to

prepare for Vendor's delivery and installation of the Software. If the SMCEL-JPA is responsible for Site preparation, Vendor will provide such assistance as the SMCEL-JPA requests to complete such preparation on a timely basis.

9. Software Acceptance Testing.

9.1 Acceptance Testing.

- a. Unless otherwise specified in a Scope of Work, upon installation of the Software, or in the case of Vendor Hosted Software, when Vendor notifies the SMCEL-JPA in writing that the Hosted Services are ready for use in a production environment, Acceptance Tests will be conducted as set forth in this **Section 9** to ensure the Software conforms to the requirements of this Contract, including the applicable Specifications and Documentation.
- b. All Acceptance Tests will take place Testing Environment described in **Appendix A - Scope of Work**, commence on the Business Day following installation of the Software, or the receipt by the SMCEL-JPA of the notification referenced in **Subsection 9.1(a)**, and be conducted diligently for up to 30 Business Days, or such other period as may be set forth in a Scope of Work (the "Testing Period"). Acceptance Tests will be conducted by the party responsible as set forth in a Scope of Work or, if a Scope of Work does not specify, the SMCEL-JPA, provided that:
 - i. for Acceptance Tests conducted by the SMCEL-JPA, if requested by the SMCEL-JPA, Vendor will make suitable Vendor Personnel available to observe or participate in such Acceptance Tests; and
 - ii. for Acceptance Tests conducted by Vendor, the SMCEL-JPA has the right to observe or participate in all or any part of such Acceptance Tests.

9.2 Vendor is solely responsible for all costs and expenses related to Vendor's performance of, participation in, and observation of Acceptance Testing.

- a. Upon delivery and installation of any application programming interfaces, Configuration or Customizations, or any other applicable Work Product, to the Software under a Scope of Work, additional Acceptance Tests will be performed on the modified Software as a whole to ensure full operability, integration, and compatibility among all elements of the Software ("Integration Testing"). Integration Testing is subject to all procedural and other terms and conditions set forth in this Section.
- b. The SMCEL-JPA may suspend Acceptance Tests and the corresponding Testing Period by written notice to Vendor if the SMCEL-JPA discovers a material Nonconformity in the tested Software or part or feature of the Software. In such event, Vendor will immediately, and in any case within 10 Business Days, correct such Nonconformity, whereupon the Acceptance Tests and Testing Period will resume for the balance of the Testing Period.

9.3 Notices of Completion, Non-Conformities, and Acceptance. Within 15 Business Days following the completion of any Acceptance Tests, including any Integration Testing, the party responsible for conducting the tests will prepare and provide to the other party written notice of the completion of the tests. Such notice must include a report describing

in reasonable detail the tests conducted and the results of such tests, including any uncorrected Nonconformity in the tested Software.

- a. If such notice is provided by either party and identifies any Nonconformities, the parties' rights, remedies, and obligations will be as set forth in **Subsection 9.4** and **Subsection 9.5**.
- b. If such notice is provided by the SMCEL-JPA, is signed by the SMCEL-JPA Program Managers or their designees, and identifies no Nonconformities, such notice constitutes the SMCEL-JPA's Acceptance of such Software.
- c. If such notice is provided by Vendor and identifies no Non-Conformities, the SMCEL-JPA will have 30 Business Days to use the Software in the Operating Environment and determine, in the exercise of its sole discretion, whether it is satisfied that the Software contains no Nonconformities, on the completion of which the SMCEL-JPA will, as appropriate:
 - i. notify Vendor in writing of Nonconformities the SMCEL-JPA has observed in the Software and of the SMCEL-JPA's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Subsection 9.4** and **Subsection 9.5**; or
 - ii. provide Vendor with a written notice of its Acceptance of such Software, which must be signed by the SMCEL-JPA Program Managers or their designees.

9.4 Failure of Acceptance Tests. If Acceptance Tests identify any Non-Conformities, Vendor, at Vendor's sole cost and expense, will remedy all such Nonconformities and re-deliver the Software, in accordance with the requirements set forth in the Contract. Redelivery will occur as promptly as commercially possible and, in any case, within 30 Business Days following, as applicable, Vendor's:

- a. Completion of such Acceptance Tests, in the case of Acceptance Tests conducted by Vendor; or
- b. Receipt of the SMCEL-JPA's notice under **Subsection 9.3 (a)** or **(c)(i)**, identifying any Nonconformities.

9.5 Repeated Failure of Acceptance Tests. If Acceptance Tests identify any Nonconformity in the Software after a second or subsequent delivery of the Software, or Vendor fails to re-deliver the Software on a timely basis, the SMCEL-JPA may, in its sole discretion, by written notice to Vendor:

- a. Continue the process set forth in this **Section 9**;
- b. Accept the Software as a nonconforming deliverable, in which case the Fees for such Software will be reduced equitably to reflect the value of the Software as received relative to the value of the Software had it conformed; or
- c. Deem the failure to be a non-curable material breach of this Contract and a Scope of Work and terminate this Contract in accordance with **Section 16**.

9.6 Acceptance. System Acceptance ("Acceptance") of the Software (subject, where applicable, to the SMCEL-JPA's right to Integration Testing) will occur on the date that is the earliest of the SMCEL-JPA's delivery of a notice accepting the Software under

Subsection 9. 3(b), or (c)(ii). Acceptance of the Software may be conditioned upon System Acceptance, if Vendor is providing Hardware, under the terms of this Contract.

9.7 Final Acceptance Testing. Final Acceptance Testing shall be performed in the Production Environment to verify the full functionality of all components of the software. The Vendor shall configure the SMCEL-JPA Production environment. All Final Acceptance Testing results must be documented by the Vendor and submitted to the SMCEL-JPA for review and acceptance after the testing is complete.

10. Non-Software Acceptance.

- 10.1. If Vendor is providing Hardware under this Contract, Vendor will comply with the requirements for delivery, acceptance and warranty of Hardware as set forth in **Appendix B**.
- 10.2. System Acceptance. If Vendor is providing Hardware under this Contract, Vendor will comply with the requirements for acceptance testing of the Software and Hardware together as a System, as set forth in **Appendix B**.
- 10.3. All other non-Software Deliverables are subject to inspection and testing by the SMCEL-JPA within 30 calendar days of the SMCEL-JPA's receipt of them ("State Review Period"), unless otherwise provided in the Scope of Work. If the non-Software Deliverables are not fully accepted by the SMCEL-JPA, the SMCEL-JPA will notify Vendor by the end of the SMCEL-JPA Review Period that either:
 - a. the non-Software Deliverables are accepted but noted deficiencies must be corrected; or
 - b. the non-Software Deliverables are rejected. If the SMCEL-JPA finds material deficiencies, it may:
 - c. reject the non-Software Deliverables without performing any further inspections;
 - d. demand performance at no additional cost; or
 - e. terminate this Contract in accordance with **Section 16**.
- 10.4. Within 10 business days from the date of Vendor's receipt of notification of acceptance with deficiencies or rejection of any non-Software Deliverables, Vendor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable non-Software Deliverables to the SMCEL-JPA. If acceptance with deficiencies or rejection of the non-Software Deliverables impacts the content or delivery of other non-completed non-Software Deliverables, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Vendor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.
- 10.5. If Vendor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the SMCEL-JPA may cancel the order in whole or in part. The SMCEL-JPA, or a third party identified by the SMCEL-JPA, may provide the non-Software Deliverables, and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 11. Assignment.** Vendor may not assign this Contract or any of its rights or delegate any of its duties or obligations hereunder, voluntarily, or involuntarily, whether by merger (regardless of whether it is the surviving or disappearing entity), conversion, consolidation, dissolution, or operation of law to any other party without the prior written approval of the SMCEL-JPA. Upon notice to Vendor, the SMCEL-JPA, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other governmental entity if such assignment is made reasonably necessary by operation of controlling law or regulation. If the SMCEL-JPA determines that a novation of the Contract to a third party is necessary, Vendor will agree to the novation and provide all necessary documentation and signatures.
- 12. Change of Control.** Vendor will notify the SMCEL-JPA, within 30 days of any public announcement or otherwise once legally permitted to do so, of a change in Vendor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following:
- a. a sale of more than 50% of Vendor's stock;
 - b. a sale of substantially all of Vendor's assets;
 - c. a change in a majority of Vendor's board members;
 - d. consummation of a merger or consolidation of Vendor with any other entity;
 - e. a change in ownership through a transaction or series of transactions;
 - f. or the board (or the stockholders) approves a plan of complete liquidation.

A change of control does not include any consolidation or merger effected exclusively to change the domicile of Vendor, or any transaction or series of transactions principally for bona fide equity financing purposes. In the event of a change of control, Vendor must require the successor to assume this Contract and all of its obligations under this Contract.

13. Invoices and Payment.

- 13.1. Invoices must conform to the requirements communicated from time-to-time by the SMCEL-JPA. All undisputed amounts are payable within 45 days of the SMCEL-JPA's receipt. Vendor may only charge for Deliverables provided as specified in Statement(s) of Work. Invoices must include an itemized statement of all charges.
- 13.2. The SMCEL-JPA has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The SMCEL-JPA will notify Vendor of any dispute within a reasonable time. Payment by the SMCEL-JPA will not constitute a waiver of any rights as to Vendor's continuing obligations, including claims for deficiencies or substandard Deliverables. Vendor's acceptance of final payment by the SMCEL-JPA constitutes a waiver of all claims by Vendor against the SMCEL-JPA for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.
- 13.3. The SMCEL-JPA will only disburse payments under this Contract through Electronic Money Transfer (EMT). Vendor must provide bank account and routing numbers to receive EMT payments. If Vendor does not register, the SMCEL-JPA is not liable for failure to provide payment.

- 13.4. Right of Setoff. Without prejudice to any other right or remedy it may have, the SMCEL-JPA reserves the right to set off at any time any amount then due and owing to it by Vendor against any amount payable by the SMCEL-JPA to Vendor under this Contract.
- 13.5. Taxes. Vendor is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local government entity on an amount payable by the SMCEL-JPA under this contract.
- 13.6. Pricing/Fee Changes. All Pricing set forth in this Contract will not be increased, except as otherwise expressly provided in this Section.
 - a. The Fees will not be increased at any time except for the addition of additional licenses, the fees for which licenses will also remain firm in accordance with the Pricing set forth in the Project Budget Proposal.
 - b. Vendor warrants and agrees that each of the Fees, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent fees, economic or product term or warranty being offered to any commercial or government customer (including any public educational institution within the State of California) of Vendor. If Vendor enters into any arrangements with another customer of Vendor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Vendor's current U. S. and International price list or comparable document, then this Contract will be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Vendor will immediately notify the SMCEL-JPA of such Fee and formally memorialize the new pricing in a Change Notice.

14. Liquidated Damages.

- 14.1. The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the SMCEL-JPA's damages in accordance with applicable law.
- 14.2. The parties acknowledge and agree that Vendor could incur liquidated damages for more than one event.
- 14.3. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the SMCEL-JPA may have under this Contract for Vendor's breach of this Contract, including without limitation, the SMCEL-JPA's right to terminate this Contract for cause and the SMCEL-JPA will be entitled in its discretion to recover actual damages caused by Vendor's failure to perform its obligations under this Contract. However, the SMCEL-JPA will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.
- 14.4. Amounts due the SMCEL-JPA as liquidated damages may be set off against any Fees payable to Vendor under this Contract, or the SMCEL-JPA may bill Vendor as a separate item and Vendor will promptly make payments on such bills.

15. Stop Work Order. The SMCEL-JPA may suspend any or all activities under the Contract at any time. The SMCEL-JPA will provide Vendor a written stop work order detailing the

suspension. Vendor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Vendor, the SMCEL-JPA will either

- a. issue a notice authorizing Vendor to resume work, or
- b. terminate the Contract or delivery order. The SMCEL-JPA will not pay for activities that have been suspended, Vendor's lost profits, or any additional compensation during a stop work period.

16. Termination, Expiration, Transition. The SMCEL-JPA may terminate this Contract, the Support Services, or any Scope of Work, in accordance with the following:

16.1. Termination for Cause. In addition to any right of termination set forth elsewhere in this Contract:

- a. The SMCEL-JPA may terminate this Contract for cause, in whole or in part, if Vendor, as determined by the SMCEL-JPA:
 - i. endangers the value, integrity, or security of State Systems, Next Gen CTB Program data, or the SMCEL-JPA's facilities or personnel;
 - ii. becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or
 - iii. breaches any of its material duties or obligations under this Contract. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.
- b. If the SMCEL-JPA terminates this Contract under this **Subsection 16.1**, the SMCEL-JPA will issue a termination notice specifying whether Vendor must:
 - i. cease performance immediately. Vendor must submit all invoices for Services accepted by the SMCEL-JPA within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Vendor for any amounts due to Vendor for Services accepted by the SMCEL-JPA under this Contract, or
 - ii. continue to perform for a specified period. If it is later determined that Vendor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Subsection 16.2**.
- c. The SMCEL-JPA will only pay for amounts due to Vendor for Services accepted by the SMCEL-JPA on or before the date of termination, subject to the SMCEL-JPA's right to set off any amounts owed by the Vendor for the SMCEL-JPA's reasonable costs in terminating this Contract. Vendor must promptly reimburse to the SMCEL-JPA any Fees prepaid by the SMCEL-JPA prorated to the date of such termination, including any prepaid Fees. Vendor must pay all reasonable costs incurred by the SMCEL-JPA in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the SMCEL-JPA incurs to procure the Services from other sources.

16.2. Termination for Convenience. The SMCEL-JPA may immediately terminate this Contract in whole or in part, without penalty and for any reason or no reason, including

but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Vendor must:

- a. cease performance immediately. Vendor must submit all invoices for Services accepted by the SMCEL-JPA within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Vendor for any amounts due to Vendor for Services accepted by the SMCEL-JPA under this Contract, or
- b. continue to perform in accordance with **Subsection 16.3**. If the SMCEL-JPA terminates this Contract for convenience, the SMCEL-JPA will pay all reasonable costs, as determined by the SMCEL-JPA, for State approved Transition Responsibilities to the extent the funds are available.

16.3. Transition Responsibilities.

- a. Upon termination or expiration of this Contract for any reason, Vendor must, for a period of time specified by the SMCEL-JPA (not to exceed 90 calendar days; the “**Transition Period**”), provide all reasonable transition assistance requested by the SMCEL-JPA, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the SMCEL-JPA or its designees. Such transition assistance may include but is not limited to:
 - i. continuing to perform the Services at the established Contract rates;
 - ii. taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the SMCEL-JPA or the SMCEL-JPA’s designee;
 - iii. taking all necessary and appropriate steps, or such other action as the SMCEL-JPA may direct, to preserve, maintain, protect, and comply with **Section 22**, including without limitation, the return or destruction of Next Gen CTB Program data at the conclusion of the Transition Period; and
 - iv. preparing an accurate accounting from which the SMCEL-JPA and Vendor may reconcile all outstanding accounts (collectively, the “Transition Responsibilities”). The Term of this Contract is automatically extended through the end of the Transition Period.
- b. Vendor will follow the transition plan as described in this Exhibit as it pertains to both transition in and transition out activities.

17. Indemnification

- 17.1. General Indemnification. Vendor must defend, indemnify, and hold the SMCEL-JPA, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to:

- a. any breach by Vendor (or any of Vendor's employees, agents, Sub-consultants, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract;
 - b. any infringement, misappropriation, or other violation of any Intellectual Property Right or other right of any third party;
 - c. any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Vendor (or any of Vendor's employees, agents, Sub-consultants, or by anyone else for whose acts any of them may be liable); and
 - d. any acts or omissions of Vendor (or any of Vendor's employees, agents, Sub-consultants, or by anyone else for whose acts any of them may be liable).
- 17.2. Indemnification Procedure. The SMCEL-JPA will notify Vendor in writing if indemnification is sought; however, failure to do so will not relieve Vendor, except to the extent that Vendor is materially prejudiced. Vendor must, to the satisfaction of the SMCEL-JPA, demonstrate its financial ability to carry out these obligations. The SMCEL-JPA is entitled to:
- a. regular updates on proceeding status;
 - b. participate in the defense of the proceeding;
 - c. employ its own counsel; and to
 - d. retain control of the defense, at its own cost and expense, if the SMCEL-JPA deems necessary. Vendor will not, without the SMCEL-JPA's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the SMCEL-JPA or any of its subdivisions must be coordinated with the Department of Attorney General. An attorney designated to represent the SMCEL-JPA may not do so until approved by the San Mateo County Attorney's Office.
- 17.3. The SMCEL-JPA is constitutionally prohibited from indemnifying Vendor or any third parties.

18. Infringement Remedies.

- 18.1. The remedies set forth in this Section are in addition to, and not in lieu of, all other remedies that may be available to the SMCEL-JPA under this Contract or otherwise, including the SMCEL-JPA's right to be indemnified for such actions.
- 18.2. If any Deliverable, or any component thereof, other than State Materials, is found to be infringing or if any use of any Software or any component thereof is enjoined, threatened to be enjoined or otherwise the subject of an infringement claim, Vendor must, at Vendor's sole cost and expense:
- a. procure for the SMCEL-JPA the right to continue to use such Deliverable, or component thereof to the full extent contemplated by this Contract; or

- b. modify or replace the materials that infringe or are alleged to infringe (“**Allegedly Infringing Materials**”) to make the Deliverable and all of its components non-infringing while providing fully equivalent features and functionality.
- 18.3. If neither of the foregoing is possible notwithstanding Vendor’s best efforts, then Vendor may direct the SMCEL-JPA to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Vendor will:
- a. refund to the SMCEL-JPA all amounts paid by the SMCEL-JPA in respect of such Allegedly Infringing Materials and any other aspects of the Deliverable provided under a Scope of Work for the Allegedly Infringing Materials that the SMCEL-JPA cannot reasonably use as intended under this Contract; and
 - b. in any case, at its sole cost and expense, secure the right for the SMCEL-JPA to continue using the Allegedly Infringing Materials for a transition period of up to 6 months to allow the SMCEL-JPA to replace the affected features of the Deliverable without disruption.
- 18.4. If Vendor directs the SMCEL-JPA to cease using any Deliverable under **Subsection 18.3**, the SMCEL-JPA, at its sole discretion, will be entitled to declare such a direction from the Vendor to cease use a material breach of the Contract and may terminate this Contract under **Section 16**. Unless the claim arose against the Deliverable independently of any of the actions specified below, Vendor will have no liability for any claim of infringement arising solely from:
- a. Vendor’s compliance with any designs, specifications, or instructions of the SMCEL-JPA; or
 - b. modification of the Deliverable by the SMCEL-JPA without the prior knowledge and approval of Vendor.

19. Disclaimer of Damages and Limitation of Liability.

- 19.1. The SMCEL-JPA’s Disclaimer of Damages. THE SMCEL-JPA WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.
- 19.2. The SMCEL-JPA’s Limitation of Liability. IN NO EVENT WILL THE SMCEL-JPA’S AGGREGATE LIABILITY TO CONSULTANT UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.

20. Disclosure of Litigation, or Other Proceeding. Vendor must notify the SMCEL-JPA within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, “**Proceeding**”) involving Vendor, a Permitted Sub-consultant, or an

officer or director of Vendor or Permitted Sub-consultant, that arises during the term of the Contract, including:

- a. a criminal Proceeding;
- b. a parole or probation Proceeding;
- c. a Proceeding under the Sarbanes-Oxley Act;
- d. a civil Proceeding involving:
 - i. a claim that might reasonably be expected to adversely affect Vendor's viability or financial stability; or
 - ii. a governmental or public entity's claim or written allegation of fraud; or
- e. a Proceeding involving any license that Vendor is required to possess in order to perform under this Contract.

21. Next Gen CTB Program data.

21.1. Ownership. The SMCEL-JPA's data ("**Next Gen CTB Program data**"), which will be treated by Vendor as Confidential Information, includes:

- a. User Data; and
- b. any other data collected, used, Processed, stored, or generated in connection with the Services, including but not limited to:
- c. personally identifiable information ("PII") collected, used, Processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, including but not limited to a person's name, email, home and/or mobile phone number, home address, household income, and optional demographic data such as race and ethnicity. PII also includes information collected to prove identity (such as photo of driver's license, state-issued ID, passport, or permanent resident card) and income (such as photo of CalFresh/Electronic Benefits Transfer (EBT) card, Medi-Cal card, county benefit eligibility letter, Muni Lifeline Card, Clipper START card number, email or mobile number associated with an Express Lanes START account, tax documents, or a self-declaration of income form).

21.2. Next Gen CTB Program data is and will remain the sole and exclusive property of the SMCEL-JPA and all right, title, and interest in the same is reserved by the SMCEL-JPA.

21.3. Vendor Use of Next Gen CTB Program data. Vendor must comply with all provisions included in the SMCEL-JPA Privacy Policy, linked here and also included as Appendix G (<https://101expresslanes.org/media/254/download?inline>). Vendor is provided a limited license to Next Gen CTB Program data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display Next Gen CTB Program data only to the extent necessary in the provision of the Services. Vendor must:

- a. keep and maintain Next Gen CTB Program data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described

in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss;

- b. use and disclose Next Gen CTB Program data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Scope of Work, and applicable law;
- c. keep and maintain Next Gen CTB Program data in the continental United States and
- d. not use, sell, rent, transfer, mine, distribute, commercially exploit, or otherwise disclose or make available Next Gen CTB Program data for Vendor's own purposes or for the benefit of anyone other than the SMCEL-JPA without the SMCEL-JPA's prior written consent. Vendor's misuse of Next Gen CTB Program data may violate state or federal laws, including but not limited to the CPRA.

21.4. Third-Party Requests. Vendor will immediately notify the SMCEL-JPA upon receipt of any third-party requests which in any way might reasonably require access to Next Gen CTB Program data. Vendor will notify the SMCEL-JPA Program Managers or their designees by the fastest means available and also in writing. Vendor must provide such notification within twenty-four (24) hours from Vendor's receipt of the request. Vendor will not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the SMCEL-JPA without first notifying the SMCEL-JPA. Upon request by the SMCEL-JPA, Vendor must provide to the SMCEL-JPA, its proposed response to the third-party request with adequate time for the SMCEL-JPA to review, and, as it deems necessary, to revise the response, object, or take other action.

21.5. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Vendor that compromises or is suspected to compromise the security, confidentiality, integrity, or availability of Next Gen CTB Program data or the physical, technical, administrative, or organizational safeguards put in place by Vendor that relate to the protection of the security, confidentiality, or integrity of Next Gen CTB Program data, Vendor must, as applicable:

- a. notify the SMCEL-JPA as soon as practicable but no later than 24 hours of becoming aware of such occurrence;
- b. cooperate with the SMCEL-JPA in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the SMCEL-JPA;
- c. in the case of PII or PHI, at the SMCEL-JPA's sole election:
- d. with approval and assistance from the SMCEL-JPA, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or
- e. reimburse the SMCEL-JPA for any costs in notifying the affected individuals;
- f. in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24 months following the date of notification to such individuals;

- g. perform or take any other actions required to comply with applicable law as a result of the occurrence;
- h. pay for any costs associated with the occurrence, including but not limited to any costs incurred by the SMCEL-JPA in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution;
- i. without limiting Vendor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the SMCEL-JPA for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the SMCEL-JPA in connection with the occurrence;
- j. be responsible for recreating lost Next Gen CTB Program data in the manner and on the schedule set by the SMCEL-JPA without charge to the SMCEL-JPA; and
- k. provide to the SMCEL-JPA a detailed plan within 10 calendar days of the occurrence describing the measures Vendor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Vendor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Vendor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Vendor. The SMCEL-JPA will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed, and approved by the SMCEL-JPA in writing prior to its dissemination.

21.6. The parties agree that any damages arising out of a breach of the terms set forth in this Section are to be considered direct damages and not consequential damages.

22. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties.

22.1. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the California Public Record Act (PRA); (b) already in the possession of the receiving party without an obligation of confidentiality;

(c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure). For purposes of this Contract, in all cases and for all matters, Next Gen CTB Program data is deemed to be Confidential Information.

- 22.2. **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or Sub-consultants of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and Sub-consultants of their obligations to keep all Confidential Information confidential. Disclosure to the Vendor's Sub-consultant is permissible where:
- a. the Sub-consultant is a Permitted Sub-consultant;
 - b. the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Sub-consultant's responsibilities; and
 - c. Vendor obligates the Permitted Sub-consultant in a written contract to maintain the SMCEL-JPA's Confidential Information in confidence. At the SMCEL-JPA's request, any of the Vendor's and Permitted Sub-consultant's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Subsection 22.2.**
- 22.3. **Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- 22.4. **Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the SMCEL-JPA, at the sole election of the SMCEL-JPA, the immediate termination, without liability to the SMCEL-JPA, of this Contract or any Scope of Work corresponding to the breach or threatened breach
- 22.5. **Surrender of Confidential Information.** Upon termination or expiration of this Contract or a Scope of Work, in whole or in part, each party must, within 5 Business Days from the date of termination or expiration, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf

of the other party, which are in such party's possession, custody, or control. Upon confirmation from the SMCEL-JPA, of receipt of all data, Vendor must permanently sanitize or destroy the SMCEL-JPA's Confidential Information, including Next Gen CTB Program data, from all media including backups using National Security Agency ("NSA") and/or National Institute of Standards and Technology ("NIST") (NIST Guide for Media Sanitization 800-88) data sanitization methods or as otherwise instructed by the SMCEL-JPA. If the SMCEL-JPA determines that the return of any Confidential Information is not feasible or necessary, Vendor must destroy the Confidential Information as specified above. The Vendor must certify the destruction of Confidential Information (including Next Gen CTB Program data) in writing within 5 Business Days from the date of confirmation from the SMCEL-JPA.

23. Records Maintenance, Inspection, Examination, and Audit.

- 23.1. Right of Audit. The SMCEL-JPA or its designee may audit Vendor to verify compliance with this Contract. Vendor must retain and provide to the SMCEL-JPA or its designee and the auditor general upon request, all financial and accounting records related to this Contract through the Term of this Contract and for three (3) years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Financial Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Financial Audit Period, Vendor must retain the records until all issues are resolved.
- 23.2. Right of Inspection. Within 10 calendar days of providing notice, the SMCEL-JPA and its authorized representatives or designees have the right to enter and inspect Vendor's premises or any other places where Services are being performed, and examine, copy, and audit all records related to this Contract. Vendor must cooperate and provide reasonable assistance. If financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of this Contract must be paid or refunded within 45 calendar days.
- 23.3. Application. This **Section 23** applies to Vendor, any Affiliate, and any Permitted Sub-consultant that performs Services in connection with this Contract.

24. Support Services. Vendor will provide the SMCEL-JPA with ongoing access, support and maintenance services described in the Service Level Agreement attached as **Appendix F**.

25. Data Security Requirements. Throughout the Term and at all times in connection with its actual or required performance of the Services, Vendor will maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the SMCEL-JPA's Confidential Information that comply with the requirements of the SMCEL-JPA's data security policies as set forth in **Appendix D, Exhibit II**.

26. Training. Vendor will provide, at no additional charge, training on the Deliverable provided hereunder in accordance with the times, locations and other terms set forth in a Scope of Work. Upon the SMCEL-JPA's request, Vendor will timely provide training for additional Authorized Users or other additional training on the Deliverables for which the SMCEL-JPA

requests such training, at such reasonable times and locations and pursuant to such rates and other terms as are set forth in the Project Budget Proposal.

27. Maintenance Releases; New Versions.

- 27.1. Maintenance Releases. Provided that the SMCEL-JPA is current on its Fees, during the Term, Vendor will provide the SMCEL-JPA, at no additional charge, with all Maintenance Releases, each of which will constitute Software and be subject to the terms and conditions of this Contract.
- 27.2. New Versions. Provided that the SMCEL-JPA is current on its Fees, during the Term, Vendor will provide the SMCEL-JPA, at no additional charge, with all New Versions, each of which will constitute Software and be subject to the terms and conditions of this Contract.
- 27.3. Installation. The SMCEL-JPA has no obligation to install or use any Maintenance Release or New Versions. If the SMCEL-JPA wishes to install any Maintenance Release or New Version, the SMCEL-JPA will have the right to have such Maintenance Release or New Version installed, in the SMCEL-JPA's discretion, by Vendor or other authorized party as set forth in a Scope of Work. Vendor will provide the SMCEL-JPA, at no additional charge, adequate Documentation for installation of the Maintenance Release or New Version, which has been developed and tested by Vendor and Accepted and Tested by the SMCEL-JPA. The SMCEL-JPA's decision not to install or implement a Maintenance Release or New Version of the Software will not affect its right to receive Support Services throughout the Term of this Contract.
- 27.4. Supported Third Party and Open-Source Components. Vendor will utilize only currently supported versions of all Third Party or Open-Source Components and will notify the SMCEL-JPA when not using the most recently published Third Party and Open-Source Components.

28. Source Code Escrow.

- 28.1. Escrow Contract. The parties may enter into a separate intellectual property escrow agreement. Such escrow agreement will govern all aspects of Source Code escrow and release. The cost of the escrow will be the sole responsibility of Vendor.
- 28.2. Deposit. Within 30 business days of the Effective Date, Vendor will deposit with the escrow agent, pursuant to the procedures of the escrow agreement, the Source Code for the Software, as well as the Documentation and names and contact information for each author or other creator of the Software. Promptly after release of any update, upgrade, patch, bug fix, enhancement, new version, or other revision to the Software, Vendor will deposit updated Source Code, documentation, names, and contact information with the escrow agent (all of which is collectively referred to herein as "**Deposit Material**").
- 28.3. Verification. At State's request and expense, the escrow agent may at any time verify the Deposit Material, including without limitation by compiling Source Code, comparing it to the Software, and reviewing the completeness and accuracy of any and all material. In the event that the Deposit Material does not conform to the requirements of **Subsection 28.2** above:

- a. Vendor will promptly deposit conforming Deposit Material; and
 - b. Vendor will pay the escrow agent for subsequent verification of the new Deposit Material. Any breach of the provisions of this **Section 28** will constitute material breach of this Contract, and no further payments will be due from the SMCEL-JPA until such breach is cured, in addition to any other remedies the SMCEL-JPA may have.
- 28.4. Deposit Material License. Vendor hereby grants the SMCEL-JPA a license to use, reproduce, and create derivative works from the Deposit Material, provided the SMCEL-JPA may not distribute or sublicense the Deposit Material or make any use of it whatsoever except for such internal or governmental uses as necessary to maintain and support the Software. Copies of the Deposit Material created or transferred pursuant to this Contract are licensed, not sold, and the SMCEL-JPA receives no title to or ownership of any copy or of the Deposit Material itself. The Deposit Material constitutes Confidential Information of Vendor pursuant to **Section 22** (Non-disclosure of Confidential Information) of this Contract (provided no provision of **Subsection 22.4** calling for return of Confidential Information before termination of this Contract will apply to the Deposit Material).

29. Vendor Representations and Warranties.

- 29.1. Authority. Vendor represents and warrants to the SMCEL-JPA that:
- a. It is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
 - b. It has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;
 - c. The execution of this Contract by its Representative has been duly authorized by all necessary organizational action; and
 - d. When executed and delivered by Vendor, this Contract will constitute the legal, valid, and binding obligation of Vendor, enforceable against Vendor in accordance with its terms.
 - e. Vendor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.
- 29.2. Bid Response. Vendor represents and warrants to the SMCEL-JPA that:
- a. The prices proposed by Vendor were arrived at independently, without consultation, communication, or agreement with any other Proposer for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Vendor to any other Proposer to the Solicitation Type; and no attempt was made by Vendor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;
 - b. All written information furnished to the SMCEL-JPA by or for Vendor in connection with this Contract, including Vendor's Bid Response, is true, accurate, and complete,

and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading;

- c. Vendor is not in material default or breach of any other contract or agreement that it may have with the SMCEL-JPA or any of its departments, commissions, boards, or agencies. Vendor further represents and warrants that it has not been a party to any contract with the SMCEL-JPA or any of its departments that was terminated by the SMCEL-JPA within the previous 5 years for the reason that Vendor failed to perform or otherwise breached an obligation of the contract; and
- d. If any of the certifications, representations, or disclosures made in Vendor's Bid Response change after contract award, the Vendor is required to report those changes immediately to the Contract Administrator.

29.3. Software Representations and Warranties. Vendor further represents and warrants to the SMCEL-JPA that:

- a. Vendor is the legal and beneficial owner of the entire right, title, and interest in and to the Software, including all Intellectual Property Rights relating thereto;
- b. Vendor has, and throughout the license term, will retain the unconditional and irrevocable right, power, and authority to grant and perform the license hereunder;
- c. Vendor has, and throughout the Term and any additional periods during which Vendor does or is required to perform the Services will have, the unconditional and irrevocable right, power, and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;
- d. the Software, and the SMCEL-JPA's use thereof, is and throughout the license term will be free and clear of all encumbrances, liens, and security interests of any kind;
- e. neither its grant of the license, nor its performance under this Contract does or to its knowledge will at any time:
 - i. conflict with or violate any applicable law;
 - ii. require the consent, approval, or authorization of any governmental or regulatory authority or other third party; or
 - iii. require the provision of any payment or other consideration to any third party;
- f. when used by the SMCEL-JPA or any Authorized User in accordance with this Contract and the Documentation, the Software, the Hosted Services, if applicable, or Documentation as delivered or installed by Vendor does not or will not:
 - i. infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party; or
 - ii. fail to comply with any applicable law;
- g. as provided by Vendor, the Software and Services do not and will not at any time during the Term contain any:
 - i. Harmful Code; or

- ii. Third party or Open-Source Components that operate in such a way that it is developed or compiled with or linked to any third party or Open-Source Components, other than Approved Third Party Components specifically described in a Scope of Work.
- h. all Documentation is and will be complete and accurate in all material respects when provided to the SMCEL-JPA such that at no time during the license term will the Software have any material undocumented feature; and
- i. Vendor will perform all Services in a timely, skillful, professional, and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, and will devote adequate resources to meet its obligations under this Contract.
- j. when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, all Software as provided by Vendor, will be fully operable, meet all applicable specifications, and function in all respects, in conformity with this Contract and the Documentation;
- k. Vendor acknowledges that the SMCEL-JPA cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the SMCEL-JPA will not indemnify any third-party software provider for any reason whatsoever;
- l. no Maintenance Release or New Version, when properly installed in accordance with this Contract, will have a material adverse effect on the functionality or operability of the Software.
- m. all Configurations or Customizations made during the Term will be forward-compatible with future Maintenance Releases or New Versions and be fully supported without additional costs.
- n. If Vendor Hosted:
 - i. Vendor will not advertise through the Hosted Services (whether with adware, banners, buttons, or other forms of online advertising) or link to external web sites that are not approved in writing by the SMCEL-JPA;
 - ii. the Software and Services will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract including the provisions set forth in the Service Level Agreement.
 - iii. all Specifications are, and will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the Hosted Services in all material respects such that at no time during the Term or any additional periods during which Vendor does or is required to perform the Services will the Hosted Services have any material undocumented feature;

- o. During the Term of this Contract, any audit rights contained in any third-party software license agreement or end user license agreement for third-party software incorporated in or otherwise used in conjunction with the Software or with the Hosted Services, if applicable, will apply solely to Vendor or its Permitted Sub-consultants. Regardless of anything to the contrary contained in any third-party software license agreement or end user license agreement, third-party software providers will have no audit rights whatsoever against State Systems or networks.

29.4. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS CONTRACT, CONSULTANT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THIS CONTRACT.

30. Conflicts and Ethics. Vendor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value including an offer of employment; or (d) paying or agreeing to pay any person, other than employees and consultants working for Vendor, any consideration contingent upon the award of the Contract. Vendor must immediately notify the SMCEL-JPA of any violation or potential violation of these standards. This Section applies to Vendor, any parent, affiliate, or subsidiary organization of Vendor, and any Permitted Sub-consultant that provides Deliverables in connection with this Contract.

31. Compliance with Laws. Vendor, its Sub-consultants, including Permitted Sub-consultants, and their respective Representatives must comply with all laws in connection with this Contract.

32. Non-discrimination. No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related) military service, or genetic information.

33. Governing Law. This Contract is governed, construed, and enforced in accordance with California law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by California law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the San Mateo County Superior Court. Vendor waives any objections, such as lack of personal jurisdiction or forum non conveniens. Vendor must appoint an agent in California to receive service of process.

34. Non-Exclusivity. Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Vendor, nor does it provide Vendor with a right of first refusal for any future work. This Contract does not restrict the SMCEL-JPA or its agencies from acquiring similar, equal, or like Services from other sources.

35. Force Majeure.

- 35.1. Force Majeure Events. Neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached the Contract, for any failure or delay in

fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of the Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a “**Force Majeure Event**”), in each case provided that:

- a. such event is outside the reasonable control of the affected party;
- b. the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue;
- c. the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

35.2. State Performance; Termination. In the event of a Force Majeure Event affecting Vendor’s performance under the Contract, the SMCEL-JPA may suspend its performance hereunder until such time as Vendor resumes performance. The SMCEL-JPA may terminate the Contract by written notice to Vendor if a Force Majeure Event affecting Vendor’s performance hereunder continues substantially uninterrupted for a period of 5 Business Days or more. Unless the SMCEL-JPA terminates the Contract pursuant to the preceding sentence, any date specifically designated for Vendor’s performance under the Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

35.3. Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of the Contract or this Exhibit:

- a. in no event will any of the following be considered a Force Majeure Event:
 - i. shutdowns, disruptions, or malfunctions of Hosted Services or any of Vendor’s telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Hosted Services; or
 - ii. the delay or failure of any Vendor Personnel to perform any obligation of Vendor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event.
- b. no Force Majeure Event modifies or excuses Vendor’s obligations under **Section 21** (Next Gen CTB Program data), 22 (Non-Disclosure of Confidential Information), or (if Vendor Hosted) defined in any data retention or security requirements as set forth in the Service Level Agreement or under the Contract.

36. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved unless the dispute precludes performance. A dispute

involving payment does not preclude performance. Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the SMCEL-JPA's right to terminate the Contract.

- 37. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without the prior written approval of the SMCEL-JPA, and then only in accordance with the explicit written instructions of the SMCEL-JPA.
- 38. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 39. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 40. Survival.** Any right, obligation, or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; Next Gen CTB Program data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.
- 41. Contract Modification.** This Contract may not be amended or modified in any way, except by a properly signed **Change Notice**. Notwithstanding the foregoing, no subsequent Scope of Work or Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.
- 42. Accessibility Requirements.**
- 42.1. All Software provided by Vendor under this Contract, including associated content and documentation, must conform to WCAG 2.0 Level AA. Vendor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for each product provided under the Contract. At a minimum, Vendor must comply with the WCAG 2.0 Level AA conformance claims it made to the SMCEL-JPA, including the level of conformance provided in any PAT. Throughout the Term of the Contract, Vendor must:
- a. maintain compliance with WCAG 2.0 Level AA and meet or exceed the level of conformance provided in its written materials, including the level of conformance provided in each PAT;
 - b. comply with plans and timelines approved by the SMCEL-JPA to achieve conformance in the event of any deficiencies;

- c. ensure that no Maintenance Release, New Version, update, or patch, when properly installed in accordance with this Contract, will have any adverse effect on the conformance of Vendor's Software to WCAG 2.0 Level AA;
 - d. promptly respond to and resolve any complaint the SMCEL-JPA receives regarding accessibility of Vendor's Software;
 - e. upon the SMCEL-JPA's written request, provide evidence of compliance with this Section by delivering to the SMCEL-JPA Vendor's most current PAT for each product provided under the Contract; and
 - f. participate in the SMCEL-JPA Digital Standards Review described below.
- 42.2. Vendor must assist the SMCEL-JPA, at no additional cost, to ensure that public-facing resources developed pursuant to this Agreement are designed, developed, and maintained to be in compliance with California Government Code Sections 7405 and 11135, and the Web Content Accessibility Guidelines 2.0, or a subsequent version, as published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success criteria. Prior to the Platform going-live and thereafter on an annual basis, or as otherwise required by the SMCEL-JPA, re-assessment of accessibility may be required. At no additional cost, Vendor must remediate all issues identified from an assessment of accessibility pursuant to plans and timelines that are approved in writing by the SMCEL-JPA.
- 42.3. Warranty. Vendor warrants that all WCAG 2.0 Level AA conformance claims made by Vendor pursuant to this Contract, including all information provided in any PAT Vendor provides to the SMCEL-JPA, are true and correct. If the SMCEL-JPA determines such conformance claims provided by the Vendor represent a higher level of conformance than what is actually provided to the SMCEL-JPA, Vendor will, at its sole cost and expense, promptly remediate its Software to align with Vendor's stated WCAG 2.0 Level AA conformance claims in accordance with plans and timelines that are approved in writing by the SMCEL-JPA. If Vendor is unable to resolve such issues in a manner acceptable to the SMCEL-JPA, in addition to all other remedies available to the SMCEL-JPA, the SMCEL-JPA may terminate this Contract for cause under **Subsection 16.1**.
- 42.4. Vendor must, without limiting Vendor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the SMCEL-JPA for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the SMCEL-JPA arising out of its failure to comply with the foregoing accessibility standards.
- 42.5. Failure to comply with the requirements in this **Section 42** shall constitute a material breach of this Contract.
- 43. Further Assurances.** Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Contract.
- 44. Relationship of the Parties.** The relationship between the parties is that of independent Consultants. Vendor, its employees, and agents will not be considered employees of the

SMCEL-JPA. No partnership or joint venture relationship is created by virtue of this Contract. Vendor, and not the SMCEL-JPA, is responsible for the payment of wages, benefits, and taxes of Vendor's employees and any Sub-consultants. Prior performance does not modify Vendor's status as an independent Vendor. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

- 45. Headings.** The headings in this Contract are for reference only and do not affect the interpretation of this Contract.
- 46. No Third-party Beneficiaries.** This Contract is for the sole benefit of the parties and their respective successors and permitted assigns. Nothing herein, express, or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Contract.
- 47. Equitable Relief.** Each party to this Contract acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Contract may give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Contract agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section.
- 48. Effect of Vendor Bankruptcy.** All rights and licenses granted by Vendor under this Contract are and will be deemed to be rights and licenses to "intellectual property," and all Deliverables are and will be deemed to be "embodiments" of "intellectual property," for purposes of, and as such terms are used in and interpreted under, **Section 365(n)** of the United States Bankruptcy Code (the "**Code**"). If Vendor or its estate becomes subject to any bankruptcy or similar proceeding, the SMCEL-JPA retains and has the right to fully exercise all rights, licenses, elections, and protections under this Contract, the Code and all other applicable bankruptcy, insolvency, and similar laws with respect to all Deliverables. Without limiting the generality of the foregoing, Vendor acknowledges and agrees that, if Vendor or its estate will become subject to any bankruptcy or similar proceeding:
- a. all rights and licenses granted to the SMCEL-JPA under this Contract will continue subject to the terms and conditions of this Contract, and will not be affected, even by Vendor's rejection of this Contract; and
 - b. the SMCEL-JPA will be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property comprising or relating to any Deliverables, and the same, if not already in the SMCEL-JPA's possession, will be promptly delivered to the SMCEL-JPA, unless Vendor elects to and does in fact continue to perform all of its obligations under this Contract.

49. Appendices. All Appendices that are referenced herein and attached hereto are hereby incorporated by reference. The following Appendices are attached hereto and incorporated herein:

Appendix A	Scope of Work
Appendix B	Operational Requirements Worksheet
Appendix C	Project Budget Proposal Template
Appendix D	Sample Agreement Template
Appendix E	California Levine Act Statement
Appendix F	Service Level Agreement
Appendix G	SMCEL-JPA Privacy Policy

50. Counterparts. This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Contract. A signed copy of this Contract delivered by facsimile, e-mail, or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Contract.

51. Entire Agreement. These Terms and Conditions, including all Scopes of Work and other Appendices (again collectively the “**Contract**”) constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, representations, and warranties, both written and oral, with respect to such subject matter.

APPENDIX E

CALIFORNIA LEVINE ACT STATEMENT

California Government Code Section 84308, commonly referred to as the "Levine Act," prohibits any San Mateo County Express Lanes Joint Powers Authority (SMCEL-JPA) Board Member from participating in any action related to a contract if he or she receives any political contributions totaling more than \$250 within the previous twelve months, and for three months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires a member of the SMCEL-JPA Board who has received such a contribution to disclose the contribution on the record of the proceeding.

A list of SMCEL-JPA Board members can be found at <https://101expresslanes.org/about/bod>. Proposers are responsible for accessing this link to review the names prior to answering the following questions.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any SMCEL-JPA Board Member in the 12 months preceding the date of the submission of your proposals or the anticipated date of any Board action related to this contract?

_____ YES _____ NO

If yes, please identify the Board Member(s):

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to any SMCEL-JPA Board Member in the three months following any Board action related to this contract?

_____ YES _____ NO

If yes, please identify the Board Member(s):

Answering yes to either of the two questions above does not preclude the SMCEL-JPA from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Board Member(s) from participating in any actions related to this contract.

Date: _____ Signature of authorized individual: _____

Type or write name of authorized individual: _____

Type or write name of company: _____



APPENDIX F

SERVICE LEVEL AGREEMENT

1. **Definitions.** For purposes of this Schedule, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Section 1** shall have the respective meanings given to them in the Contract.

“**Actual Uptime**” means the total minutes in the Service Period that the Hosted Services are Available.

“**Availability**” has the meaning set forth in **Section 4.1**.

“**Availability Requirement**” has the meaning set forth in **Section 4.1**.

“**Available**” has the meaning set forth in **Section 4.1**.

“**Contractor Service Manager**” has the meaning set forth in **Section 3.1**.

“**Corrective Action Plan**” has the meaning set forth in **Section 5.6**.

“**Critical Service Error**” has the meaning set forth in **Section 5.4.a**.

“**Exceptions**” has the meaning set forth in **Section 4.2**.

“**Force Majeure Event**” has the meaning set forth in **Section 6.1**.

“**High Service Error**” has the meaning set forth in **Section 5.4.a**.

“**Hosted Services**” has the meaning set forth in **Section 2.1.a**.

“**Low Service Error**” has the meaning set forth in **Section 5.4.a**.

“**Medium Service Error**” has the meaning set forth in **Section 5.4.a**.

“**Resolve**” has the meaning set forth in **Section 5.4.b**.

“**Scheduled Downtime**” has the meaning set forth in **Section 4.3**.

“**Scheduled Uptime**” means the total minutes in the Service Period.

“**Service Availability Credits**” has the meaning set forth in **Section 4.6.a**.

“**Service Error**” means any failure of any Hosted Service to be Available or otherwise perform in accordance with this Schedule.

“**Service Level Credits**” has the meaning set forth in **Section 5.5**.

“**Service Level Failure**” means a failure to perform the Software Support Services fully in compliance with the Support Service Level Requirements.

“**Service Period**” has the meaning set forth in **Section 4.1**.

“**Software**” has the meaning set forth in the Contract.

“**Software Support Services**” has the meaning set forth in **Section 5**.

“**SMCEL-JPA Service Manager**” has the meaning set forth in **Section 3.2**.

“**SMCEL-JPA Systems**” means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the SMCEL-JPA or any of its designees.

“**Support Request**” has the meaning set forth in **Section 5.4.a**.

“**Support Service Level Requirements**” has the meaning set forth in **Section 5.4**.

“**Term**” has the meaning set forth in the Contract.

2. **Services.**

2.1. Services. Throughout the Term, Contractor will, in accordance with all Contract Terms set forth in the Contract and this Schedule, provide to the SMCEL-JPA and its Authorized Users the following services:

- a. the hosting, management and operation of the Software and other services for remote electronic access and use by the SMCEL-JPA and its Authorized Users (“**Hosted Services**”);
- b. the Software Support Services set forth in **Section 5** of this Schedule;

3. **Personnel.**

3.1. Contractor Personnel for the Hosted Services. Contractor shall appoint a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of Support Requests and the Software Support Services (the “Contractor Service Manager”). The Contractor Service Manager will be considered Key Personnel under the Contract.

3.2. SMCEL-JPA Service Manager for the Hosted Services. The SMCEL-JPA shall appoint and, in its reasonable discretion, replace, a SMCEL-JPA employee to serve as the primary contact with respect to the Services who will have the authority to act on behalf of the SMCEL-JPA in matters pertaining to the Software Support Services, including the submission and processing of Support Requests (the “**SMCEL-JPA Service Manager**”).

4. **Service Availability and Service Availability Credits.**

4.1. Availability Requirement. Contractor will make the Hosted Services Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a “**Service Period**”), at least 99.98% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions (the “**Availability Requirement**”). “**Available**” means the Hosted Services are available and operable for access and use by the SMCEL-JPA and its Authorized Users over the Internet in material conformity with the Contract. “**Availability**” has a correlative meaning. The Hosted Services are not considered Available in the event of a

material performance degradation or inoperability of the Hosted Services, in whole or in part. The Availability Requirement will be calculated for the Service Period as follows: (Actual Uptime – Total Minutes in Service Period Hosted Services are not Available Due to an Exception) ÷ (Scheduled Uptime – Total Minutes in Service Period Hosted Services are not Available Due to an Exception) x 100 = Availability.

- 4.2. Exceptions. No period of Hosted Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following (“Exceptions”):
 - a. failures of the SMCEL-JPA’s or its Authorized Users’ internet connectivity;
 - b. Scheduled Downtime as set forth in **Section 4.3**.
- 4.3. Scheduled Downtime. Contractor must notify the SMCEL-JPA at least seventy-two (72) hours in advance of all scheduled outages of the Hosted Services in whole or in part (“**Scheduled Downtime**”). All such scheduled outages will: (a) last no longer than five (5) hours; (b) be scheduled between the hours of 12:00 a.m. and 5:00 a.m., Eastern Time; and (c) occur no more frequently than once per week; provided that Contractor may request the SMCEL-JPA to approve extensions of Scheduled Downtime above five (5) hours, and such approval by the SMCEL-JPA may not be unreasonably withheld or delayed.
- 4.4. Software Response Time. Software response time, defined as the interval from the time the end user sends a transaction to the time a visual confirmation of transaction completion is received, must be less than two (2) seconds for 98% of all transactions. Unacceptable response times shall be considered to make the Software unavailable and will count against the Availability Requirement.
- 4.5. Service Availability Reports. Within thirty (30) days after the end of each Service Period, Contractor will provide to the SMCEL-JPA a report describing the Availability and other performance of the Hosted Services during that calendar month as compared to the Availability Requirement. The report must be in electronic or such other form as the SMCEL-JPA may approve in writing and shall include, at a minimum: (a) the actual performance of the Hosted Services relative to the Availability Requirement; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability Requirement during the reporting period, a description in sufficient detail to inform the SMCEL-JPA of the cause of such failure and the corrective actions the Contractor has taken and will take to ensure that the Availability Requirement are fully met.
- 4.6. Remedies for Service Availability Failures.
 - a. If the actual Availability of the Hosted Services is less than the Availability Requirement for any Service Period, such failure will constitute a Service Error for which Contractor will issue to the SMCEL-JPA the following credits on the fees payable for Hosted Services provided during the Service Period (“**Service Availability Credits**”):

Availability	Credit of Fees
≥99.98%	None
<99.98% but ≥99.0%	15%
<99.0% but ≥95.0%	50%
<95.0%	100%

- b. Any Service Availability Credits due under this **Section 4.6** will be applied in accordance with payment terms of the Contract.
 - c. If the actual Availability of the Hosted Services is less than the Availability Requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the SMCEL-JPA, the SMCEL-JPA may terminate the Contract on written notice to Contractor with no liability, obligation or penalty to the SMCEL-JPA by reason of such termination.
5. **Support and Maintenance Services.** Contractor will provide Hosted Service maintenance and support services (collectively, “**Software Support Services**”) in accordance with the provisions of this **Section 5**. The Software Support Services are included in the Services, and Contractor may not assess any additional fees, costs or charges for such Software Support Services.
- 5.1. Support Service Responsibilities. Contractor will:
- a. correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections and remedial programming;
 - b. provide telephone and online support from 7:00 AM to 7:00 PM;
 - c. provide online access to technical support bulletins and other user support information and forums, to the full extent Contractor makes such resources available to its other customers; and
 - d. respond to and Resolve Support Requests as specified in this **Section 5**.
- 5.2. Service Monitoring and Management. Contractor will continuously monitor and manage the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such monitoring and management include:
- a. proactively monitoring on a twenty-four (24) hour by seven (7) day basis all Hosted Service functions, servers, firewall and other components of Hosted Service security;
 - b. if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Hosted Service, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and
 - c. if Contractor receives knowledge that the Hosted Service or any Hosted Service function or component is not Available (including by written notice from the SMCEL-JPA pursuant to the procedures set forth herein):

- i. confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;
- ii. if Contractor’s facility check in accordance with clause (i) above confirms a Hosted Service outage in whole or in part: (A) notifying the SMCEL-JPA in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are Resolved as Critical Service Errors in accordance with the Support Request Classification set forth in **Section 5.4**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and
- iii. notifying the SMCEL-JPA that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

5.3. Service Maintenance. Contractor will continuously maintain the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services include providing to the SMCEL-JPA and its Authorized Users:

- a. all updates, bug fixes, enhancements, Maintenance Releases, New Versions and other improvements to the Hosted Services, including the Software, that Contractor provides at no additional charge to its other similarly situated customers; provided that Contractor shall consult with the SMCEL-JPA and is required to receive SMCEL-JPA approval prior to modifying or upgrading Hosted Services, including Maintenance Releases and New Versions of Software; and
- b. all such services and repairs as are required to maintain the Hosted Services or are ancillary, necessary or otherwise related to the SMCEL-JPA’s or its Authorized Users’ access to or use of the Hosted Services, so that the Hosted Services operate properly in accordance with the Contract and this Schedule.

5.4. Support Service Level Requirements. Contractor will correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other Contract Terms set forth in this **Section 5.4 (“Support Service Level Requirements”)**, and the Contract.

- a. Support Requests. The SMCEL-JPA will classify its requests for Service Error corrections in accordance with the descriptions set forth in the chart below (each a “**Support Request**”). The SMCEL-JPA Service Manager will notify Contractor of Support Requests by email, telephone, or such other means as the parties may hereafter agree to in writing.

Support Request Classification	Description: Any Service Error Comprising or Causing any of the Following Events or Effects
---------------------------------------	--

Critical Service Error	<ul style="list-style-type: none"> • Issue affecting entire system or single critical production function; • System down or operating in materially degraded state; • Data integrity at risk; • Declared a Critical Support Request by the SMCEL-JPA; or • Widespread access interruptions.
High Service Error	<ul style="list-style-type: none"> • Primary component failure that materially impairs its performance; or • Data entry or access is materially impaired on a limited basis.
Medium Service Error	<ul style="list-style-type: none"> • Hosted Service is operating with minor issues that can be addressed with an acceptable (as determined by the SMCEL-JPA) temporary work around.
Low Service Error	<ul style="list-style-type: none"> • Request for assistance, information, or services that are routine in nature.

b. Response and Resolution Time Service Levels. Response and Resolution times will be measured from the time Contractor receives a Support Request until the respective times Contractor has (i) responded to, in the case of response time and (ii) Resolved such Support Request, in the case of Resolution time. **“Resolve”** (including **“Resolved”**, **“Resolution”** and correlative capitalized terms) means that, as to any Service Error, Contractor has provided the SMCEL-JPA the corresponding Service Error correction and the SMCEL-JPA has confirmed such correction and its acceptance thereof. Contractor will respond to and Resolve all Service Errors within the following times based on the severity of the Service Error:

Support Request Classification	Service Level Metric (Required Response Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
Critical Service Error	One (1) hour	Five percent (5%) of the Fees for the month in which the initial Service Level	Three (3) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure

Support Request Classification	Service Level Metric (Required Response Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
		Failure begins and five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.		begins and five percent (5%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
High Service Error	One (1) hour	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Four (4) hours	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
Medium Service Error	Three (3) hours	N/A	Two (2) Business Days	N/A
Low Service Error	Three (3) hours	N/A	Five (5) Business Days	N/A

c. Escalation. With respect to any Critical Service Error Support Request, until such Support Request is Resolved, Contractor will escalate that Support Request within sixty (60) minutes of the receipt of such Support Request by the appropriate Contractor support personnel, including, as applicable, the Contractor Service Manager and Contractor's management or engineering personnel, as appropriate.

5.5. Support Service Level Credits. Failure to achieve any of the Support Service Level Requirements for Critical and High Service Errors will constitute a Service Level Failure for which Contractor will issue to the SMCEL-JPA the corresponding service credits set forth in **Section 5.4.b** ("**Service Level Credits**") in accordance with payment terms set forth in the Contract.

5.6. Corrective Action Plan. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these Service Errors and provide to the SMCEL-JPA within five (5) Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the SMCEL-JPA's review, comment and approval, which, subject to and upon the SMCEL-JPA's written approval, shall be a part of, and by this reference is incorporated in, the Contract as the parties' corrective action plan (the "**Corrective Action Plan**"). The Corrective Action Plan must include, at a minimum: (a) Contractor's commitment to the SMCEL-JPA to devote the appropriate time, skilled personnel, systems support and equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor's preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

6. **Force Majeure.**

6.1. Force Majeure Events. Subject to **Section 6.3**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached the Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of the Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

6.2. State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under the Contract, the SMCEL-JPA may suspend its

performance hereunder until such time as Contractor resumes performance. The SMCEL-JPA may terminate the Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the SMCEL-JPA terminates the Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under the Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

6.3. Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of the Contract or this Schedule:

- a. in no event will any of the following be considered a Force Majeure Event:
 - i. shutdowns, disruptions or malfunctions of Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or
 - ii. the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event.
- b. no Force Majeure Event modifies or excuses Contractor's obligations under **Sections 22** (SMCEL-JPA Data), **23** (Confidentiality), or **28** (Indemnification) of the Contract, **Section 7** (Disaster Recovery and Backup) of this Schedule, the Availability Requirement defined in this Schedule, or any security requirements under the Contract, the Statement of Work, or applicable Schedule.

7. **Disaster Recovery and Backup.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:

- a. maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of 2 hours, and a Recovery Time Objective (RTO) of 2 hours (the "**DR Plan**") and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor's current DR Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the DR Plan are attached as Schedule G. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. Contractor will provide the SMCEL-JPA with copies of all such updates to the Plan within fifteen (15) days of its adoption by Contractor. All updates to the DR Plan are subject to the requirements of this **Section 7**; and
- b. provide the SMCEL-JPA with copies of all reports resulting from any testing of or pursuant to the DR Plan promptly after Contractor's receipt or preparation. If Contractor fails to reinstate all material Hosted Services within the periods of time set forth in the DR Plan, the SMCEL-JPA may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default.

8. **Firmware Revisions.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:

- a. Provide appropriate module development, software development, testing, acceptance, and central software deployment required for the fully functional integration up to two controller firmware upgrades per year. At the owner's request, the Contractor must:
 - i. Complete all required central software changes required to integrate a new controller firmware version within 60 days of written request from the owner.
 - ii. Coordinate with controller manufacturer as-needed to fully integrate all firmware functionality into the central software.
 - iii. Provide a virtual testing environment through which SMCEL-JPA can connect a controller with desired firmware to test functionality.



APPENDIX G

SMCEL-JPA PRIVACY POLICY

The effective date of this Privacy Policy is September 13, 2024

1. Overview

The San Mateo County Express Lanes- Joint Powers Authority (“SMCEL-JPA”) operates and maintains Express Lanes along the Highway 101 corridor between the San Mateo County/Santa Clara County line and the San Mateo County/San Francisco County line.

SMCEL-JPA is committed to ensuring customer privacy and security. This Privacy Policy is intended to provide an understanding of how SMCEL-JPA will handle personally identifiable information (“PII”) collected in connection with the Express Lanes and other programs owned and operated by SMCEL-JPA. Specifically, SMCEL-JPA will not provide personally identifiable information (“PII”) to any third party except as described in this Privacy Policy or consistent with the privacy protections included in pre-existing operating agreements with state and regional transportation agencies.

This Privacy Policy is intended to describe the types of information collected from customers, the third parties with whom SMCEL-JPA may share this information, the process by which customers are notified about changes to this Privacy Policy, and the process by which a customer may review and request changes to any of their PII.

PII collected in connection with the Express Lanes will also be subject to BATA’s FasTrak® Privacy Policy found at <https://www.bayareafastrak.org/en/support/privacy.shtml>. The FasTrak® Regional Customer Service Center (“RCSC”) will be responsible for customer account management, transaction processing, and violations processing for the Express Lanes. PII will be sent to the RCSC from the Express Lanes Host (defined below) for processing. By using the Express Lanes, the customer is allowing SMCEL-JPA, its contractors, and other third parties referenced herein, to process PII according to this Privacy Policy.

2. Definitions

The following definitions apply:

Electronic Toll Collection System: A system where a transponder, camera-based vehicle identification system, or other electronic medium is used to deduct payment of a toll from a subscribers account or to establish an obligation to pay a toll.

Person: any person who subscribes to an electronic toll collection or any person who uses a toll bridge, toll lane, or toll road that employs an electronic toll collection system.

Interoperability: means the sharing of data, including PII, across multiple transportation agencies for the sole purpose of creating an integrated toll payment system.

Personally Identifiable Information (PII): means any information that identifies or describes a person including, but not limited to, travel pattern data, address, telephone number, email address, license plate number, photograph, bank account information, or credit card number. For purposes of this section, with respect to electronic transit fare collection systems, “personally identifiable information” does not include photographic or video footage.

Aggregate Data or Aggregate Information: Aggregate Data or Aggregate Information is statistical information that is derived from collective data that relates to a group or category of persons from which PII has been removed. Aggregate Data reflects the characteristics of a large group of anonymous people.

Anonymous Data or Anonymous Information: Information that is disaggregated data from which PII has been removed, that does not identify or describe a person and that cannot be directly linked to a specific individual. SMCEL-JPA may use Anonymous Data for any agency purpose and make it available to third parties.

Bay Area Toll Payment Plan or Payment Plan: The Bay Area Toll Payment Plan is a program that allows low-income customers to make installment payments on tolls, penalties, and DMV fees owed.

Express Lanes: Express lanes along the Highway 101 corridor operated and maintained by SMCEL-JPA.

Express Lanes Host: Computer processing system that collects data, including PII, to build trips and apply tolls to those trips.

FasTrak® Account: A FasTrak® Account is an account that uses toll tags for toll payment. Such accounts are established prior to trips and have a balance prepaid by credit card, check or cash. When driving in an Express Lane the toll is deducted from the pre-paid balance.

License Plate Account: A License Plate Account is an account for which tolls are based on the vehicle’s license plate number. Such accounts are established prior to trips and are backed by a valid credit card or with a balance prepaid by check or cash. When driving in an Express Lane, the full toll is charged to the credit card or deducted from the pre-paid balance.

Next Generation Community Transportation Benefits Program or Next Gen CTB Program: The Next Generation Community Transportation Benefits Program is a program that will provide a preloaded mobility debit card for qualifying individuals in San Mateo County.

One-Time Payment Account: A One-Time Payment Account is similar to a License Plate Account but is limited in duration and requires a minimum payment of one toll trip.

License Plate Data: License Plate Data is information collected from electronic images of license plates captured at toll tag read points either for the purpose of toll collection, where the customer has a License Plate or One-Time Payment Account, or for purposes of enforcement.

Travel Pattern Data: Consists of a customer’s toll tag number and license plate number, as applicable, along with date, time, and location, which are collected at the entry and exist points of an Express Lane. A customer’s travel locations (i.e., toll booth or Express Lanes entry and exit points) dates, and times traveled do not constitute Travel Pattern Data if such

information (1) is dissociated from any specific individual to create Anonymous Data; or (2) is combined with other data to create Aggregate Data.

3. Collection of Personally Identifiable Information

3.1. Prior to the Opening of an Express Lane

Once tolling infrastructure is installed and prior to the opening of the SMCEL-JPA Express Lane, system testing will occur on the corridor. As a person drives on the Express Lane prior to opening, Travel Pattern Data, image of license plate and photograph of vehicle will be collected for testing purposes only. A FasTrak® customer can avoid having their toll tag number collected by placing the toll tag in the mylar bag in which the tag was first obtained by the customer. The license plate image and photograph of the vehicle will still be collected at toll tag read points.

3.2. After Opening of an Express Lane

During operational (tolling) hours, the Express Lanes system collects Travel Pattern Data, image of license plate and photograph of vehicle as a customer drives on the Express Lanes to record the transaction.

During non-operational hours, SMCEL-JPA may carry out system testing in the Express Lanes. During system testing, as a person drives on an Express Lane, Travel Pattern Data, image of license plate and photograph of vehicle will be collected for testing purposes only. The license plate image and photograph of the vehicle will still be collected at toll tag read points.

When system testing is not occurring during non-operational hours, the Express Lanes system will only capture toll tag numbers and dates, times, and locations collected at toll tag read points.

3.3. Next Generation Community Transportation Benefits Program

SMCEL-JPA collects PII from those customers wishing to participate in the Next Gen CTB Program to determine eligibility. Such PII includes name, email, home and/or mobile phone number, home address, household income, and optional demographic data such as race and ethnicity. Other PII is collected related to documentation required to prove identity (such as photo of driver's license, state-issued ID, passport, or permanent resident card) and income (such as photo of CalFresh/Electronic Benefits Transfer (EBT) card, Medi-Cal card, county benefit eligibility letter, Muni Lifeline Card, Clipper START card number, email or mobile number associated with an Express Lanes START account, tax documents, or a self-declaration of income form). An eligibility verifier (e.g., community-based organization, peer agency, third-party contractor, etc.), under contract with SMCEL-JPA, receives information submitted by applicants to verify eligibility for the Next Gen CTB Program. Once eligibility is established, the applicant's PII data is provided to SMCEL-JPA and a mobility debit card processor for participant/program management purposes and distribution of benefits.

3.4. Payment Plan

For those customers wishing to participate in the Payment Plan, PII is collected to determine eligibility. Such PII includes name, email, home and/or mobile phone number, number of people in household, household income, license plate number, state of registration, and violation number(s). Other PII is incorporated in the documentation or information requested to prove identity (such as photo of driver's license, state-issued ID, passport, or permanent resident card)

and income (such as photo of CalFresh/ EBT card, Medi-Cal card, county benefit eligibility letter, Muni Lifeline Card, Clipper STARTS card number, email or mobile number associated with an Express Lanes STARTS account, or tax documents) as well as in customer responses to optional application questions for demographic information (e.g. race, gender, and age). The Eligibility Verifier contractor, under contract with the Metropolitan Transportation Commission (MTC), on behalf of BATA, obtains this documentation from information submitted by customers through the Payment Plan website and in paper form submitted by mail or facsimile transmission to perform the eligibility review. Once eligibility is established, the customer's name, email, address, phone number(s), license plate number, state of registration, and violation number(s) are provided to the FasTrak® RCSC.

4. How SMCEL-JPA Uses Personally Identifiable Information

SMCEL-JPA uses the PII in order to build and price Express Lanes trips, monitor, and diagnose system performance, plan for and manage express lane operations, provide customer service and respond to questions, to collect payments, and to administer benefits for eligible residents.

SMCEL-JPA may also obtain PII about a customer from other sources, such as BATA through the FasTrak® RCSC to respond to customer questions and concerns.

PII is only utilized as described in this Privacy Policy.

5. Third Parties with Whom SMCEL-JPA May Share Personally Identifiable Information

SMCEL-JPA will not share PII with any third party without expressed customer consent, except as described in this Privacy Policy. SMCEL-JPA will share PII with BATA and its FasTrak® RCSC contractor for testing purposes, for financial and accounting functions such as billing, account settlement, enforcement, or other financial activities required to operate and manage the electronic toll collection system or for actions taken to comply with interoperability specifications and state law.

SMCEL-JPA may also share PII with third parties involved in the Next Gen CTB Program including peer/public agencies, partner/community organizations, and contractors to verify eligibility, administer debit cards, and manage program participation. These third parties will only be provided with the PII they need to deliver services, are required to maintain the confidentiality of the information pursuant to agreements with SMCEL-JPA and may only use PII as necessary to carry out their duties as described in this privacy policy and in accordance with their agreements with SMCEL-JPA.

SMCEL-JPA may utilize PII to communicate directly, or through its RCSC contractor, with subscribers of the toll collection system about products and services offered by SMCEL-JPA, a third party with an agreement with SMCEL-JPA, or from its RCSC Contractor. In connection to the Payment Plan and Next Gen CTB Program, the Eligibility Verifier contractor may contact an individual using PII provided in the application to inform them that their application has been approved or to let them know if their application is denied or incomplete. Communication will be made using PII limited to the subscriber's name, address, and electronic mail address, provided that SMCEL-JPA has received the subscriber's consent to receive the communications.

In addition, SMCEL-JPA may hire third-party service providers to develop and operate the Express Lanes, performing such functions as monitoring traffic conditions, managing traffic, trip building and testing. These third parties are provided only with the PII they need to deliver the services. SMCEL-JPA requires the service providers to maintain the confidentiality of the information and to use it only as necessary to carry out their duties in connection with the Express Lanes.

Besides these entities, PII will not be disclosed to any other third party, except as required to comply with laws or legal processes served on SMECL-JPA.

6. Retention of Personally Identifiable Information

SMCEL-JPA, through its contractor, shall only store PII that is necessary to perform essential functions including toll collection, enforcement activities, operation planning and improvements, customer service, and benefit administration. SMCEL-JPA will make every effort, within practical business and cost constraints, to purge the personal account information of an account that is closed or terminated. SMCEL-JPA, through its contractor, will discard all PII no more than four years and six months after the date the PII is collected.

For Next Gen CTB participants, proof of identity and proof of income documentation is discarded no more than one year after approval, denial, or issuance of final notice of incomplete applications. For Payment Plan enrollees, proof of identity and proof of income documentation is discarded no later than 60 days after approval, denial, or issuance of final notice of incomplete applications. Paper copies of applications and supporting materials shall be discarded within 60 days after entry into the Payment Plan program database. All PII provided by Payment Plan enrollees in their applications is purged from the Payment Plan database within 60 days after the enrollee has satisfied all payments under the payment plan, the payment plan has been cancelled, or after issuance of final notice that the application is incomplete, except as required to comply with laws or legal processes.

7. Aggregate Data

SMCEL-JPA may combine the PII provided by customers in a non-identifiable format with other information to create Aggregate Data that may be disclosed to third parties. SMCEL-JPA may use Aggregate Data and provide Aggregate Data to others for such things as managing traffic, generating statistical reports to manage program operations and for regional transportation planning, research, and reporting. Aggregate Data does not contain any information that could be used to contact or identify individual customers.

8. Anonymous Data

SMCEL-JPA may also remove all PII from data to create Anonymous Data that may be disclosed to third parties. BATA may use Anonymous Data for any agency purpose and may make Anonymous Data available to third parties. SMCELJPA requires third parties with whom Anonymous Data is shared to agree that they will not attempt to make information personally identifiable, such as by combining it with other databases.

9. Reviewing and Requesting Changes to Customers' Personally Identifiable Information

Customers who wish to review and update their account information should refer to the procedures under the FasTrak® Privacy Policy found at <https://www.bayareafastrak.org/en/support/privacy.shtml>. SMCEL-JPA will not accept or process any customer requests to modify or update PII or account information. All other public records requests for access to PII data will be processed in accordance with the California Public Records Act and all other applicable laws. SMCEL-JPA will object to the release of any PII on the basis of the customer's right to privacy which is protected under the California Streets and Highways Code section 31490, and all applicable statutes, rules, regulations, and orders relating to the handling of confidentiality of PII.

10.Changes to this Privacy Policy

Material Changes – SMCEL-JPA will inform customers if material changes are made to this Privacy Policy, in particular, changes that expand the permissible uses or disclosures of PII allowed by the prior version of the Privacy Policy. If SMCEL-JPA makes material changes to this Privacy Policy, SMCEL-JPA will notify customers by means of posting a conspicuous notice on the Express Lanes website, [<https://101expresslanes.org/>], that material changes have been made.

Immaterial Changes – SMCEL-JPA may also make non-substantive changes to the Privacy Policy such as those that do not affect the permissible uses or disclosures of PII. In these instances, SMCEL-JPA may not post a special notice on the website.

If SMCEL-JPA decides to make any change to this Privacy Policy, material or immaterial, SMCEL-JPA will post the revised policy on the Express Lanes website, along with the date of any amendment. SMCEL-JPA reserves the right to modify this Privacy Policy at any time, so the policy needs to be reviewed frequently by customers.

When SMCEL-JPA revises the Privacy Policy, the "last updated" date at the top of the Privacy Policy will reflect the date of the last change. We encourage customers to review this Privacy Policy periodically to stay informed about how SMCEL-JPA protects the security of PII collected for Express Lanes. Continued use of the Express Lanes constitutes the customer's agreement to this Privacy Policy and any updates.

SMCEL-JPA retains the right to impose an administrative fee on persons who use the San Mateo Express Lanes in an amount sufficient to cover the cost of implementing this privacy policy.

11.Emails Sent to SMCEL-JPA

This Privacy Policy only applies to PII that SMCEL-JPA obtains in connection with a customer's use of the Express Lanes. This Privacy Policy does not apply to other web-based content or personal information that is transmitted directly to SMCEL-JPA. A customer should not send PII in an email directly to SMCEL-JPA, if they want to keep content or data private.

12.Contact Information

SMCEL-JPA welcomes comments on this Privacy Policy. Also, if there are questions about this statement, please contact SMCEL-JPA at:

San Mateo County Express Lanes – Joint Powers Authority
Attn: Mehul Kumar
1250 San Carlos Ave San Carlos, California 94070
E-mail: kumarm@samtrans.com

13.History of Changes to Privacy Policy

September 13, 2024

Privacy Policy Established