EXHIBIT D
(Additional Provisions)

A. Equipment

1. Equipment Provided By the Contractor: The Contractor shall provide equipment as required in Exhibit A of this Contract. The Contractor shall provide this equipment in such quantities and in such locations as required by Exhibit A of this Contract.
2. Condition of Equipment: All equipment furnished under this Contract shall be newly manufactured and unused. Reconditioned equipment is only allowed when agreed to in writing and approved in advance by the Covered California Project Manager.
3. Risk of Loss: The Contractor and its insurers, if any, shall relieve Covered California for all risk of loss or damage to the equipment.
4. Substitutions: Substitution of equipment may not be tendered without advance written consent of Covered California State. The Contractor shall not use any specification in lieu of those contained in the Contract without written consent of Covered California.
5. Representations and Warranties: The Contractor represents and warrants that:
    a. The State's use and possession of Contractor-provided equipment will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through the Contractor.
    b. Contractor-provided equipment will be free of any rightful claim of any third person or entity based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.
    c. Contractor-provided equipment will be new and unused, unless otherwise agreed to in writing and approved in advance by Covered California Project Director.

B. Liquidated Damages

1. Acknowledgement of Harm: This Contract uses performance standards to promote necessary system performance for the solution. The performance standards focus on parameters as they relate to meeting business objectives. When a performance standard is not met, a negative effect may result~~s~~. The solution is a high availability solution and it is anticipated that the most critical and severe outages will prompt an immediate response from the Contractor to restore the solution. Such a critical outage is not expected to continue for an extended period. For the purposes of defining liquidated damages, Covered California Project Director shall assess damages in accordance with this section.

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2. Limitation of Liability for Liquidated Damages: Liquidated damages will not be assessed if the Contractor's delay or failure to timely perform its obligations was caused by factors beyond the reasonable control and without any material error or negligence of the Contractor Staff or its Subcontractors. In no event will the aggregate liquidated damages payable by Contractor in a given month exceed 20% of the monthly charges (excluding the fees for any software or hardware) for the applicable month.

3. Payment of Liquidated Damages: For the amount of any ~~such~~ liquidated damages due under this Section C, Covered California shall have the right to reduce the amount of payment due hereunder to the Contractor or require direct payment therefor from the Contractor to Covered California. The parties agree that the liquidated damages herein provided are difficult to establish and the Contractor shall pay the amounts in Section 4, Liquidated Damages: Specific Amounts, of this Contract as liquidated damages and not as a penalty.

4. Liquidated Damages: Specific Amounts. The performance measures in this section shall become effective the first full month following Solution Acceptance. Solution Acceptance shall be formalized in writing from Covered California to contractor.

1	The solution shall have no more than two (2) applicant mis-matches per 10,000 for applicants executed through the batch process. An applicant mis-matched is defined as an image and its data being matched to the wrong applicant record. For any deviation, the Contractor shall be assessed a liquidated damage of $1,000 per instance that exceeds the two in 10,000 matches.
2	The solution shall have no more than one (1) applicant mis-matchs per 50,000 for applicants executed through the host-to-host or online process. An applicant mis-match is defined as an image and its data being matched to the wrong applicant record. For any deviation, the Contractor shall be assessed a liquidated damage of $1,000 per instance that exceeds the one in 50,000 matches.

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3	The Contractor shall accept and ensure the following resolution timeframes for the solution: a. Priority 1: A system outage will be resolved within one (1) hour during business hours which are 7:00 am – 8:00 pm Pacific Time. If an outage occurs after 8:00pm Pacific Time, no damages will be assessed until 8:00am Pacific Time the next business day. For any deviation, the Contractor shall be assessed a liquidated damage of $500 per hour after the first hour of the outage. b. Priority 2: A major system degradation that impacts Consumer and User ability to use the solution will be resolved within two (2) hours during business hours, which are 7:00 am – 8:00 pm Pacific Time. If a major system degradation occurs after 8:00 pm Pacific Time, no damages will be assessed until 9:00 am Pacific Time the next business day. For any deviation, the Contractor shall be assessed a liquidated damage of $250 per hour after the first two c. Priority 3: A partial system degradation will be resolved within one (1) business day. For any deviation, the Contractor shall be assessed a liquidated damage of $250 per day after the first day of the partial system degradation. d. Priority 4: Cosmetic problems and routine maintenance requests will be resolved within ten (10) business days. For any deviation, the Contractor shall be assessed a liquidated damage of $250 per day after 30 days of the problem or maintenance request.