

**ATTACHMENT 1**

Maintenance and Operations Agreement between the WCDS Consortium Counties and HP  
Enterprises, LLC

**MAINTENANCE AND OPERATIONS AGREEMENT**  
**BETWEEN**  
**THE WCDS CONSORTIUM COUNTIES**  
**AND**  
**HP ENTERPRISE SERVICES, LLC**

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- Exhibit B - Equipment and Software
- Exhibit C - Service Level Agreements and Liquidated Damages
- Exhibit D - Deleted by Agreement of the Parties
- Exhibit E - Hewlett-Packard Company Pre-Existing Software Agreement
- Exhibit F - Statement of Work
- Exhibit G - Revisions to the Response
- Exhibit H - Letter of Credit
- Exhibit I - Guaranty
- Exhibit J - Statement of Work CalHEERS Interface
- Exhibit K - Statement of Work Contact CalWIN

## MAINTENANCE AND OPERATIONS AGREEMENT

This Maintenance and Operations Agreement (the "Agreement") was entered into as of the 31<sup>st</sup> day of January 2015 (the "Agreement Effective Date"), by and between the WCDS Consortium Counties of Alameda, Contra Costa, Fresno, Orange, Placer, Sacramento, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Tulare, Ventura, and Yolo (the "Counties") and HP Enterprise Services, LLC, a Delaware limited liability company ("Contractor," as described further below). The parties referred to below shall be the Contractor and collectively the WCDS Consortium Counties.

### RECITALS

The Counties use several computer systems to support their eligibility and benefits determinations, client correspondence, management reports, interfaces and case management for public assistance programs;

These systems are currently being operated and maintained by Contractor;

The Counties issued a Request for Proposal (the "RFP"), which was dated March 1, 2013 and which, as amended by its Addenda and WCDS CalWIN M&O Procurement Vendor Questions and Answers, is incorporated into this Agreement by this reference, to find a vendor to operate and maintain these systems;

Contractor submitted a proposal in response to the RFP, which was dated July 31, 2013, which includes Exhibit G to the extent it revises such response and the BAFO and which is incorporated into this Agreement by this reference (the "Response");

The Counties evaluated all proposals submitted and identified Contractor as the apparently successful contractor;

Contractor desires to enter into an agreement with the Counties to provide the Counties with Deliverables and Services (as these terms are defined further below); and

The Counties and Contractor have agreed that the terms and conditions of this Agreement shall govern Contractor's furnishing Deliverables and Services; and

The parties agree they will perform their respective obligations as described below in this Agreement; and

As of April 1, 2017 HP Enterprise Services simultaneously became Enterprise Services LLC ("ES") and merged with Computer Sciences Corporation ("CSC") to form DXC Technology, a new parent company to ES and CSC. Subsequently, as of January 1, 2018 ES has assigned its obligations under the Agreement to DXC Technology Services LLC ("DXC"), a wholly-owned subsidiary of DXC Technology, and as such, any references to HP Enterprise Services in this document shall be deemed to mean DXC; and



By execution of this Agreement, the Counties amend the Maximum Amount for the initial five year term (base period) as described in Exhibit A, Financial Matters; and

By execution of this Agreement, the Counties exercise their right to renew the term of this Agreement for the three year renewal period as described in Article 2 to begin February 1, 2020 and to amend the Maximum Amount as described in Exhibit A, Financial Matters.

Therefore, in consideration of the foregoing Recitals and the mutual promises and covenants as set forth below, the parties agree as follows:

## **1. Definitions**

. The following terms as used throughout this Agreement shall have the meanings as set forth below.

**1.1 “Acceptance”:** A Notice or other form (i.e., in writing or through the Project Management Tool) provided by the Counties to Contractor to indicate that a Deliverable has conformed to its applicable Acceptance Criteria in accordance with the processes described in Section 9.2.

**1.2 “Acceptance Criteria”:** The extract or subset of Specifications against which each Deliverable shall be evaluated in accordance with Section 9.2 and which are described for Deliverables in DEDs, Change Requests and other Deliverables.

**1.3 “Acceptance Tests”:** The tests or reviews that are performed by the Counties and that must be satisfied before Acceptance can occur as set forth in Section 9.2.

**1.4 “ASF”:** The Application Support Facility; the Project Site where staff for the Counties reside as described in the RFP.

**1.5 “Back-up Site Facility”:** As of the Operations Effective Date, the backup data processing Facility to which the Systems restore in a disaster and which is located at Colorado Springs, Colorado.

**1.6 “Best and Final Offer” or “BAFO”:** Contractor's best and final offer in response to a request from the Counties, dated September 20, 2013.

**1.7 “Central Site Facility”:** As of the Effective Date, the central data processing Facility at which the Systems reside and which is located at Rancho Cordova, California, and migrated to Tulsa, Oklahoma on May 21, 2018.

**1.8 “Certification”:** The Counties’ receipt of Notice and detailed supporting information from Contractor that Contractor has, as applicable: completed a Deliverable in

accordance with its Acceptance Criteria or pre-tested a Deliverable for compliance with the Specifications; and confirmed the Deliverable is ready for applicable Acceptance Tests.

**1.9 “Change Request”:** A written form that is used to modify, delete or add to the Deliverables or Services, in whole or in part, including without limitation to add Equipment, and that is made in accordance with the terms of Section 14, or that is made in accordance with Section 13.

**1.10 “Charges”:** The amount(s) to be paid for Services and Deliverables, in whole or in part, including without limitation, Equipment, the Network, and Facilities, as described in Exhibit A.

**1.11 “Confidential Information”:** Various trade secrets and information of each party that either Contractor or the Counties desire to protect against unrestricted disclosure, including without limitation; with respect to Contractor, the Contractor Technology; with respect to the Counties, the Configuration and the Counties’ Data; non-public Specifications; the Software; any nonpublic information or documentation concerning either party’s business or future products or plans that are learned by the other party during the performance of this Agreement; and information that is designated as confidential by the disclosing party. The following are also hereby designated the Counties’ Confidential Information: client and employee personal information, including but not limited to names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data and health information, and law enforcement records, and such other Confidential Information as is described in this definition.

**1.12 “Configuration(s)”:** Set up and customization of tables, schema, personal calculation rules, functions, features, operations, screens, and reports for the Software as required to meet the Specifications.

**1.13 “Contractor”:** HP Enterprise Services, LLC, its employees, Subcontractors, Staff and agents.

**1.14 “Contractor Project Manager”:** The individual chosen by Contractor and approved by the Counties with management responsibilities for Contractor, as described in Section 4.3. Also referred to as the Project Director in the RFP.

**1.15 “Contractor Technology”:** Intellectual property which were owned by Contractor prior to the Agreement Effective Date (including certain modifications, enhancements or improvements to such intellectual property developed hereunder), including Contractor’s proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines, and which were not designed, developed or installed with Federal Financial Participation; the Pre-existing Software; and Contractor’s Confidential Information.

**1.16 “Cosmetic Deficiencies”:** In the Counties’ reasonable judgment after consultation with Contractor and in accordance with the Counties’ standard procedures for determining there is a Deficiency, a cosmetic or inconsequential Deficiency, although an accumulation, combination, or pattern of Cosmetic Deficiencies shall in the Counties’ reasonable judgment result in characterizing those Cosmetic Deficiencies as Deficiencies.

**1.17 “The Counties’ Executive Director”:** The person designated by the Counties to be responsible for financial and contractual matters regarding the Agreement, including but not limited to, the person to whom the Counties’ signature authority has been delegated as set forth in this Agreement and other writings and the person designated by the Counties to be responsible for day-to-day management of the Counties’ resources for the Project and monitoring the status of Contractor’s performance under the Agreement. The term includes, except as otherwise provided herein, an authorized representative of the Counties’ Executive Director acting within the limits of his/her authority.

**1.18 “County”:** Each County included in the Counties.

**1.19 “Critical Milestones”:** The events and activities listed as “Critical Milestones” in Exhibit A and marked in the table in Section 2.1 in Exhibit F with a “Y”.

**1.20 “Custom Software”:** The modifications and changes to the Software which are designed, developed or produced by Contractor for the Counties under the Agreement.

**1.21 “Data”:** The Counties’ records, files, forms, data, information and other documents in electronic or hard copy form.

**1.22 “Day(s)”:** A calendar day or calendar day(s), unless otherwise indicated.

**1.23 “DED(s)”:** Deliverable expectation documents that include the Acceptance Criteria for each Deliverable.

**1.24 “Deficiency”:** A failure of a Deliverable or Service, or an omission, defect or deficiency in a Deliverable or Service, including but not limited to such failures, omissions, defects or deficiencies which remain on the OED from the Information Technology Agreement that the parties accepted through the Transition-In Plan, which causes it not to conform to its Specifications or significant incorrect spelling, incorrect grammar, poor quality esthetics, poor quality of documentation, or similar failures in a Deliverable.

**1.25 “Deliverables”:** Contractor’s products which are based on applicable Specifications and which are provided by Contractor to the Counties (either independently or in concert with the Counties or third parties) during the course of Contractor’s performance under this Agreement, including without limitation Equipment, the Network, Third Party Software as described in a Change Request, and other deliverables which are described in Exhibit F and in Change Requests.

**1.26 “Documentation”:** All operations, technical and other manuals used in conjunction with the Systems, in whole and in part, including without limitation manuals provided by licensors of Third-Party Software and by Equipment manufacturers.

**1.27 “Enhancements”:** All updates, upgrades, additions, and changes to, and future Releases during the term for the Software in whole or in part, including without limitation: (1) updated versions of the Software to operate on upgraded versions of firmware or upgraded versions of Equipment; and (2) updated versions of Software that encompass improvements, extensions, Maintenance updates, Deficiency corrections, or other changes that are logical improvements or extensions of the Software. In addition, Enhancements will also include changes to the Software made pursuant to Change Requests.

**1.28 “Equipment”:** The computer hardware on which the Software and Data will operate at the Sites, and all equipment, operating system software, firmware and physical materials required for and associated with their operation, including without limitation furniture and other materials at the Sites as described in Exhibit B.

**1.29 “Facilities”:** The buildings and land to house certain Equipment and Project related activities hereunder.

**1.30 “Federal Financial Participation”:** The federal government’s share of an expenditure made by the Counties under the Agreement.

**1.31 “Function(s)”:** A discrete capability or function of the Software.

**1.32 “Implementation”:** The process for making a Software Deliverable Operational for Processing the Data in Production. Implementation shall be completed when Contractor has completed the Implementation Services according to the applicable Work Plan.

**1.33 “Information Technology Agreement”:** The agreement which was executed between the parties for the design, development, implementation, operations and maintenance for the Systems and which was effective as of February 28, 2000.

**1.34 “Key Staff”:** Contractor’s key personnel described in Exhibit F and listed in Section 4.10.9 of the Response.

**1.35 “Letter of Credit”:** The letter of credit described in Section 15.8 and included at Exhibit H.

**1.36 “Local County Sites”:** The locations where Equipment, Software, and Project staff may be located, which are listed in the RFP Attachment D, and which may change as otherwise designated by the Counties in accordance with Section 14.

**1.37 “Maintenance”:** Maintenance and Support Services which shall be performed by Contractor and which are described as such in the RFP, Response and Exhibit F.

**1.38 "Maximum Amount":** The maximum amount payable and paid by the Counties to Contractor under this Agreement, as described in Exhibit A.

**1.39 "Network":** The telecommunications lines, Equipment, Software, and Services for transmitting Data and other information for the Counties among and between Sites and other specified locations and systems.

**1.40 "Notice":** A written document given by a party to the other in accordance with Section 22.29.

**1.41 "Object Code":** The binary code version of a Software program loaded into a computer's memory to enable it to perform a program function.

**1.42 "Operational":** The condition when a Software Deliverable or the Systems are functional in accordance with their applicable Specifications and used for their purposes in Production.

**1.43 "Operations":** Services which shall be performed by Contractor and which are described as such in the RFP, Response and Exhibit F.

**1.44 "Operations Effective Date" or "OED":** The event that occurs after Acceptance of each Software Deliverable and the Counties put the applicable Function(s) into Production.

**1.45 "Performance Standards":** The standards which Services will meet as described in Exhibit C.

**1.46 "Pre-existing Software":** All computer programs which were developed and owned by Contractor prior to the Agreement Effective Date or outside the scope of this Agreement, and any modifications thereof and derivative works based therein, and which were not designed, developed or installed with Federal Financial Participation, including but not limited to commercially available Contractor software listed in Exhibit B and proprietary software which is not generally made available as a commercial product by Contractor; and the documentation used to describe, maintain and use such Pre-existing Software.

**1.47 "Processing":** The performance by the Software residing on the Equipment of logical operations and calculations on the Data.

**1.48 "Production":** The use of Function(s) in the Counties' production environment(s) and to perform their regular business operations.

**1.49 "Project":** Pursuant to the terms and conditions of this Agreement, the Maintenance, Operations, management, and use of the Systems for the administration of certain public assistance programs for which the Counties are responsible.

**1.50 “Project Management Tool”:** The software tool that the parties use to manage information for and other aspects of the Project; the tool is referred to as Project Portfolio Management in the RFP or shall be a substitute tool chosen by the Counties pursuant to Section 14.

**1.51 “Project Plan”:** The Project Plan for each Change Request and other tasks, as described in RFP Section 4.9.3.3.

**1.52 “Property”:** All the Counties’ Equipment, the Deliverables, and other real and personal property.

**1.53 “Release”:** A specifically identifiable version of the System that is (or was) placed into Production on a particular date.

**1.54 “Release Effective Date”:** The event that occurs after Acceptance of each Software Deliverable, the Counties decide to put the applicable Function(s) into Production, and Contractor puts the applicable Function(s) into Production.

**1.55 “SAC”:** The Strategic Architecture Committee described in Schedule 1 to Exhibit F.

**1.56 “Schedule”:** The dates described in a Work Plan for performance of Services and other Project events and activities.

**1.57 “Separate Services”:** The requested Services to be rendered and chargeable to an individual County pursuant to Section 13.

**1.58 “Service Level Agreements”:** The standards to which the Systems shall perform and which Services and Deliverables will meet as described in Exhibit C.

**1.59 “Services”:** The tasks and services to be performed by Contractor on the Project, as described in the Agreement.

**1.60 “Site(s)”:** The locations for the Equipment, Software, and Project staff, including without limitation the local County Sites, the Central Site Facility, the Project site, Contractor’s back up site and Contractor’s training sites.

**1.61 “Software”:** The software for the CalWIN System, the Access CalWIN System, the Benefits CalWIN System, and the SMART System (to the extent Contractor provides Services for the SMART System), as each are described in the RFP; Pre-existing Software; Third-Party Software; Custom Software; the Configuration; and all Enhancements thereto in Source Code and Object Code formats.

**1.62 “Source Code”:** The series of instructions to a computer for carrying out the various tasks that are performed by a computer program, expressed in a programming

language that is easily comprehensible to appropriately trained persons and that translates such instructions into Object Code which then directs the computer to perform its functions.

**1.63 “Specifications”:** The technical and other written specifications that define the requirements for the Project as described in the RFP, the Response, subsequent Deliverables which have received Acceptance, DEDs, the Service Level Agreements, and the Documentation. The Specifications are, by this reference, made a part of this Agreement as though completely set forth herein.

**1.64 “Staff”:** Contractor’s employees, Subcontractors and agents who shall provide the Services on behalf of Contractor.

**1.65 “Start Date”:** The Agreement Effective Date...

**1.66 “State”:** The State of California.

**1.67 “State Letters”:** Letters from the Agencies of the State of California to the counties in the State, with instructions regarding the implementation of federal and State policies, laws, rules, and regulations.

**1.68 “Statement of Work”:** The Statement of Work included in Exhibit F, and subsequent Statements of Work which are agreed to by the parties in writing and which shall be incorporated into Exhibit F upon such agreement, detailing the Services to be performed and Deliverables to be provided by Contractor under the terms and conditions of this Agreement.

**1.69 “Subcontractor”:** A person, partnership, or company, which is not in the employment of or owned by Contractor and which is performing Services under this Agreement under a separate agreement with or on behalf of Contractor.

**1.70 “Support”:** The technical and customer support Services which are described as such in the RFP and Response and in Exhibit F.

**1.71 “System(s)”:** The Software integrated and functioning together with the Data in accordance with the applicable Specifications and on the Equipment for the CalWIN System, the ACCESS CalWIN System, the Benefits CalWIN System, MyBenefits CalWIN System, CalWIN Mobile Application System and the SMART System, as each are described in the RFP.

**1.72 “System Testing”:** Functional and integration testing performed on Software Deliverables by Contractor so that Contractor can provide Certification of their readiness for applicable Acceptance Tests by the Counties.

**1.73 “Third-Party Software”:** Software which is developed by third parties and generally distributed for commercial use, and not specifically designed or developed for the Counties, including without limitation operating system software, tools, utilities, open source

software, and commercial-off-the-shelf software from a third party licensor and which Contractor supplies to the Counties pursuant to the terms of this Agreement.

**1.74 “Unauthorized Code”:** Any: (i) virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or Data or to perform any other such actions; and (ii) back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Unauthorized Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g., remote access via modem) solely for purposes of Maintenance or Operations.

**1.75 “Uptime”:** The time that each System is Operational, as measured 24-hours-a-day, Monday through Sunday, on a monthly basis, except for mutually agreed upon scheduled Maintenance activities. Uptime shall be as described in Exhibit C. Also referred to as “Availability” and “Available” in Exhibit C.

**1.76 “User(s)”:** Parties who will have use of and access to the Systems and Services.

**1.77 “Work Plan”:** The plan of activities for a Change Request and other tasks, as described in Exhibit F.

**1.78 “Work Product”:** Data and products produced under this Agreement including but not limited to, Deliverables, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Configurations, Custom Software, Data and databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

**2. Term.** The term shall begin on the Agreement Effective Date and shall continue for five years, subject to earlier termination as provided in the Agreement. In addition, the Counties shall have the sole discretion to renew the term for up to a total of five additional years, comprised of one 3-year period and one 2-year period. Renewal of the Agreement term may be made by the Counties upon the same authority as provided in Section 22.26.

### **3. Financial Matters.**

**3.1 Charges.** Subject to the Counties’ receipt of a correct invoice, Contractor’s performing its obligations as required in the Agreement, and the Counties’ exercise of their remedies, the Counties shall pay the Charges in Section 3 of Exhibit A in accordance with the Payment Schedule in Section 6 of Exhibit A for the Services and Deliverables and Change Requests in accordance with the terms of Section 3.5 for Deliverables which received Acceptance in the previous month.



**3.2 Maximum Amount.** The Maximum Amount shall be as set forth in Exhibit A.

**3.3 Taxes.** Subject to the Counties' receipt of a correct invoice, Contractor's performing its obligations as required in the Agreement, and the Counties' exercise of their remedies, the Counties shall pay for any sales or use taxes imposed on the Deliverables if the Counties receive an invoice from Contractor for such taxes within one year of the due date. Contractor must pay taxes based on Contractor's income or revenue or personal property taxes levied or assessed on Contractor's personal property to which the Counties does not hold title.

**3.4 Contractor Expenses.** Contractor shall pay its out-of-pocket expenses which are incurred in connection with the Agreement unless otherwise indicated in a Change Request and agreed to in writing by the Counties.

**3.5 Invoices.** Contractor shall submit correct invoices to the Counties' Executive Director for all Charges, expenses, and other amounts to be paid by the Counties hereunder. All invoices submitted must meet with the approval of the Counties' Executive Director or designee prior to payment. The Counties' Executive Director will, within 10 working days of receipt thereof, review invoice(s) and, if approved by Counties' Executive Director or designee, will advise Contractor to proceed processing the invoice directly to each County for payment as directed in writing by Counties' Executive Director or designee. Each County shall pay its share of each invoice as determined by the County share allocation methodology set forth in Section 8 in Exhibit A and subject to the exercise of the Counties' remedies within 30 Days following the receipt of such invoice in each County. The methodology set forth in Section 8 in Exhibit A may be modified by the Counties' Executive Director or designee in his or her sole discretion, provided any changes to the County share allocation are less than 3% of the annual County share in any County. For any annual change of such that is 3% or greater, the Counties' Executive Director or designee must obtain the approval of Counties' County Boards of Supervisors or their delegates in their sole discretion before any such change is effective. Pending approval of such changes by the County Boards of Supervisors or their delegates, Contractor shall issue invoices in the County-share ratios most recently approved by Counties for Contractor to use. After approval of such changes by the County Boards of Supervisors or their delegates, if needed, the parties shall revise and adjust invoice County-share ratios in subsequent months. In no event will the total County share allocation equal less than 100%. Contractor shall only submit invoices for Services or Deliverables as permitted by this Section 3.5. Incorrect or incomplete invoices will be returned by the Counties to Contractor for correction and reissue. The Agreement number must appear on all invoices, bills of lading, packages, and correspondence relating to this Agreement. Invoices must reference this Agreement, must provide detailed supporting documentation and must be in a format as requested by the Counties, including without limitation:

**3.5.1** Contractor name, address, telephone number and federal tax identification number;

**3.5.2** An itemization of each Deliverable and Service;

**3.5.3** The Deliverable and Service for which payment is sought, and the Acceptance date triggering payment;

**3.5.4** Applicable Charges;

**3.5.5** Date of delivery and/or date of installation, as applicable;

**3.5.6** Any other Project expenses or costs which are accepted on a Change Request, with a detailed, itemization of such expenses and costs, if applicable;

**3.5.7** Sales or use taxes, if applicable;

**3.5.8** Credits, if any; and

**3.5.9** Total amount due.

**3.6 Overpayments to Contractor.** Contractor shall promptly, but in all cases within 30 Days, pay to the Counties the full amount of any erroneous payment or overpayment upon Notice of an erroneous payment or overpayment to which Contractor is not entitled or when otherwise discovered by Contractor.

**3.7 Credits.** Any credits due the Counties under this Agreement may be applied against Contractor's invoices with appropriate information attached, upon giving of notice required herein, if any, by the Counties to Contractor.

**3.8 No Increases.** Contractor shall not increase the Charges or Maximum Amount due from the Counties under this Agreement for all Services and Deliverables during the term of this Agreement, except as otherwise specifically permitted in the Agreement.

**3.9 Funding.**

**3.9.1** The parties acknowledge and agree that this Agreement is dependent upon the availability of County, State, and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the County, State and/or federal governments for the Agreement, or is not allocated or allotted to the Counties by the applicable County, State and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of the Counties to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate as applicable.

**3.9.2** If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the Counties or from the County, State and/or federal governments for the Agreement, or is not allocated or allotted in full to the Counties by County, State, and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the Counties shall seek from Contractor its recommendations regarding changes to the Project, and the obligations of the Counties to make payments will be delayed or be reduced under this Section to the extent necessary for the Counties or the Counties shall have the right to terminate the Agreement as provided in Section 21.6 or suspend the

Project as provided in Section 15.5, but without a 30 Day limit. If such funding under this Agreement is reduced as a result of such delays or reductions in funding in an amount that is less than 20% of the Charges budgeted to be paid to Contractor for Services and Deliverables in any State fiscal year and the Counties do not exercise such rights to terminate, the Counties shall determine which aspects of the Agreement shall proceed and which Services shall be performed and not performed, with Contractor's Charges for such Services and Deliverables reduced proportionately and the Contractor will be allowed to reduce or delay its associated costs for such Services and Deliverables to the same extent. If such funding under this Agreement is reduced as a result of such delays or reductions in funding in an amount that is equal to or greater than 20% of the Charges budgeted to be paid to Contractor for Services and Deliverables in any State fiscal year: (i) the Counties and Contractor shall jointly determine which aspects of the Project shall proceed and which Services shall be performed and not performed in which fiscal period, with Contractor's Charges related to such Services to be performed and associated Deliverables reduced; and (ii) the parties shall discuss whether to revise the Agreement related to Performance Standards, liquidated damages, remedies, Key Staff, the Implementation of Software version updates and other relevant terms. In these situations, Contractor shall have the right to submit claims for such costs and expenses pursuant to Section 3.9.2, and amounts held back as described in Exhibit A if the Counties utilize their rights under Section 3.9.2, and the Counties will pay Contractor for Services and Deliverables and certain of its costs in accordance with the terms of Section 21.6. Any obligation to pay by the Counties will not extend beyond the end of the Counties' then current funding period.

**3.9.3** Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, the Counties in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced and the Counties shall not be responsible for any costs, expenses or losses incurred by Contractor as a result of the Counties' termination of the Agreement or reduction of Services except as expressly described in this Agreement. The Counties will use reasonable efforts to provide Notice as soon as reasonably possible to Contractor if it reasonably appears that this Section 3.9 may be utilized by the Counties or be applicable at any time during the pendency of the Project.

**3.10 Advance Payments Prohibited.** No advance payment shall be made for Deliverables or Services furnished by Contractor pursuant to this Agreement unless otherwise mutually agreed upon in writing.

**3.11 No Additional Consideration.** Except as expressly provided in Exhibit A, Contractor shall not be entitled to nor receive from the Counties any additional consideration, compensation, salary, wages, or any other type of remuneration for Services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

#### **4. Project Management.**

**4.1 Overall Responsibility.** Contractor shall have responsibility for managing the Project to completion in accordance with the requirements of the Agreement.

**4.2 Reports and Meetings.** The Contractor Project Manager and other Key Staff shall participate in meetings with the Counties' Executive Director and other members of the Counties' Project team during the Project at times as mutually agreed upon or as indicated in the Statement of Work. Such meetings will include monthly leadership meetings, at which Contractor shall report on upcoming legislative and regulatory changes of relevance to the Counties, and quarterly advisory board meetings. Contractor shall also invite the Counties' Executive Director to attend Contractor's semi-annual and other applicable conferences as determined by Contractor, at which Contractor shows premier clients the future of its product lines, at no charge for registration to attend the conferences, but the Counties shall pay for their travel expenses to attend such conferences, subject to both parties' ethics and compliance function approval.

**4.3 Contractor Project Manager.**

**4.3.1** Contractor shall assign to the Project a Contractor Project Manager of a management level sufficient to assure timely responses from all Contractor personnel and whose resume and qualifications will be reviewed and must be approved by the Counties prior to his or her appointment as Contractor Project Manager. The Contractor Project Manager shall be responsible for acting as a liaison with the Counties' Executive Director.

**4.3.2** Contractor agrees that the Contractor Project Manager shall be fully qualified to perform the tasks required of that position under this Agreement. The Contractor Project Manager shall function as Contractor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The Contractor Project Manager shall have authority to make decisions and approve Change Requests.

**4.3.3** If the Contractor Project Manager is removed or replaced, Contractor will promptly (and in all cases within 48 hours) provide Notice to the Counties and submit at least two resumes of other qualified candidates within 30 Days of removal or replacement of the Contractor Project Manager. Contractor must obtain approval of the replacement Contractor Project Manager from the Counties, prior to his or her beginning work on the Project. Contractor shall temporarily fill the Contractor Project Manager within seven Days of it being vacated and shall fill the position with a permanent fulltime replacement within 45 Days of the Contractor Project Manager's removal or departure.

**4.4 Contractor Staff.**

**4.4.1** Prior to the Agreement Effective Date, Contractor shall have provided to the Counties names of and resumes for Key Staff for the Project and their positions during the Project and Support and Maintenance. Contractor shall also provide to the Counties job descriptions for Key Staff positions.

**4.4.2** Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff shall not be changed during the Project from the people who were described in Exhibit F and the Response without the prior written approval of the Counties. During the term of the Agreement, the Counties

reserve the right to approve or disapprove Contractor's and any Subcontractor's Key Staff assigned to this Agreement, to approve or disapprove any proposed changes in Key Staff, or to require the removal or reassignment of any Contractor or Subcontractor Staff found unacceptable by the Counties, subject to the Counties' compliance with applicable laws. Contractor shall provide the Counties with a resume of any member of its Key Staff or a Subcontractor's Key Staff assigned to or proposed to be assigned to any aspect of the performance of this Agreement prior to that person commencing to provide any Services.

**4.4.3** All Staff proposed by Contractor as replacements for other Staff shall have comparable or greater skills for performing the activities as performed by the Staff being replaced. Contractor assumes sole and full responsibility for its acts and the acts of its Staff. Contractor understands and agrees that the Counties do not assume liability for the actions of the Staff. Contractor shall ensure that any transition to new Staff will not affect the Schedule or provision of Services set forth in this Agreement.

**4.4.4** Contractor agrees that any claim on behalf of any person arising out of employment or alleged employment by Contractor (including, but not limited to, claims of discrimination against Contractor, its officers, or its agents) are the sole responsibility of Contractor and are not the responsibility of the Counties. Contractor will indemnify and hold the Counties harmless from any and all such claims asserted against the Counties. Any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from the Counties (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

**4.5 The Counties' Executive Director.** The Contractor Project Manager's primary point of contact in matters of Project management shall be the Counties' Executive Director. The Counties' Executive Director or his or her designee or successor will manage this Agreement on behalf of the Counties and will be the principal point of contact for the Contractor concerning Contractor's performance under this Agreement.

**4.6 Reference and Background Checks.** Due to the confidential nature of the information and materials which will be accessible to Contractor, the Counties shall have the right to conduct reference and background checks on Contractor Staff to be used to provide the Services. The Counties reserve the right in their sole discretion to reject any proposed Staff as a result of information produced by such reference checks, background checks, or additional sources of information. In addition, Contractor shall conduct its own reference and background checks for at least five previous years on Staff or their substitutes to be used to provide the Services. Contractor further agrees to cooperate fully with the Counties in completion of these requirements.

**4.7 Records Retention and Access Requirements.**

**4.7.1** Contractor shall agree to the conditions of all applicable County, State and federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Agreement. In addition, Contractor shall

agree to the terms which are set forth below regarding retention of records and access for County, State and federal government officials.

**4.7.2** Contractor and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflects the accuracy of amounts billed to the Counties during the performance of this Agreement and their compliance with applicable laws and regulations, and shall retain all such records for six years after the expiration or termination of this Agreement. Records involving matters in litigation related to this Agreement shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within six years from the date of expiration or termination of this Agreement.

**4.7.3** All such records shall be subject at reasonable times and upon prior Notice to examination, inspection, copying, or audit by personnel so authorized by the Counties' Executive Director and/or County, State and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Agreement, access to these items will be provided within Sacramento County, California. During the six year period after this Agreement term or one year term following litigation, delivery of and access to these items will be at no cost to the Counties. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors, subject to Section 22.20 (Force Majeure). Notwithstanding anything to the contrary herein, the Counties shall on its behalf (but without limiting other government agencies) agree to audit Contractor in accordance with the terms of the Agreement no more often than semi-annually.

**4.7.4** The records retention and review requirements of this Section 4.7 shall be included by Contractor in any of its subcontracts with Subcontractors. The Counties' personnel shall be accompanied by Contractor personnel at all times during any examination, inspection, review or audit. Contractor shall make no charges to the Counties for services rendered in connection with an audit requested by the Counties.

**4.7.5** As part of the Services, Contractor shall provide, upon the Counties' request, a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services provided to the Counties under this Agreement. In addition, Contractor shall undergo an annual SSAE No. 16 or successor audit throughout the term at the Central Site Facility and the Back-up Site Facility. As part of the Services, Contractor shall provide, upon the Counties' request, a copy of such annual SSAE No. 16 or successor audit within 30 Days of completion. If any relevant exceptions are noted in such audits, Contractor shall promptly correct those exceptions.

**4.8 Accounting Requirements.** Contractor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Services and all other costs and expenditures made under this Agreement, and the costs properly applicable to the Agreement shall be readily ascertainable therefrom.

**4.9 Supplemental Contracts.** The parties acknowledge that the Systems are being operated and maintained by Contractor as of the Agreement Effective Date and during

the Transition In Period (as defined in Exhibit F). The Counties may undertake or award supplemental contracts for work related to this Agreement, or any portion thereof. Contractor shall cooperate such other contractors and the Counties in all such cases. Contractor shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of such other contractors or for any delays which may be caused by such other contractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.

**4.10 Inspections.** County, State and federal agencies shall, at all reasonable times, have the right to enter Contractor's facilities, premises or such other places where duties under the Agreement are being provided to inspect, monitor, or otherwise evaluate Contractor's performance, compliance and/or quality assurance under this Agreement. Contractor and all Subcontractors must provide reasonable access to all Facilities and assistance to County, State and federal Government authorized representatives. All inspections and evaluations shall be performed by such agencies in such a manner that will not unduly delay work.

## **5. Services and Resources.**

**5.1 Performance.** Contractor shall begin to perform the Services on the Start Date. Contractor shall perform the Services as described in this Agreement.

**5.2 Necessary Resources.** Except as specifically provided herein, Contractor shall provide the Staff and all other materials and resources necessary for the performance of the Services.

**5.3 Ownership.** Title to all Property furnished by the Counties shall remain in the Counties. Title to all Property purchased by Contractor, for which Contractor has been reimbursed by the Counties under this Agreement, shall pass to and vest in the Counties as provided in Exhibit F.

**5.4 Use of Property.** Any Property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the Counties' Executive Director, be used only for the performance of its obligations under and subject to the terms of this Agreement.

**5.5 Damage to Property.** Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor or from the failure on the part of Contractor to maintain and administer that Property in accordance with the terms of the Agreement. Notwithstanding anything to the contrary herein, Contractor shall be liable to the Counties for any damages resulting from damage to Property, which damages result from or are caused by Contractor. Contractor shall ensure that the Property is returned to the Counties in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted. Contractor shall repair or make good any such damage, destruction or loss at any of the Counties' Sites, and shall do so without requesting contribution or assistance from the Counties.

**5.6 Notice of Damage.** Upon the loss of, destruction of, or damage to any of the Property, Contractor shall give Notice to the Counties' Executive Director thereof and shall take all reasonable steps to protect that Property from further damage.

**5.7 Surrender of Property.** Contractor shall surrender to the Counties all Property upon the earliest of completion, termination, or cancellation of this Agreement.

**5.8 The Counties' Property.** The Counties will provide Contractor access to and use of the Counties' Equipment as described in Exhibit F. Contractor's use of the Counties' Equipment shall be subject to the Counties' security, administrative and other requirements.

## **6. Equipment.**

**6.1 Contractor Equipment.** Contractor shall provide Equipment at Contractor Sites and as described in Exhibit B.

**6.2 The Counties' Equipment.** The Counties shall provide Equipment at the Counties' Sites as described in Exhibit B.

### **6.3 Equipment and Third-Party Software Ordering and Delivery**

**6.3.1** The Counties may order Equipment and Third-Party Software from Contractor pursuant to Change Requests. Contractor will ship the Equipment and Third-Party Software to Contractor or the Counties and County Sites, as agreed upon by the parties in the applicable Change Request, Work Plan, and this Agreement. If Contractor receives the Equipment and Third-Party Software, Contractor will load the Third-Party Software and other Software on the Equipment, and Contractor will pre-test each such item of Equipment and confirm that it operates in accordance with applicable Specifications before it is shipped to a County Site or the Counties' Site. Following such confirmation, Contractor will ship the Equipment with the applicable Software to the Site(s) agreed to by the parties in writing.

**6.3.2** Contractor shall deliver the Equipment and Software ordered pursuant to this Agreement on the dates specified in the Change Request and its Work Plan. For any exception to these delivery dates, Contractor must notify the Counties and obtain prior approval in writing.

**6.3.3** All Equipment and Third Party Software physical deliveries made pursuant to this Agreement to local County Sites and the ASF must be complete. The Counties shall inspect and provide written acknowledgement of Acceptance or rejection of installation of the Equipment after receipt of a Notice from Contractor that installation has been completed within such other period of time as the parties agree in writing. Any such item of Equipment shall be deemed incomplete and not delivered, thereby relieving the Counties' of their inspection obligations until delivery is complete, if any item of Equipment or Third Party Software, component, or feature thereof within the ordered configuration has not been delivered, or, if delivered, not installed in accordance with its Specifications and the Change Request and its Work Plan. However, the Counties shall retain such incomplete Equipment or Third Party Software until delivery is complete. All packages must be accompanied by a packing slip which



identifies all items included with the shipment and the Counties' Change Request number. Contractor's or Contractor's delivery receipt must be signed by an authorized representative of the Counties for all deliveries made hereunder.

#### **6.4 Loss or Damage.**

**6.4.1** Contractor shall ship all Equipment and Software purchased and licensed pursuant to this Agreement, freight prepaid, FOB the Counties' designated destination. The method of shipment shall be consistent with the nature of the Equipment and Software and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Equipment and Software, in whole or in part, ordered hereunder which occurs prior to installation completion, except loss or damage attributable to the Counties' acts or omissions or a force majeure event under Section 22.20 (Force Majeure); and such loss, damage, or destruction shall not release Contractor from any obligation hereunder.

**6.4.2** After installation completion, the risk of loss or damage for the Equipment shall be borne by the Counties, except loss or damage which results from or is caused by Contractor.

#### **6.5 Installation and Set-up.**

**6.5.1** Installation for all Equipment and Software will occur as described in Exhibit F or the applicable Change Request, Project Plan, and Work Plan. Any Equipment and Software installations done by Contractor shall be conducted by experienced and trained Staff, and shall not invalidate or void any manufacturers' warranties. Contractor will be responsible for safety conditions in the areas of work performance that it controls.

**6.5.2** Contractor shall conduct its installation Services so as to minimize interference with normal activities of the Counties and shall keep the Site safe, clean and orderly at all times. Contractor will restore the Site(s) to a condition no less finished than prior to the initiation of the Equipment's installation. Upon completion of installation, Contractor will leave the Site clean and free from all of its materials, tools, and equipment not required after installation and from all rubbish and debris which result from installation.

**6.5.3** Contractor shall provide confirmation that each item of Equipment conforms to its applicable Specifications following completion of installation by Contractor as required in this Agreement. Contractor agrees that the Counties shall have the right to confirm that the Equipment conforms to applicable Specifications following receipt of such confirmation. Contractor shall correct any failures of the Equipment to meet applicable Specifications following receipt of Notice from the Counties and following this confirmation inspection described in the sentence above, unless such failure is due to the fault of the Counties.

**6.6 Connections to Equipment.** If requested by the Counties, Contractor agrees to identify, on all items of Equipment, components, or features thereof supplied under this Agreement, all appropriate test points for connecting commercially available Equipment monitors designed to measure system capacity, performance, or activity.

#### **6.7 Site and System Access.**

**6.7.1** Contractor shall have access to the Counties' Sites in accordance with applicable Change Requests and Work Plans to provide Services described in this Section, subject to the administrative and security regulations existing at the Site(s), and such other security regulations as are required because of the nature of the Systems or a Site. The Counties shall cause the Counties' Sites to be available and ready on the dates specified in the applicable Change request and its Work Plan for Equipment deliveries and installations in accordance with written site and environmental specifications agreed to by the parties, as set forth in the applicable Change Request.

**6.7.2** To the extent a Site of the Counties' is not available and ready as so specified within ten business days of the applicable dates in the Work Plan and the Counties' failure to perform is not due to an event described in Section 22.20, Contractor may submit a Change Request to the Counties under Section 14.7.

**6.7.3** Any subsequent alterations or modifications to Site of the Counties' which is directly attributable to incomplete or erroneous specifications provided by Contractor and which involve additional expense shall be made at the expense of Contractor, to the extent that such costs would not have been incurred had the complete and/or correct specifications been initially provided.

**6.7.4** Contractor shall promptly, and before the conditions are disturbed, provide a Notice to the Counties' Executive Director of any latent or previously unknown physical conditions encountered at a County Site which may affect the proposed method or time for performing the work and may submit a Change Request to the Counties in accordance with Section 14.7.

**6.8 Protection From Damage.** Contractor shall continuously protect the Systems and County Equipment, in whole or in part, from damage, destruction or loss caused by its Staff, and shall protect the Counties' real and personal Property from damage arising from its Staff in connection with the delivery and installation of Equipment. Contractor shall be responsible for any loss, destruction, or damage to the Counties' or any County's Property which results from or is caused by Contractor's acts or omissions. Contractor shall repair any damage, destruction, or loss at the Counties' Sites caused by Contractor.

**6.9 Notice of Damage.** Upon the loss of, destruction of, or damage to any Property, under this Section, of the Counties or any County, Contractor shall notify the Counties' Executive Director thereof and, subject to direction from the Counties' Executive Director or her or his designee, shall take all reasonable steps to protect that Property from further damage.

**6.10 Additions.** The Counties may add items of Equipment and Software to the System in accordance with the Change Request or other ordering procedures and standard configurations for Equipment and Third-Party Software agreed to in writing by the parties. Such additions shall work with the Systems in accordance with the Specifications and shall be subject to all of the terms and conditions of this Agreement.

**6.11 Changes or Cancellations.** The Counties may change or cancel items of Equipment and Software prior to shipment. If the Counties issue a Change Request or other

mutually agreed upon form causing a delivery delay or cancels an order less than 20 Days prior to scheduled shipment, the Counties may be subject to a restocking charge, provided that imposing such charges is part of Contractor's existing policies. Such charges would be equal to Contractor's actual costs of restocking, which shall in any case be no greater than five percent of the Charges for the Equipment being delayed or cancelled.

**6.12 Codes.** Contractor shall comply with all required Federal, State and local codes, inspection standards and ordinances which apply while performing installation Services and which exist at the time of the applicable installation. In the event that Contractor is not performing in compliance with such required codes, inspection standards and ordinances, Contractor shall remedy such noncompliance at no charge to the Counties.

**6.13 Operations Documentation.** Contractor shall, upon commencement of performance, provide to the Counties such current diagrams, schematics, manuals, and other Documentation necessary for the operation of the Equipment by the Counties or a third party. There shall be no additional charge for such Documentation.

## **7. Network.**

### **7.1 General**

**7.1.1** Contractor shall provide the Network Management Plan within the Systems Operations Plan Deliverable, as described in Section 4.3.22.3 of the RFP and the Response, in accordance with applicable Specifications.

**7.1.2** Pursuant to the Network Specifications developed by Contractor pursuant to the Network Management Plan within the Systems Operations Plan Deliverable as described in Section 4.3.22.3 of the RFP and the Response, and following the completion of an approved Network installation Schedule, Contractor shall connect the Equipment of Counties' Sites to the Contractor's Network.

**7.1.3** Contractor shall verify and test the circuits and Equipment to its own and the applicable supplier's standards and for monitoring and managing the installed Network.

**7.1.4** Contractor shall not be liable for disruption or failure of the Network to the extent such disruptions or failures are caused by failures of the County-operated or State-operated telecommunications facilities, if any, used for the Network.

**7.2 Network Impact of Office Relocations.** If Sites of the Counties change during the term, Contractor shall specify the new Network compliance requirements for the relocated Site, and the Counties will be responsible for scheduling and implementing new Network component installation and old Network component removal.

## **8. Facilities.**

**8.1 Central Site Facilities.** Contractor shall provide a Central Site Facility for the Systems as described in Exhibit F.

**8.2 Development Environment Facilities.** Contractor shall provide a development environment to support the Software and other development and testing requirements for the Project.

**8.3 Office Facilities.** Contractor shall lease office Facilities to house the Project. These Facilities shall provide space (as described in Exhibit F) to accommodate the Counties' Project team, as well as the required on-site Contractor Staff, subject to Contractor's and the Counties' agreement upon Contractor's space requirements.

**8.4 Facilities Costs.** Contractor shall be responsible for all costs related to the operation of each Facility, including, but not limited to, leasehold improvements, utilities, security, telephone, office equipment, supplies, janitorial services, storage, transportation, insurance, fax and copy machine equipment and supplies. Also included is the telephone system required to support help desk call routing and tracking.

**8.5 Facilities Furnishings.** Contractor shall provide furnishings including but not limited to furniture and general office equipment which is specified in the RFP and Section 4.11.4 of the Response and which is used in office Facilities and the Central Site Facility for the Project. Any such furnishings needed in the Counties' Sites will be provided by the Counties. Any such needs which exist in a Contractor owned or supplied development environment facility will be provided by Contractor.

**8.6 Contractor Liaison.** Contractor shall designate an individual or individuals as liaison on all Facility-related matters.

## **9. Acceptance Process for Deliverables and Services.**

### **9.1 General.**

**9.1.1** Contractor shall provide the Counties with the Deliverables and Services according to the Work Plans and as described in the RFP, the Response, and other parts of this Agreement. Contractor shall utilize the Specifications, the DEDs, the RFP, the Response, the Deliverables for which the Counties have previously granted Acceptance, Contractor's professional knowledge, and this Agreement as the basis of subsequent Deliverables and Services. Contractor shall retain backup copies in writing and on electronic media of all Deliverables until 180 Days after termination or expiration of this Agreement and shall provide the Counties on its request with a copy thereof until that time.

**9.1.2** All Deliverables shall be subject to the Counties' Acceptance, including without limitation Deliverables provided pursuant to Change Requests. All Services which are subject to Acceptance Tests shall have their Acceptance Criteria described in DEDs and shall be described in and included in Deliverables as identified in Exhibit F or mutually agreed Change Requests pursuant to Section 14, such as training Services which shall be completed by Contractor and described in a monthly status report. The Counties' review of Deliverables shall be in accordance with the time frames therefor set forth in the applicable Work Plans.

**9.1.3** The Work Plan shall include Deliverables that are described as Critical Milestones in the Agreement and others, if any, mutually agreed upon in a Change Request. A breach of a Critical Milestone shall be subject to the procedure in Section 21.1 before the Counties can exercise the remedy in Section 21.1. In addition, updated versions of the Work Plan which receive Acceptance by the Counties shall be incorporated by reference into the Agreement without requiring an Agreement amendment.

## **9.2 Deliverables Acceptance Process.**

**9.2.1** Upon delivery of a Deliverable and receipt of Certification from Contractor that the Deliverable meets its Acceptance Criteria, the Counties will, with Contractor's assistance and in accordance with the Change Request and other applicable Project documents, review or perform Acceptance Tests on the Deliverable, as applicable, to determine whether the Deliverable conforms to its Acceptance Criteria. The Counties will provide Acceptance for a Deliverable if it has no Deficiencies (except Cosmetic Deficiencies). However, if a Deficiency (except for Cosmetic Deficiencies) is found, the Counties will notify Contractor with the Project Management Tool, in an email or in a written Notice or other document of Deficiencies used as the grounds for the Counties' decision not to give Acceptance. The Counties shall use diligent efforts to provide thorough lists of such Deficiencies as soon as feasible in accordance with the times for their review and testing in the Work Plan or as provided below. Disagreements between the parties regarding the testing process shall be promptly escalated by the parties to the Counties' Executive Director and the Contractor Project Manager who will use diligent efforts to resolve such disagreements. Contractor shall correct Deficiencies and resubmit a corrected Deliverable to the Counties which will review or perform Acceptance Tests on the Deliverable to verify whether the Deliverable lacks Deficiencies (except for Cosmetic Deficiencies) and with the Project Management Tool, in an email or in a written Notice or other document shall either give its Acceptance or reject it following such review or Acceptance Tests. Contractor's times for correcting Deficiencies and the Counties' review of Deliverables shall be in accordance with the timeframes therefor set in the Work Plan and other Project documents. If time periods for correcting Deficiencies by Contractor and reviewing and retesting corrected Deliverables are not in the Work Plan or another Project document, each such time period shall be ten business days. However, the parties shall initiate Change Requests if the Counties request changes to or additional Functions for the Deliverables, which are not included in the applicable Specifications for such Deliverables, during the Counties' Acceptance Test process.

**9.2.2** If Contractor is unable to correct all Deficiencies (except for Cosmetic Deficiencies) within the number of Days indicated in the Work Plan following the Deliverable's scheduled Acceptance, or if no such date is in the Work Plan, within 30 Days from such scheduled Acceptance, the Counties may, at their option: (a) continue reviewing or performing Acceptance Tests on the Deliverable and require Contractor to continue until Deficiencies are corrected or eliminated; (b) request Contractor to provide, at its expense, a replacement Deliverable for further review or Acceptance Tests; (c) set-off from the Charges to the extent the Counties determine the Deficiencies for the Deliverable have not been corrected and provide Acceptance for the Deliverable; or (d) after completion of the process set forth in this Section 9.2 and providing Notice of default to Contractor, reject the Deliverable and terminate this Agreement as provided in Section 21.2.

**9.2.3** Notwithstanding anything to the contrary in this Agreement, the parties shall use the following alternative process, also known as a “go-to-green plan”, when the Counties and Contractor determine that there is a new requirement for the Systems, and the deadline for Implementation of Software with such requirement does not allow for the parties to use or meet the time periods and testing, review and correction processes described above in this Section 9.2. If the Counties and Contractor make this determination, there will be a Change Request pursuant to Section 14 opened for the new requirement. A corresponding “go-to-green” plan will be developed that describes: (i) the scope of work; (ii) Deliverables; (iii) time periods and deadlines for delivery, testing, and other activities; (iv) limitations on or changes to remedies that will apply to the Change Request work, subject to the last sentence of this Section 9.2.3; and (v) other unique aspects of the work performed pursuant to the Change Request. Contractor shall correct Deficiencies, which are found by either party after a Deliverable has been implemented into Production in accordance with the terms of this Change Request, by the earlier of Implementation of the next regularly scheduled Release of Updates for the Software or 90 Days following the effective date of the Change Request, unless the Change Request indicates when Contractor shall otherwise correct such Deficiencies. Except for the remedy in Section 14.6 (Termination), the Counties’ remedies associated with such Change Request shall not apply until the next regularly scheduled Release of Updates for the Software unless the Change Request indicates when such remedies would apply.

**9.2.4** Notwithstanding the foregoing, if the Counties determine that Deliverables, which have previously been described in a Change Request, need to be changed and implemented into Production before System Testing and/or Acceptance Tests can be completed:

- (i) the Counties shall have the right to issue a revision (e.g., a deviation or addendum) to an existing Change Request;
- (ii) Contractor shall perform the work required in the changed Change Request in accordance with Section 14;
- (iii) the Contractor Project Manager and the Counties’ Executive Director shall meet to discuss and describe in the revision to the existing Change Request:
  - (a) possible approaches to correcting Deficiencies that arise after the changed Deliverable is in Production; and
  - (b) whether to hold in abeyance the Counties’ exercising their remedies related to such Deficiencies and Service Level Agreements only for the Deliverable(s) subject to the changed Change Request (but not other Deliverables) to the extent that such Deficiencies are a result of the revision (e.g., a deviation or addendum) as described in subsection 9.2.4(i).

**9.3 Release Effective Date.** After Acceptance of a Release, the Counties shall, with input from Contractor, determine whether the Release is ready for its Release Effective Date.

**9.4 Deleted by Agreement of the Parties.**

**9.5 Interpretation of Deliverables.** In the event of a contradiction, conflict, ambiguity or inconsistency in or between Deliverables and other documents that are part of this Agreement, including without limitation, a Deliverable that has already received Acceptance, the RFP and the Response, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in favor of the latest the Counties-approved Deliverable except in the case where a previous documented requirement is inadvertently omitted or not addressed directly in a subsequent Deliverable. No requirements can be omitted from the Specifications without the written consent of the Counties' Executive Director.

**9.6 Knowledge Transfer.** While constructing and developing the Deliverables, Contractor shall demonstrate and provide information to staff designated by the Counties about the functions and operations of all such Software in accordance with the Specifications and the Change Request and its Project Plan and Work Plan.

**10. Licenses.**

**10.1 Pre-existing Software, Other Contractor Technology, And Third-Party Software Licenses.** Contractor hereby grants the Counties: (a) a nonexclusive, perpetual license to use and reproduce the commercially available Pre-existing Software listed in Sections II.A.1 and II.B.2 (except for Software which is marked with a "Y" in the column entitled "Used In Operations Service Delivery") of Exhibit B which Contractor provides to or makes available to the Counties in Object Code format; (b) a nonexclusive, perpetual, irrevocable and non-terminable license to use, reproduce, modify, and prepare derivative works based on any Contractor proprietary Pre-existing Software, which Contractor shall provide to or make available to the Counties in Source Code format, and other Contractor Technology that is listed in Section II.B.1 of Exhibit B and that is or should be listed in the Project Management Tool for the Counties' internal purposes related to the Project; and (c) a nonexclusive, perpetual license to use and reproduce (to the extent permitted in the Third-Party Software license agreement) the Third-Party Software which Contractor provides to or makes available to the Counties in Object Code format for the Counties' internal purposes related to the Project. In addition, commercially available Pre-existing Software which is licensed by Contractor to the Counties under this Agreement and which is listed in Sections II.A.1 and II.B.2 of Exhibit B shall also be subject to the terms of Exhibit E following expiration or termination of this Agreement. These licenses shall extend to any County's information technology and telecommunications outsource vendor or vendors, including any subcontractors or successor(s) to the outsource vendor(s) for use on the Project. Contractor shall list in the Project Management Tool all Contractor Technology (including but not limited to Pre-existing Software) and Third-Party Software that Contractor uses on the Project during the term and that could have an impact on the Maintenance or Operation of the Systems or Project within ten Days of such use. Such use will include without limitation embedding the Contractor Technology or Third-Party Software in a Deliverable, providing or making it available to the Counties, or using for fulfilling its obligations under the Agreement.

**10.2 Source Code** Contractor shall provide the Counties with a copy of the Source Code and updated associated technical Documentation for the Custom Software in its

then current condition and for the other Software which is owned by or otherwise licensed to the Counties during the term in Source Code format and which is in Contractor's possession quarterly and within ten business days of a request from the Counties. Contractor shall electronically transmit by telecommunications facilities such Source Code and Documentation at no additional cost in a format acceptable to the Counties.

**10.3 Term.** The licenses in Section 10.1 are granted when the Counties first obtain access to or directly use the Contractor Technology and Third-Party Software under the terms of this Agreement, in whole or in part, and the licenses continue until the Counties return the Pre-existing Software, Third-Party Software and other Contractor Technology and copies thereof to Contractor or Third-Party Software licensor, erase such Pre-existing Software and other Contractor Technology from their Equipment's storage media, and terminate the Agreement, subject to termination following termination or expiration of this Agreement as provided in applicable license agreements, except as provided in Section 10.1(b).

**10.4 Title.** Contractor and its suppliers hold all right, title and interest in the Pre-existing Software and Contractor Technology.

**10.5 Documentation.** Contractor shall provide to the Counties one set of Documentation or electronic access to Documentation for Software, as well as the System, during the term, and Contractor shall transfer licenses to Documentation, which is marked with a "Y" in the column entitled "Transferable License to WCDS" and shall transfer licenses to Documentation which is listed in Section III of Exhibit B for the Counties' use following expiration or termination of the Agreement, to the Counties. Contractor shall provide to the Counties all such Documentation for use in electronic format compatible with Microsoft Corporation's then-generally available Office products, Adobe products, or comparable then-standard formats, and a written format in accordance with the terms of this Agreement. Upgrades and revisions to this Documentation shall be provided while Contractor is providing Services therefor. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Contractor's Documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation Documentation on a web site, Contractor may fulfill the obligations set forth in this Section by providing the Counties access to its web-based Documentation information. Contractor may also provide such information on CD-ROM. If the Counties wish to copy, modify or otherwise use that Documentation for any purpose or use parts of such Documentation in another document, Contractor shall seek such permission from the manufacturer or licensor if Contractor does not already have authority to copy, modify or otherwise use such Documentation. The Counties may seek permission directly from the manufacturer or licensor or may ask Contractor to obtain permission to use, modify and reproduce such Documentation. If Contractor uses Documentation owned by third parties for training on the Software, Contractor shall obtain permission to use such Documentation or otherwise shall develop training materials which shall be owned by the Counties as Work Products without use of the third parties' Documentation. Those materials developed by Contractor shall be available to the Counties to modify or use for the Counties' needs.

**10.6 Copies.** The Counties will reproduce and include the copyright and other proprietary notices and product identifications provided by Contractor on such copies, in



whole or in part, or on any form of the Pre-existing Software, Contractor Technology and the Documentation.

**10.7 Restrictions.** Except as permitted by this Agreement, any license agreement following expiration or termination of this Agreement, or by law, the Counties agrees not to: otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any third party or lease the Pre-existing Software or any copy of it which is provided only in Object Code format.

**10.8 Replacements.** The Counties shall be entitled to exercise its rights to Pre-existing Software and Third-Party Software on the Equipment or any replacement equipment used by the Counties, and with any new platform (e.g., operating system software, database, and other associated software-related products) to which Contractor moves the Pre-existing Software and Third-Party Software and with replacement Pre-existing Software and Third-Party Software without payment of additional Charges or other amounts under this Agreement, including but not limited to Exhibit E, or any Third-Party Software license agreement following expiration or termination of this Agreement.

**10.9 Third-Party Software Licenses.** Contractor shall assign or otherwise provide a license agreement to the Counties to Third-Party Software upon expiration or termination of the Agreement to the extent permitted by the Third-Party Software license and as indicated in Exhibit B. Prior to utilizing any Third-Party Software product that may be included as part of a Software Deliverable to the Counties and that could be licensed directly to the Counties by the licensor if the Third-Party Software would be installed on the Equipment of the Counties or their designee, Contractor shall provide copies of any applicable license agreement from the licensor of the Third-Party Software as part of the review process by the SAC to allow the Counties to pre-approve such license agreement, and the Counties shall approve, reject or request changes to such license agreements within two weeks of receipt.

**10.10 Versions.** Unless otherwise mutually agreed to in writing, Contractor shall, during the Project, maintain any and all Third-Party Software products in accordance with the terms of Schedule 1 to Exhibit F (Process to Manage Software Version Currency). The Contractor will provide to the SAC a Software upgrade plan Deliverable at no additional charge for such Services. However, Contractor shall not maintain any Third-Party Software versions, including one version back, if any such version would prevent the Counties from using any Functions, in whole or in part, in accordance with applicable Specifications for the Counties' then current version of the Systems. Any additional costs that are charged by a Third-Party Software manufacturer for an upgrade to a Third-Party Software product that is not covered by such product's maintenance agreement shall be charged to and paid for by Contractor as part of its monthly Maintenance and Operations Charges described in Exhibit A, Section 6.

**10.11 State and Federal Governments.** In accordance with 45 C.F.R. 95.617 and 45 C.F.R. 92.34, all appropriate State and federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for federal government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation under 45 CFR subpart F; (ii) associated Documentation designed, developed, or installed with Federal

Financial Participation under the Agreement; (iii) the copyright in any work developed under this Agreement, a grant, sub-grant or contract under a grant or sub-grant; and (iv) any rights of copyright to which Contractor purchases ownership under this Agreement.

## **11. The Counties' Ownership Rights.**

**11.1 Software and Modifications.** The Counties will have all ownership rights in Software (in Source Code and Object Code formats) or modifications thereof and associated Documentation designed, developed or installed with Federal Financial Participation under 45 CFR subpart F. In addition, the Counties shall own all right, title and interest in and to its Confidential Information, the Counties' intellectual property, the Counties' equipment, Equipment purchased by the Counties for the Project pursuant to Change Requests, including but not limited to Equipment purchased under Section 13, and the other Work Products (including but not limited to Custom Software but not including Contractor Technology for purposes of this Section 11) and the Configurations.

**11.2 Transfer of Ownership by Contractor.** Contractor shall take all actions necessary and transfer ownership of each Work Product to the Counties upon its Acceptance. As between the parties, the Work Products shall be deemed works made for hire of the Counties for all purposes of copyright law, and copyright shall belong solely to the Counties. In the event that any such Work Product is adjudged to be not a work made for hire, Contractor agrees to assign, and hereby assigns, all copyright in such Work Product to the Counties. Contractor shall, at the expense of the Counties, assist the Counties or its nominees to obtain copyrights, trademarks, or patents for all such Work Products in the United States and any other countries. Contractor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to the Counties all the right, title and interest in and to such Work Products. Contractor also agrees to waive and not assert any moral rights it may have in any such works.

**11.3 Data.** Contractor shall provide the Counties with a copy of the Data which is on the Equipment used for the Systems within five business days of a request from the Counties. Contractor shall provide such Data at no additional cost on magnetic media in a format acceptable to the Counties.

## **12. Warranties.**

**12.1 Deliverables.** Contractor represents and warrants that each Deliverable, including without limitation, each of the Systems, shall conform to and perform in accordance with its applicable Specifications as provided herein, with the exception of Cosmetic Deficiencies as permitted in Section 9.2 of the Agreement. Contractor shall promptly in accordance with applicable Performance Standards in Exhibit C repair or replace each of the Deliverables that does not meet its applicable Specifications as provided herein at no additional charge to the Counties.

## **12.2 Services.**

### **12.2.1 Contractor represents and warrants that:**

**12.2.1.1** It shall perform all Services required pursuant to this Agreement in a professional manner;

**12.2.1.2** Time shall be of the essence in connection with performance of the Critical Milestones; and

**12.2.1.3** The Services will comply with the Service Level Agreements and Specifications, if any.

**12.2.2** Contractor shall promptly in accordance with Exhibit C re-perform Services which are not in compliance with such representations and warranties at no cost, unless such non-compliance is due to an event described in Section 22.20 (Force Majeure), to the Counties.

## **12.3 Equipment. Contractor warrants that:**

**12.3.1** Upon delivery to the Counties the Equipment will be new and unused;

**12.3.2** The Counties' use and possession of the Equipment will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Contractor; and

**12.3.3** Each item of Contractor-provided Equipment, component, or feature thereof delivered hereunder to County Sites and the ASF will conform to the detailed manufacturer's Specifications of such item and its configuration in all respects for the System including, but not limited to, physical characteristics, operating characteristics, space requirements, functionality, power requirements, maintenance or warranty characteristics, modularity, and comparability. Any such configuration shall be deemed incomplete and not delivered, thereby relieving the Counties' of their inspection obligations until delivery is complete, if any item of Contractor-provided Equipment component, or feature thereof within that configuration has not been delivered, or, if delivered, not installed or operational at County Sites and the ASF in accordance with its Specifications.

## **12.4 Intellectual Property Rights**

**12.4.1** Contractor warrants that it is the owner of the Work Products that are to be transferred and assigned to the Counties in accordance with Section 11.2 or otherwise has the right to grant to the Counties the licenses (including but not limited to licenses to Third-Party Software) described herein without violating any rights of any third party.

**12.4.2** Contractor represents that, as of the Start Date, there is no actual or threatened suit by any such third party based on an alleged violation of the rights granted or licensed by Contractor to the Counties hereunder.

**12.4.3** Contractor warrants that the Work Products shall not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on patent, copyright, trade secret, unfair trade practice, or other intellectual property right.

**12.5 Network.** Contractor represents and warrants that the Network shall conform to and perform in accordance with its Specifications. Contractor shall promptly repair or replace the Network, in whole or in part, to the extent that it does not meet its Specifications at no additional charge to the Counties, except for County-operated or State-operated telecommunications facilities, if any, used for the Network.

**12.6 Legal and Regulatory Compliance.** Contractor represents and warrants that the Services, Deliverables, and Contractor-provided Facilities shall comply with all applicable federal and State laws, regulations, codes, standards and ordinances, subject to Section 14.8. In the event that any Services performed or any Deliverables or Facilities provided by Contractor are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances, it shall be the sole responsibility of Contractor to bring the Service, Deliverables, and Facilities into compliance in accordance with and subject to Section 14.8. In addition, Contractor shall be responsible for and shall indemnify the Counties against any fines, penalties, sanctions, or disallowances which are imposed on the Counties or Contractor and which arise from any noncompliance with the federal or State laws, regulations, codes, policies and guidelines that affect or apply to Contractor's or its Subcontractors' performance of their obligations.

**12.7 No Unauthorized Code.**

**12.7.1** Contractor warrants that, at the time it is made available or provided to the Counties, the Software and Equipment shall not contain Unauthorized Code, that Contractor has tested such Software and Equipment for such Unauthorized Code using industry standard tests, and that Contractor has not found any such Unauthorized Code. Contractor warrants to the Counties that the Software and Contractor Technology under this Agreement shall contain no Unauthorized Code when it is made available or provided to the Counties. Contractor further warrants that Contractor shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies Contractor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict the Counties' use of or access to the Software, Data, or Services, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use for any copy of the Software and Services provided to the Counties under this Agreement.

**12.7.2** In the event of a breach of these warranties, Contractor shall immediately assign at least one knowledgeable and qualified Staff representative, who will begin work after telephonic notice by the Counties on curing such breaches. This representative will be dedicated to remedy the Deficiency, failure, malfunction, defect, or problem at no cost to the Counties.

**12.8 Authorization.** Contractor represents and warrants that:

**12.8.1** Contractor is a limited liability company, validly existing and in good standing under the laws of the state of Delaware and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

**12.8.2** It has the full power and authority to grant to the Counties the rights described in this Agreement without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor;

**12.8.3** The execution, delivery and performance of this Agreement has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Agreement and perform its obligations under this Agreement;

**12.8.4** The person executing this Agreement for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to this Agreement, and that all requirements of Contractor have been fulfilled to provide such actual authority;

**12.8.5** Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Agreement;

**12.8.6** Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the Services; and

**12.8.7** It shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services; and Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

**12.9 Ability to Perform.** Contractor represents and warrants that:

**12.9.1** Contractor has the financial stability to carry out at least six months of Services during any period of this Agreement without reimbursement for the Services or expenses;

**12.9.2** Contractor has the financial resources to fund the capital expenditures required under the Agreement without advances by the Counties or assignment of any payments by the Counties to a financing source; and

**12.9.3** Each Subcontractor providing a substantial amount of the Services under this Agreement has the financial resources to carry out its duties under this Agreement.

**12.10 Compatibility.** Contractor warrants that it shall maintain the Software, Equipment and Network for the Systems to operate in accordance with applicable Specifications if Contractor upgrades or replaces such Software, Equipment, or Networks, in whole or in part at no additional cost unless the Counties or third parties directly implement a change that negatively impacts the Systems. If the Counties or other third parties directly implement a change that negatively impacts the Systems, a Change Request will be submitted under Section 14.8.

**12.11 Service Level Agreements.**

**12.11.1** Contractor warrants that it shall maintain the Systems, in whole and in part, to meet the Service Level Agreements.

**12.11.2** Contractor and the Counties will conduct tests for measuring and certifying the achievement of the Service Level Agreements as described in Exhibit C. Contractor must implement all testing, measurement and monitoring tools and procedures required to measure and report Contractor's performance of the Systems against the applicable Service Level Agreements. Such testing, measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the Service Level Agreements, and will be subject to audit by the Counties. Contractor will provide the Counties with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.

**12.11.3** If one or more of the System fails to meet all Service Level Agreements, Contractor shall modify, reconfigure, upgrade or replace Equipment, the Network, and/or Software at no cost to the Counties in order to provide Systems that comply with such Service Level Agreements.

**12.12 Disclaimers.** WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT ARE CONTRACTOR'S ONLY WARRANTIES CONCERNING THE SERVICES AND DELIVERABLES, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

**13. Separate Services and Products.**

**13.1 County Requests.** Each County may ask Contractor to sell it equipment, third-party software licenses, or deliverables, and to perform special jobs, in addition to the Services described in Exhibit F or Change Requests between the Counties and Contractor, to be paid for by each requesting County in accordance with a Change Request, which is substantially similar to Change Requests used by Contractor and the Counties between that County and Contractor, as long as such separate services, equipment, third-party software or deliverables do not conflict with the Services, Equipment, and Deliverables provided to the Counties set forth in this Agreement, are substantially similar to those provided to the Counties under this Agreement, are related to the Systems, and take into consideration the available resources and capabilities of Contractor. Contractor will also notify the Counties immediately if

it learns that a service, equipment, third-party software license or deliverable being provided by Contractor to an individual County impacts or could potentially impact the Systems or Services under this Agreement. To the extent specified in the Change Request for each County and subject to written approval by the Counties' Executive Director of such Change Request, such jobs may include:

**13.1.1** Changes to Software programs in which less than a simple majority of the participating Counties concur. If so stated in a Change Request, such changes shall be made so that the programs will remain identical in all operating locations. The Counties making the request shall pay the costs of distributing the changes to such Counties;

**13.1.2** Documentation, differing from that provided in the Services, resulting from differing County needs.

**13.1.3** Implementation Services for the Systems, if the County chooses to request Contractor's provision of this Service rather than providing such Service itself.

**13.1.4** Contractor correction of Deficiencies in the Systems caused by the requesting County;

**13.1.5** Assistance in training, Operations, or any other areas as desired;  
and

**13.1.6** Purchase of services to design, develop, and implement deliverables, which shall be subject to the terms of the Agreement, except that individual Counties will have the right to terminate the Change Request for such deliverables but not this Agreement, and the Counties shall not be in breach of the Agreement if an individual County is in breach of that County's obligations in its Change Request or exercise of its rights under the Agreement; and

**13.1.7** Purchase of equipment and any associated third party software licenses in accordance with Section 6.3 of this Agreement.

**13.2 Notice to the Counties of System Software Changes.** If Contractor discovers or is apprised by a County that Services will impact or require changes to software which Contractor developed through Separate Services, Contractor will promptly notify the affected Counties.

**13.3 Standards.** Unless otherwise agreed in separate Change Request, Contractor shall utilize the same standards for Separate Services and provide the same type of applicable Documentation as set forth in written Specifications unless otherwise directed by the requesting County.

## **14. Changes.**

### **14.1 Changing Government Programs.**

**14.1.1** The parties acknowledge that the government programs supported by this Agreement will be subject to continuous change during the term of this Agreement. Except as provided in this Section 14, Contractor has provided for or will provide for adequate resources, at no additional cost to the Counties, to reasonably accommodate such changes during the term, subject to the Change Request process of this Section 14.

**14.1.2** The Parties also acknowledge that Contractor was selected, in part, because of its expertise, experience, and knowledge concerning applicable federal and State laws, regulations, codes, policies, or guidelines that affect the performance of the Services and Systems.

**14.1.3** Contractor will use diligent and affirmative efforts to identify future changes in applicable federal or State legislative enactments and regulations and the impact of such changes on the performance of the Services or Deliverables or the Counties' use of the Services or Deliverables. Contractor shall apprise the Counties of such changes that the Contractor is aware of and work with the Counties to identify the impact of, and how to implement, such changes on how the Counties use the Services or Deliverables. However, Contractor shall be in material breach of the Agreement if it does not use diligent and affirmative efforts to identify such future changes. Contractor shall report on such changes in writing to the Counties on at least a monthly basis at Project leadership meetings and at least on a calendar quarterly basis at the advisory board meetings.

**14.2 Issuance of Change Requests.** The Counties may, at any time by a written Change Request, request changes within the scope of the Agreement, and corrections of Deficiencies caused by the Counties failing to perform their obligations under the Agreement or by events described in Section 22.20 (Force Majeure). Such changes may include, without limitation, revisions to Deliverables or Services.

**14.3 Contractor Response to Change Request.** In the ordinary course of work on the Project, Contractor shall respond in writing to a Change Request within 20 Days of receipt, advising the Counties of any costs and providing a Work Plan. If the Counties submit a Change Request to Contractor that is based on a request from the State to provide information about a change to the Systems on less than 20 Days, Contractor shall use its diligent efforts, to respond in writing to such Change Requests (i) within three business days of receipt, advising the Counties of its estimates of any costs and providing an estimated schedule resulting from such changes and (ii) within 20 Days of receipt, advising the Counties of its costs and providing a Work Plan for such changes, subject to the Counties providing Contractor with sufficient (in the Counties' reasonable judgment) information to allow Contractor to advise the Counties of its costs and to provide a Work Plan for such changes. However, Contractor's failure to respond in writing to such Change Requests within three business days of receipt as provided above shall not cause Contractor to be in breach. When there is a cost impact, i.e., increase or decrease in Charges, Contractor shall advise the Counties in writing of the increase or decrease involved, including a breakdown of the number of Staff hours by level of Contractor and the Counties'



personnel needed to effect this change. Contractor shall produce Deliverables and provide Services under Change Requests on a fixed price basis. The Counties shall not pay Contractor for preparing Change Requests or preparing pricing and scheduling information in response to Change Requests issued by the Counties.

#### **14.4 Agreement on Change Request**

. The Contractor Project Manager and the Counties' Executive Director shall negotiate in good faith and in a timely manner as to the price for amounts over the Maximum Amount specified in Exhibit A and the time to perform any Change Request. If the parties reach an agreement on a Change Request in writing, and the Change Request is executed by authorized representatives of the parties, the terms of this Agreement shall be modified accordingly. The parties will execute a formal Agreement amendment for any Change Request that increases or decreases the Maximum Amount. All Change Requests must be executed by the Counties' Executive Director. Increases to the Maximum Amount set forth in Exhibit A, Section 1, may be made upon the same authority as provided in Section 22.26. In no event shall the Charges be increased nor shall time be extended in a Change Request to correct Systems Deficiencies caused by Contractor. In addition, in response to questions from the Counties, State or Federal government about the Systems or for guidance to Contractor about the Systems, such as conducting narrow or small structured query language database searches or minor work that can be performed incidental to other Maintenance and Operations Services, Contractor will provide up to 450 hours per quarter. These hours do not roll over to the next quarter if not used during the quarter.

**14.5 Disagreement.** If the parties are unable to reach an agreement in writing within 15 Days of Contractor's response to a Change Request, the Counties' Executive Director may make a determination of the revised price and Schedule, and Contractor shall proceed with the work according to such price and schedule which shall be included in the resulting Change Request, subject to Contractor's right to appeal the Counties' Executive Director's determination of the price and/or Schedule to the dispute resolution process under Section 18. If Contractor appeals the Counties' Executive Director's determination of the price and/or Schedule to the dispute resolution process under Section 18, the Counties shall pay for such work up to the price determined by the Counties' Executive Director until all amounts in such price are expended, after which Contractor shall continue performing such work until completion of such dispute resolution process related to this Change Request. If there is a mutually acceptable completion of such dispute resolution process, the Counties shall pay Contractor in accordance with the terms of how the dispute was resolved pursuant to such dispute resolution process. Nothing in this Section 14.5 shall in any manner excuse Contractor from proceeding diligently with the Agreement as changed by the Change Request.

**14.6 Termination.** If Contractor fails or refuses to perform its Services pursuant to Section 14.5 or to an agreed and executed Change Request, Contractor shall be in material breach of this Agreement, and the Counties shall have the right to terminate the Agreement for such a breach in accordance with Section 21.1.

**14.7 Contractor Submission of Change Request.** Contractor may also submit a Change Request to the Counties to propose changes that should be made within the

scope of the Agreement and to propose corrections of Deficiencies which are caused by the Counties failing to perform their obligations under the Agreement or by events described in Section 22.20 (Force Majeure). Any such Change Request shall include proposed costs and a proposed schedule, including a breakdown of the number of Staff hours by level of Contractor and the Counties personnel needed to effect this change. The Counties shall respond to such Change Requests from Contractor within 20 Days of receipt. If the parties reach an agreement on a Change Request in writing, and the Change Request is executed by authorized representatives of the Parties, the terms of this Agreement shall be modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by Contractor, the Counties' Executive Director will be deemed to have rejected the requested Change Request.

#### **14.8 Change Requests Due to Statutory or Regulatory Changes**

**14.8.1** If there are changes in applicable federal and State laws, regulations, codes, standards and ordinances that affect the Services or Deliverables, including but not limited to the Systems, such changes shall be subject to Change Requests pursuant to Section 14 of this Agreement. Contractor shall obtain and utilize the direction of and interpretation by the Counties of changes in applicable federal and State laws, regulations, codes, standards and ordinances that occur after the Operations Effective Date and that affect the Services or Deliverables before designing, developing and implementing any Deliverables or performing Services affected by such changes. If any Services or any Deliverables, including but not limited to the Systems, have Deficiencies because they violate laws, regulations, codes, standards and ordinances after the Operations Effective Date and following Contractor's performance of Services pursuant to such Change Requests described above, Contractor shall correct such Deficiencies in such Services and Deliverables at no cost to the Counties unless any such Deficiency was caused by the Counties, in which case Contractor shall bring the Services and Deliverables into compliance in accordance with Section 14.

**14.8.2** If there are changes in applicable federal and State laws, regulations, codes, standards and ordinances that occur and that affect the Contractor-provided Facilities, such costs incurred by Contractor to bring the Contractor-provided Facilities into compliance shall be subject to no-cost Change Requests pursuant to Section 14 of this Agreement and to the direction and interpretation thereof by the Counties. If any Contractor-provided Facilities violate such laws, regulations, codes, standards and ordinances, Contractor shall bring the Contractor-provided Facilities into compliance at no cost to the Counties unless any such violation was caused by the Counties, in which case Contractor shall bring the Facilities into compliance in accordance with Section 14.

**14.8.3** Contractor shall obtain and utilize the direction of and interpretation by the Counties of all applicable federal and State laws, regulations, codes, standards and ordinances in connection with the design, development and Implementation of any Deliverables.

**14.8.4** The Counties shall not submit a Change Request to Contractor to perform Services that would violate State law or foreclose Contractor from performing work under State law. If Contractor determines that a Change Request from the Counties asks

Contractor to perform Services that would violate State law or foreclose Contractor from performing work under State law, the parties shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to such Change Request.

## **15. Additional Rights and Remedies.**

**15.1 Withholding Invoicing and/or Payments.** If Contractor fails to deliver Deliverables or to provide Services which satisfy Contractor's obligations hereunder, and the Counties decide to exercise the remedy provided in Section 15.1, the Counties shall provide Notice to Contractor of such failure and, if Contractor fails to correct such failure within 30 Days of the date of such Notice, the Counties shall have the right to withhold invoicing to the individual Counties and/or payment of any and all payments due hereunder. The Counties may withhold such invoicing and/or any and all such payments due hereunder to Contractor, without penalty or work stoppage by Contractor, until such failure to perform is cured.

**15.2 Reductions in Payments Due.** Amounts due the Counties by Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set-off by the Counties from any money payable to Contractor pursuant to this Agreement.

**15.3 Cover.** If, in the reasonable judgment of the Counties, a default by Contractor is not so substantial as to require termination, reasonable efforts to induce Contractor to cure the default are unavailing, Contractor fails to cure such default within 30 Days of receipt of Notice from the Counties, and the default is capable of being cured by the Counties or by another resource without unduly interfering with continued performance by Contractor, the Counties may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall reimburse the Counties for the reasonable cost of the difference between the original Agreement Charges for the Services in default and the replacement costs of such Services acquired from another vendor. In addition, Contractor must cooperate with these resources in allowing access to the Software Facilities, and Equipment.

## **15.4 Liquidated Damages.**

**15.4.1** The parties agree that any delay or failure by Contractor to timely perform its obligations and in accordance with the Service Level Agreements and time periods agreed to by the parties will interfere with the proper and timely Implementation of the System and Services, to the loss and damage of the Counties. Further, the Counties will incur major costs to perform the obligations that would have otherwise been performed by Contractor. The parties understand and agree that the liquidated damages Contractor shall pay to the Counties as a result of nonperformance hereunder by Contractor are described in Exhibit C and that these amounts are reasonable estimates of the Counties' damages in accordance with applicable State law.

**15.4.2** The parties acknowledge and agree that, except as provided below in this Section, Contractor could incur liquidated damages for more than one event if Contractor fails to timely perform its obligations by each date or applicable Service Level Agreement.

However, when the same Deficiency causes Contractor to fail to meet the Wide Area Network Availability Service Level Agreement (SLA 3.1.4) in Exhibit C and the Systems Availability Service Level Agreements for the CalWIN System, Benefits CalWIN System, and ACCESS CalWIN System (SLAs 3.1.1 – 3.1.3) in Exhibit C, the Counties shall determine in their sole discretion whether liquidated damages will apply for either (a) Contractor's failure to meet the Wide Area Network Availability Service Level Agreement (SLA 3.1.4) in Exhibit C or (b) Contractor's failure to meet Service Level Agreements 3.1.1 – 3.1.3 in Exhibit C.

**15.4.3** The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the Counties may have under this Agreement for Contractor's breach of this Agreement, including without limitation, the Counties' right to terminate this Agreement, and the Counties shall be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Agreement. However, the Counties will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages and the Counties shall agree to limit the amount of liquidated damages imposed on Contractor each month to \$1,000,000 for Contractor's failure to meet any and all Service Level Agreements. For purposes of calculating liquidated damages, the Counties' Executive Director shall impose:

15.4.3.1 100% of liquidated damages applicable during a month when Contractor fails to meet: (a) the CalWIN System Availability Service Level Agreement (SLA 3.1.1) between 7am to 6pm Pacific Time on Monday through Saturday; (b) the Benefits CalWIN System Service level Agreement (SLA 3.1.2) between 8am to 8pm Pacific Time on Monday through Saturday; (c) the ACCESS CalWIN System Service level Agreement (SLA 3.1.3) between 8am to 8pm Pacific Time on Monday through Saturday; and (d) any and all other Service Level Agreements; and

15.4.3.2 25% of liquidated damages during a month on each of the following SLAs when Contractor fails to meet (including State holidays) each of (a) the CalWIN System Availability Service Level Agreement (SLA 3.1.1) between 6:01pm to 6:59am Pacific Time on Monday through Saturday, and from 6:01pm Saturday to 6:59am Monday; (b) the Benefits CalWIN System Service level Agreement (SLA 3.1.2) between 8:01pm to 7:59am Pacific Time on Monday through Saturday and from 8:01pm on Saturday to 7:59am Pacific Time on Monday; (c) the ACCESS CalWIN System Service level Agreement (SLA 3.1.3) between 8:01pm to 7:59am Pacific Time on Monday through Saturday, and from 8:01pm on Saturday to 7:59am Pacific Time on Monday.

**15.4.4** Amounts due the Counties as liquidated damages may be deducted by the Counties from any money payable to Contractor under this Agreement, the Counties may bill Contractor as a separate item therefor and Contractor shall promptly make payments on such bills, or the Counties shall have the right to increase the annual pool of Application Maintenance Hours and/or Modernization Hours (as these terms are defined in the RFP) in amounts equal to liquidated damages incurred by Contractor at the blended rate of \$142.46. The parties agree that

unused Application Maintenance Hours and Modernization Hours shall carry over into subsequent years until used by the Counties on the Project, or expiration or termination of the Agreement, whichever is earlier.

**15.5 Suspension for Convenience.** The Counties shall have the right at any time to order the Services of Contractor fully or partially stopped for its own convenience for up to 30 Days per year of the term at no additional cost above Contractor's Charges for its standard monthly Maintenance and Operations Services to the Counties as described in Section 6 of Exhibit A. Contractor will receive Notice for such an order. The schedules for performing Contractor's obligations shall be delayed on a day-to-day basis to the extent the Counties have issued a stop work order to Contractor and such stop work order is causing delays in completing Services in accordance with such schedule. Contractor shall have the right to submit claims in accordance with the terms of Section 22.7, as a result of stop work orders issued under this Section. In addition, the parties shall discuss whether to revise the Agreement related to Performance Standards, liquidated damages, remedies, Key Staff, the Implementation of Software version updates and other relevant terms.

**15.6 Deleted by Agreement of the Parties.**

**15.7 Correction or Removal.** The Counties may correct such Deficiencies or non-conformities or cure any Contractor default under this Agreement without prejudice to any other remedy it may have if Contractor fails to correct Deficiencies in the Systems as required in this Agreement or if Contractor otherwise defaults or fails to perform any provision of the Agreement within 30 Days of receipt of Notice from the Counties of such defaults or failures to perform.

**15.8 Letter of Credit.** Within 30 Days of the Agreement Effective Date, Contractor shall provide the Counties with an irrevocable Letter of Credit up to the aggregate sum of \$5,000,000 substantially in the form of Exhibit H, which is attached hereto and incorporated by this reference. The Letter of Credit shall secure the performance of Contractor, including without limitation performance of the Services in accordance with the terms of the Agreement and providing Deliverables in accordance with the Specifications, and shall secure any damages, cost or expenses resulting from Contractor's default in performance hereunder or liability caused by Contractor. In the event of a breach by Contractor, the Letter of Credit shall become payable to the Counties for any outstanding damage assessments made by the Counties against Contractor. An amount up to the full amount of the Letter of Credit may also be applied to Contractor's liability for any administrative costs and/or excess costs incurred by the Counties in obtaining similar Deliverables, other products and Services to replace those terminated as a result of Contractor's default. The Counties may seek other remedies in addition to this stated liability. Contractor shall be in material breach of this Agreement if it fails to provide a Letter of Credit as required in this Agreement.

**15.9 Guaranty.** Within 10 Days of the Agreement Effective Date, Contractor shall provide the Counties with a Guaranty in the form of Exhibit I, which is

attached hereto and incorporated by this reference, executed by its parent company, Hewlett-Packard Company. The Counties may invoke the Guaranty in addition to all other remedies available under this Agreement, in law or equity.

## **16. Insurance.**

**16.1 Liability and Auto Insurance.** Contractor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of California and approved by the Counties. Contractor shall include the Counties, its boards, agencies, contractors, officers, employees, agents and volunteers, and the State, both individually and collectively, as a named insured party in Contractor's insurance policy obtained hereunder, excluding workers' compensation coverage under Section 16.2. Such insurance shall apply as primary insurance for these insureds. If Contractor fails to buy and maintain the insurance coverage described in this Section 16, the Counties may terminate this Agreement under Section 21.1 (Termination for Material Breach). The minimum acceptable limits shall be as indicated below with no deductible except as indicated below:

**16.1.1** Comprehensive General Liability or equivalent self-insurance covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

**16.1.2** Comprehensive Business Automobile Liability (owned, hired, or nonowned vehicles) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;

**16.1.3** Employers Liability insurance covering the risks of Contractor's Staff and employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;

**16.1.4** Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million; and

**16.1.5** Professional Liability or Errors and Omissions, with a deductible not to exceed \$100,000 and coverage of not less than \$1 million per occurrence/\$2 million general aggregate.

**16.2 Workers' Compensation Coverage.** Prior to providing Services under this Agreement, Contractor shall, in full compliance with State law, provide or purchase, at its sole cost and expense, and this shall remain in full force and effect during the term of the Agreement, statutory California's workers' compensation coverage for its employees and Employer's Liability in the minimum amount of \$1 million per occurrence. The Counties will not be responsible for payment of premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under applicable laws during the performance of duties and Services under this Agreement. However, should Contractor fail

to secure insurance coverage or fail to pay premiums on behalf of its employees, the Counties may deduct the amount of premiums owing from the amounts payable to Contractor under this Agreement and transmit the same to the responsible State agency.

**16.3 Subcontractors.** Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

**16.4 Premiums.** Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for the Counties pursuant to this Section shall expressly provide therein that the Counties and the State be named as additional insured, and that it shall not be revoked by the insurer until 30 Days' Notice of intended revocation thereof shall have first been given to the Counties and the State by such insurer.

**16.5 Cancellation.** Contractor's insurance policies shall not be canceled or nonrenewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or nonrenewal shall not take place or reduced in scope of coverage until 30 business days' written Notice has been given to the Counties' Executive Director, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section 16. Contractor's insurance policies shall not be reduced in scope without the Counties' prior written consent.

**16.6 Insurance Documents.** Contractor shall furnish to the Counties copies of certificates of all required insurance prior to the Agreement Effective Date, and copies of renewal certificates of all required insurance within 30 Days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide these documents shall be grounds for immediate termination or suspension of this Agreement by the Counties for material breach. The Counties reserve the right to review the insurance requirements contained herein once every five years to ensure that there is appropriate coverage that is in accordance with this Agreement.

**16.7 Increased Coverage.** The Counties are to be notified by Contractor promptly if any aggregate insurance limit is exceeded. In such event, Contractor must purchase additional coverage to meet these requirements.

**16.8 Cross-Liability.** All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the Counties and shall include a severability of interests (cross-liability) provision.

## **17. Confidential Information.**

### **17.1 Protection Obligations.**

**17.1.1 Access and Protection.** During the term of the Agreement, Contractor and the Counties will have access to and become acquainted with each party's

Confidential Information. The Counties and Contractor, and each of their officers, employees, and authorized contractors and agents, shall maintain all Confidential Information of the other party (a) in confidence, (b) at least to the extent as it protects the confidentiality of its own proprietary information of like kind, (c) but in no event with less than reasonable care, and (d) in accordance with the Security and Confidentiality Plan Deliverable (as described in RFP Section 4.10.10), which shall be included in the Systems Operations Plan Deliverable based on Section 4.10.10 of the RFP and other mutually agreed upon Acceptance Criteria. In addition, the Counties and each of their officers, employees, and authorized contractors and agents, including State and federal agencies shall maintain Contractor's Confidential Information that is made available at Contractor's Central Site Facility and Contractor's backup data center under Section 4.10 of the Agreement in strict confidence. Neither party will at any time use, publish, reproduce or disclose any Confidential Information, except to authorized officers, employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section 17.1.1, as authorized in writing by the other party, as otherwise specifically permitted herein, and shall only use such Confidential Information to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable federal, State and County law, regulation, codes, and this Section 17.1.1, the other party's Confidential Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Agreement. Each party agrees that, prior to disclosing any Confidential Information of the other party to any third party as permitted under this Section 17.1.1, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 17.1.1 with respect to the Confidential Information. In addition to the requirements expressly stated in this Section 17.1.1, Contractor and its Subcontractors will comply with any applicable law, policy, rule, or reasonable requirement of any County, the State and the federal government that relates to the safeguarding or disclosure of information relating to applicants and recipients of the Counties' services, Contractor's operations, or the Services performed by Contractor under this Agreement. Contractor shall comply with changes to any such applicable law, policy, rule, or reasonable requirement in accordance with and subject to Section 14.8.

**17.1.2 Security Requirements.** Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which Contractor may establish from time-to-time, and which are described in the Security and Confidentiality Plan described in Section 17.1.1 with respect to information and materials which come into each party's possession and to which such party gains access under this Agreement. Such information and materials include without limitation all Confidential Information. Contractor shall comply with changes to such security standards, practices, and procedures in accordance with and subject to Section 14.8. The Counties' Executive Director shall resolve conflicts between security standards, practices, and procedures of two or more Counties.

**17.2 Audit.** The Counties reserve the right to monitor, audit or investigate Contractor's use of the Counties Confidential Information collected, used, or acquired by Contractor under this Agreement.



**17.3 Return.** Subject to record retention laws, each party shall promptly return to the disclosing party, on termination or expiration, all of the disclosing party's Confidential Information, including copies thereof.

**17.4 Injunctive Relief.**

**17.4.1** Contractor shall immediately report to the Counties any and all unauthorized disclosures or uses of the Counties' Confidential Information by Contractor of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of the Counties' Confidential Information to others may cause immediate and irreparable harm to the Counties. If Contractor should publish or disclose such Confidential Information to others without authorization, the Counties shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

**17.4.2** The Counties will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information by Counties of which the Counties are aware or have knowledge. The Counties acknowledges that any publication or disclosure of Contractor's Confidential Information to others may cause immediate and irreparable harm to Contractor. If the Counties should publish or disclose such Confidential Information to others without authorization, Contractor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

**17.5 Exceptions.** The following information shall not be considered Confidential Information for the purposes of this Agreement: information previously known when received from the other party and not subject to confidentiality obligations; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and is lawfully obtainable by the general public.

**17.6 Public Records.** Notwithstanding the above, Contractor acknowledges that this Agreement shall be a public record under State law. Any specific information that is claimed by Contractor to be Confidential Information must be clearly identified as such by Contractor. To the extent consistent with State law, including the California Public Records Act, the Counties will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view Contractor's Confidential Information, the Counties will notify Contractor of the request and of the date that any such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure or other appropriate remedy. If Contractor fails to obtain the court order enjoining disclosure prior to the deadline for responding to the request for documents, the Counties may release the identified requested information on the date specified without penalty or liability. The Counties reserve the right to also seek reimbursement for all costs and expenses incurred by the Counties in their refusal to produce Contractor's confidential documents.

## **17.7 Compliance With State Requirements.**

**17.7.1** As part of its nondisclosure obligations, Contractor shall comply and require its officers and employees to comply with the provisions of Sections 10850 and 18909 of the Welfare and Institutions Code, Division 19 of the California Department of Social Services Manual of Policies and Procedures, and all other statutory laws relating to privacy and confidentiality.

**17.7.2** Contractor will keep confidential and not open to examination, for any purpose not directly connected with the administration of public social services, any applications and records concerning any individual made or kept by a public officer or agency in connection with the administration of the provision of the Welfare and Institutions Code relating to any form of public social services.

**17.7.3** Contractor shall inform all of its employees, agents, subcontractors and partners of the above provision and that any person knowingly and intentionally violating the provisions of this State law is guilty of misdemeanor.

**17.8 Written Staff Agreements.** Contractor agrees to cause Staff to which Contractor makes available (as permitted by this Agreement) Counties', and the State's Confidential Information to agree in writing to observe and perform all provisions of this Section 17 applicable to such Staff.

**17.9 Subpoena.** In the event that a subpoena or other legal process in any way concerning the Counties' or any County's Confidential Information is served upon Contractor, then Contractor agrees to notify the Counties within 24 hours following receipt of such subpoena or other legal process and to cooperate with the Counties or any County in any lawful effort by the Counties or any County to contest the legal validity of such subpoena or other legal process. In the event that a subpoena or other legal process in any way concerning Contractor's Confidential Information is served upon the Counties or any County, then the Counties or any such County, as applicable, agree to notify Contractor within 24 hours following receipt of such subpoena or other legal process and to cooperate with Contractor in any lawful effort by Contractor to contest the legal validity of such subpoena or other legal process.

**17.10 Survival.** The provisions of this Section 17 shall remain in effect following the termination or expiration of this Agreement.

## **18. Dispute Resolution.**

**18.1 Good Faith Efforts.** The parties shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement through negotiations between senior management of the parties and their designees. If the dispute cannot be resolved within 15 Days of initiating such negotiations or such other time period mutually agreed to by the parties in writing, the parties shall promptly (and in any case within five business days) initiate negotiations between the then-current Chair, Vice-Chair, Co-Chair or other leadership of the Board of Directors of the Counties and Contractor's Vice President of State and Local Health and Human Services in the West and their designees. If the dispute cannot be resolved within 15 Days of initiating such negotiations or such other time period

mutually agreed to by the parties in writing, either party may terminate the dispute resolution negotiations.

**18.2 Continued Performance.** Contractor and the Counties agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities and obligations under this Agreement and shall have the right to exercise their rights and remedies.

**19. Additional Indemnifications.**

**19.1 Intellectual Property.**

**19.1.1** Contractor shall, at its expense, defend, indemnify, and hold harmless the Counties and their employees, officers, directors, contractors and agents, and the State and its officers, employees, and agents, from and against any third-party claim or action against the Counties or the State which is based on a claim that any Deliverable or any part thereof under this Agreement infringes a patent, copyright, trademark, or other proprietary right or misappropriates a trade secret, and Contractor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. The Counties shall promptly give Contractor notice of any such claim and shall cooperate in the defense of such claims at Contractor's expense. Notwithstanding the foregoing, the Counties shall have the right to participate in the defense of any such action and employ their own counsel in connection therewith, but the fees and expenses of such counsel shall be at the expense of the Counties unless:

**19.1.1.1** the employment of such counsel shall have been authorized in writing by Contractor in connection with the defense of such action;

**19.1.1.2** Contractor shall not have employed counsel to take charge of the defense of such action within a reasonable time after commencement of the action; or

**19.1.1.3** the Counties shall have reasonably concluded that there may be defenses available to them which are different from or additional to those available to Contractor (in which case Contractor shall not have the right to direct the defense of such action on behalf of the Counties), in any of which events such fees and expenses shall be borne by the Counties.

**19.1.2** In case the Deliverables, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of the Counties' rights thereto is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities: (i) procure for the Counties the right to continue using the Deliverables; (ii) modify the Deliverables to comply with the Specifications and to not violate any intellectual property rights; (iii) or retrieve any or all Deliverables which are enjoined or restricted and other Deliverables designated by the Counties upon receipt of notice from the Counties and refund the Charges for such Deliverables.

**19.1.3** The foregoing states Contractor's sole obligation and the Counties' exclusive remedy with respect to any alleged infringement by all or part of the Deliverables.

**19.1.4** Contractor shall not be liable to the extent claims of misappropriation of infringement arise from: (i) Contractor's compliance with any designs, Specifications or written instructions of the Counties and Contractor could not have avoided such claims through alternative products; or (ii) any changes made by the Counties or any third party authorized by the Counties to make changes unless Contractor authorized such changes or gave instructions on how to make the changes or the Counties did so based on the advice of Contractor.

**19.2 General.** Contractor shall, at its expense, indemnify, defend, and hold harmless the Counties, its employees, Boards of Supervisors, officers, directors, contractors and agents, and the State, its employees, officers, and agents, both individually and collectively, from and against any losses, liabilities, damages, penalties, costs, obligations, fees, including without limitation reasonable attorneys' fees, and expenses from any claim, action, suit or judgment caused by or arising from: (i) the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors, including but not limited for Property damage, bodily injury or death; (ii) a breach or alleged breach of its obligations in Section 17; and (iii) Contractor-provided Facilities. The Counties shall promptly give Contractor notice of such claim and shall cooperate in the defense of such claims at Contractor's expense.

## **20. Damages Disclaimers and Limitations.**

**20.1 The Counties' Disclaimer of Damages.** THE COUNTIES SHALL 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 AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

**20.2 The Counties' Limitation of Liability.** IN NO EVENT SHALL THE COUNTIES' AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, 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 AGREEMENT, EXCEED THE MAXIMUM AMOUNT IN EXHIBIT A.

**20.3 Contractor's Disclaimers of Damages.** EXCEPT AS PROVIDED IN SECTION 20.5, CONTRACTOR SHALL 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 AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

**20.4 Contractor's Limitation of Liability.** EXCEPT AS PROVIDED IN SECTION 20.5, IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY TO THE COUNTIES UNDER THIS AGREEMENT, 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 AGREEMENT, EXCEED THE MAXIMUM AMOUNT IN EXHIBIT A.

**20.5 Exceptions to Damages Limitations.** THE DISCLAIMERS OF CERTAIN DAMAGES AND THE DAMAGES LIMITATIONS IN SECTIONS 20.3 AND 20.4 SHALL NOT APPLY TO DAMAGES, EXPENSES, LOSSES, FEES, LIABILITIES, COSTS OR OTHER AMOUNTS ARISING FROM CONTRACTOR'S INDEMNIFICATION OBLIGATIONS IN SECTIONS 4.4.4, 12.6, 19.1, 19.2, 22.19 AND 22.35.3.

**20.6 Liability Among Counties.** Except as specifically provided herein, Contractor acknowledges and agrees that each County is individually liable for the acts and omissions of its employees, agents and contractors, that there shall be no joint liability among or between the Counties, and that no individual County shall bear any liability for the acts or omissions of another County or its respective employees, agents, and contractors. Further, each individual County shall be responsible for the acts and omissions of its County employees or contractors participating on an ad hoc or part time basis on the Project. However, for actions taken on behalf of the Counties by any County employee or contractor contributed to the Counties and dedicated full time to this Project, the Counties shall be jointly liable in an allocation as determined by the County share allocation methodology set forth in Exhibit A, as modified to the extent permitted in Section 3.5.

## **21. Termination.**

**21.1 Termination for Material Breach.** If either party fails to cure any material breaches of this Agreement which are described in a written Notice from the other party within 30 Days of receipt of such Notice, this Agreement may be terminated immediately, in whole or in part, by Notice from the non-breaching party. In addition, if the Counties determine that a breach of the Agreement has occurred in Contractor's compliance with the conditions of this Agreement or if the Counties, in their reasonable judgment, have reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of Contractor under this Agreement, and the situation is deemed by the Counties to merit corrective action, the Counties shall have the right to pursue termination of the Agreement in accordance with Section 21.1.

### **21.2 Termination for Rejection of Deliverables**

21.2.1 If Contractor is unable to correct Deficiencies, with notice and a cure period of no less than 30 days, in a Change Request that has a total value of \$2,000,000 or more that has not been accepted or has been implemented in Production for less than 90 Days and that includes but is not limited to Equipment, the Network, Third Party Software as described in a Change Request, and in other Deliverables that are described in Exhibit F as the

Integrated Document Management System project and the Business Intelligence project, the Counties shall have the right to immediately reject the Deliverable, without penalty or liability to the Counties, and return the rejected Deliverable and/or other Deliverables to Contractor. If the Counties reject the Deliverable under this Section, Contractor shall, within 20 Days thereafter, refund to the Counties all payments made to Contractor for the returned Deliverables or amount determined by the Counties' Executive Director.

**21.2.2** If Contractor is unable to correct Deficiencies, with notice and a cure period of no less than 30 days, in a Change Request that has a total value of \$2,000,000 or more that has not been accepted or has been implemented in Production for less than 90 Days and that includes but is not limited to Equipment, the Network, Third Party Software as described in a Change Request, and in other Deliverables that are described in Exhibit F as the Integrated Document Management System project and the Business Intelligence project, the Counties shall also have the right to terminate this Agreement if Contractor fails to correct Deficiencies in a Deliverable within 30 Days of Notice of such failure from the Counties, without penalty or liability to the Counties, and return the rejected Deliverable and other Deliverables to Contractor. If the Counties terminate the Agreement under this Section, Contractor shall, within 20 Days thereafter, refund to the Counties all payments made to Contractor for the returned Deliverables or amount determined by the Counties' Executive Director.

**21.2.3** Except as provided in Sections 21.2.1 and 21.2.2, if Contractor is unable to correct Deficiencies in a Deliverable, the Counties shall have the right to immediately reject the Deliverable, without penalty or liability to the Counties, and return the rejected Deliverable and/or other Deliverables to Contractor. If the Counties reject a Deliverable under this Section, the Counties shall have the right to pursue their rights and remedies as provided in the Agreement and at law and in equity.

### **21.3 Termination for Convenience.**

**21.3.1** In addition to its other rights to terminate, the Counties may terminate this Agreement, in whole or in part for the Counties' convenience, by a minimum of 90 Days' Notice to Contractor.

**21.3.2** During this 90-Day period, Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the Counties from such winding down and cessation of Services. If this Agreement is so terminated, the Counties shall be liable only for payment in accordance with the terms of this Agreement for Services rendered in accordance with the requirements of this Agreement prior to the effective date of termination.

**21.3.3** In case of such termination for convenience, the Counties will pay to Contractor the agreed upon price, if separately stated, for Deliverables for which Acceptance has been given by the Counties, amounts for Services provided prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given, and amounts for Deliverables which are in development but which have not received Acceptance. The amounts for such Services and

Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the hourly rates in Exhibit A, but such costs shall be no greater than the final Charges for each Deliverable. In the case of termination for convenience, Contractor shall promptly refund any prepaid annual Charges on a pro rata basis to the extent that they have not been depreciated, incurred or used through such date. In addition, Counties agree to negotiate in good faith additional amounts to compensate Contractor as a result of the Counties' termination of the Agreement pursuant to Section 21.3, Section 21.5, or Section 21.6 for documented reasonable costs that were incurred by Contractor on this Project, for undepreciated or unamortized equipment and software licenses, pre-paid costs by Contractor for Maintenance Services to the extent not yet been fully used by the Counties and not invoiced to the Counties, early termination of leases, and other documented reasonable Project-related expenses, subject to the Counties' availability of funds for a termination pursuant to Section 21.6.

**21.3.4** If it is determined for any reason the failure to perform is not within Contractor's control or not due to Contractor's fault, or negligence, the termination by the Counties under Sections 21.1 or 21.2 shall be deemed to be a termination for convenience under Section 21.3.

**21.4 Termination for Conflict of Interest.** The Counties may terminate this Agreement under Section 21.1 (Termination for Material Breach) by Notice to Contractor if the Counties determine, after due notice and examination, that Contractor has violated any laws regarding ethics in public acquisitions and procurement and performance of contracts, including but not limited to any creating a conflict of interest.

**21.5 Termination for Withdrawal of Authority.** In the event that the authority of the Counties to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, the Counties may terminate this Agreement under Section 21.3 (Termination for Convenience), in whole or in part. This Section shall not be construed so as to permit the Counties to terminate this Agreement in order to acquire similar Services from a third party.

**21.6 Termination for Non-allocation of Funds.** If funds are not allocated to continue this Agreement in any future period, the Counties may terminate this Agreement under Section 21.3 (Termination for Convenience). The Counties will not be obligated to pay any further Charges for Services or Charges for such future period, but the Counties shall make payments for Services, Deliverables and Contractor's costs as provided in Section 21.3.3, subject to the Counties' availability of funding therefor. The Counties agree to notify Contractor of such non-allocation at the earliest reasonable time. No penalty shall accrue to the Counties in the event this Section shall be exercised.

**21.7 Termination for Insolvency.** Counties may, by Notice to Contractor and failure by Contractor to rectify any of the conditions described below in this Section within 30 Days following such notice, terminate this Agreement forthwith in the event Contractor shall be dissolved or shall sustain the loss, cancellation or forfeiture of its legal status or good standing by reason of any judicial, extra-judicial or administrative proceedings or Contractor shall:

**21.7.1** Apply for or consent to the appointment of a receiver, trustee, or liquidator of Contractor for all or a substantial part of Contractor's assets;

**21.7.2** Be able to, or admit in writing its inability to, pay its debts as they mature;

**21.7.3** Make a general assignment for the benefit of creditors;

**21.7.4** Be adjudicated bankrupt or insolvent;

**21.7.5** File a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement for the benefit of creditors or take advantage of any insolvency law in its capacity as a debtor;

**21.7.6** Interpose an answer admitting the material allegations of the petition filed against Contractor in any bankruptcy, reorganization, receivership, insolvency or any similar proceedings; and/or

**21.7.7** Take any action for the purpose of effecting any of the foregoing.

## **21.8 Termination Procedure.**

**21.8.1** After receipt of a Notice of termination in whole or in part, and except as otherwise directed by the Counties, Contractor shall:

**21.8.1.1** Stop work under this Agreement on the date, and to the extent specified, in the Notice;

**21.8.1.2** Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Agreement that is not terminated;

**21.8.1.3** As soon as practicable, but in no event longer than 30 Days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Counties to the extent required, which approval or ratification shall be final for the purpose of this Section;

**21.8.1.4** Complete performance of such part of this Agreement as shall not have been terminated by the Counties;

**21.8.1.5** Take such action as may be necessary, or as the Counties' Executive Director may direct, for the protection and preservation of the Property related to this Agreement which is in the possession of Contractor and in which the Counties has an interest;

**21.8.1.6** Transfer title to the Counties and deliver in the manner, at the times, and to the extent directed by the Counties' Executive Director, any Property which



is required to be furnished to the Counties and which has been accepted or requested by the Counties; and

**21.8.1.7** Provide written certification to the Counties that Contractor has surrendered to the Counties all such Property.

**21.8.2** Upon termination or expiration of this Agreement, the Counties, in addition to any other rights provided in this Agreement, may require Contractor to deliver to the Counties, and, if so requested, Contractor shall deliver to the Counties: (a) the Contractor Technology (i) that is licensed to the Counties under Section 10.1 or Exhibit E, (ii) that is permitted to be assigned or transferred on expiration or termination of this Agreement, as Marked with a “Y” in Column G in Section II.A and Column G of Section II.B of Exhibit B and subsequent Change Requests that revise these tables, and (iii) that is listed or should be listed in the Project Management Tool; and (b) Third-Party Software (i) that is licensed to the Counties under this Agreement by Contractor or Third-Party Software licenses for such part of this Agreement as has been terminated or for the entire Agreement if the term expires or if the Agreement has been terminated in whole and (ii) that is permitted to be assigned or transferred on expiration or termination of this Agreement, as Marked with a “Y” in Column G in Sections II.C and II.D of Exhibit B and subsequent Change Requests that revise these tables. In addition, the Counties may also require Contractor to deliver to the Counties any Contractor Technology which Contractor has been using on the Project and which the Counties determine will be necessary for their continued operations and maintenance of the Systems.

**21.8.3** Upon expiration of the Agreement or Contractor’s receipt of notice of termination of the Agreement by the Counties, Contractor will provide any turnover assistance Services necessary to enable the Counties or its designee to effectively close out the Agreement and move the work to another vendor or to perform the work by itself. The Counties shall pay on a time and materials basis at rates in the Agreement for turnover assistance, subject to mutual written agreement on such work to be performed, and Contractor agrees that any of its out-of-pocket costs, which will be reimbursed by the Counties, will not be marked up to include profits. Contractor shall perform Services as described in Section 4.12.3 of the RFP and the Response to assist in transitioning out the Maintenance and Operations Services for the Systems to another vendor. In addition, within ten Days of receipt of the Notice of termination or expiration and on the date of termination or expiration, Contractor shall provide the Software and other materials described in Section 4.12.13 of the RFP, including but not limited to, in machine readable form, an up-to-date, usable copy of the Software for the Systems, including but not limited to Pre-existing Software, other Contractor Technology and Third-Party Software that can be assigned or transferred by Contractor or through Third-Party Software license agreements as identified in Exhibit B as updated by the Software Reporting Report Deliverable (as described in RFP Section 4.3.6.6), the Data and a copy of all Documentation that is available at the time of termination or expiration (1) for the Software Configuration and (2) to utilize the above-described Software and Data. Contractor will ensure that all consents or approvals to allow Contractor and Subcontractors to provide the assistance required following termination or expiration have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to the Counties.

## **22. General Conditions.**

### **22.1 Americans With Disabilities Act**

This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs and activities provided to the public by State and local governments, except public transportation services. Contractor shall also comply with all applicable provisions of Title I (Employment) of the Americans with Disabilities Act. Contractor shall not discriminate on the basis of disability in connection with the Services, programs, and activities performed and provided under the Agreement. In addition, Contractor is not required to provide special needs equipment at no further cost for any County or the Counties and their employees.

**22.2 Antitrust Violations.** Contractor and the Counties recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by the Counties. Therefore, Contractor hereby assigns to the Counties any and all claims for such overcharges as to goods and services purchased in connection with this Agreement, except as to overcharges not passed on to the Counties resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Charges under this Agreement.

**22.3 Assignment.** Contractor may not assign or transfer this Agreement or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of the Counties' Executive Director. The Counties may assign this Agreement and may delegate their duties in whole or in part without the consent of Contractor. Any attempted assignment, transfer or delegation in contravention of this Section of the Agreement shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

**22.4 Authority.** Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

**22.5 Binding Effect.** Each party agrees that the Agreement binds it and each of its employees, agents, independent contractors, and representatives.

**22.6 Business Registration.** Contractor must be registered to conduct business in the State of California and with all applicable agencies, and Contractor shall provide the Counties with a copy of its business license on or before the Start Date of this Agreement.

**22.7 Claims.** Contractor must submit claims against the Counties within the earlier of one year of the date upon which Contractor knew of the existence of the claim or one year from expiration or termination of the Agreement. No claims shall be allowed unless Notice of such claim has been given within the above described time period. Such claims must be submitted to the Counties' Executive Director or his or her designee by Contractor in the form and with the certification prescribed by the Counties' Executive Director or his or her designee. Upon failure of Contractor to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred.

## **22.8 Compliance With Civil Rights Laws.**

**22.8.1** No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by this Contract because of race, color, creed, marital status, religion, sex, sexual orientation, national origin, Vietnam era or disabled veteran's status, age, the presence of any sensory, mental or physical disability, or political affiliation or belief.

**22.8.2** In the event of Contractor's noncompliance or refusal to comply with any civil rights or nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part under Section 21.1 (Termination for Material Breach), and Contractor may be declared ineligible for further contracts with the Counties. Contractor shall be given a reasonable time in which to cure noncompliance. In addition to the cancellation of this Agreement, Contractor may be subject to penalties under federal and State law.

**22.9 Compliance with Health and Safety and Related Laws.** Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable. Contractor shall comply with all applicable local safety and health clearances, including fire clearances, for each site where Services are provided under the terms of this Agreement. Contractor will comply with all applicable health laws and regulations, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services, 42 C.F.R. Part 2, and other applicable laws.

**22.10 Conflicts Between Documents; Order of Precedence.** In the event that there is a conflict between the documents comprising the Agreement, the following order of precedence shall apply:

**22.10.1** The terms and conditions in the body of this Agreement;

**22.10.2** Change Requests;

**22.10.3** Exhibit A (Financial Matters);

**22.10.4** Exhibit F (The Statement of Work);

**22.10.5** Exhibit B (Equipment and Software);

**22.10.6** Exhibit C (Service Level Agreements and Liquidated Damages);

**22.10.7** Exhibit E (Hewlett-Packard Company Pre-Existing Software Agreement);

**22.10.8** The RFP; and

### **22.10.9 The Response.**

**22.11 Cooperation of Parties.** The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Agreement.

**22.12 Copeland Anti-kickback Act.** Contractor acknowledges and agrees that: (i) it is subject to the Copeland “Anti-kickback” Act, Title 18 U.S.C. Section 874; and (ii) Contractor shall be fined by applicable law under this title or imprisoned not more than five years, or both by applicable law if, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever, Contractor induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment. Contractor also acknowledges and agrees that: (i) Contractor and each Subcontractor are subject to Title 40, U.S.C. (as amended) Sec. 3145, Regulations governing contractors and subcontractors; (ii) each week Contractor shall furnish the Counties with a statement with respect to the wages paid each Contractor and Subcontractor employee during the preceding week; and (iii) Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure) shall apply to such statements.

### **22.13 Covenant Against Contingent Fees.**

**22.13.1** Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or a bona fide established commercial or selling agency of Contractor.

**22.13.2** In the event of breach of this Section by Contractor, the Counties shall have the right to either annul or terminate this Agreement without liability to the Counties, or, in the Counties’ discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

### **22.14 Debarment and Suspension**

**22.14.1** Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions. As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110, by signing and submitting this Agreement, Contractor certifies that it and its principals (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; (b) have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records,

making false statements, or receiving stolen property; (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Section 22.14.1(b); and (d) have not within a three-year period preceding the Effective Date had one or more public transactions (federal, state, or local) terminated for cause or default. Contractor certifies that it will not contract with a subcontractor that is debarred or suspended. Contractor further agrees that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions," without modification in all lower tier transactions and in all solicitations for lower tier covered transactions.

**22.14.2** For federally funded agreements in the amount of \$100,000 or more, Contractor agrees to certify that it and its principals are not debarred or suspended from federal financial assistance programs and activities. Contractor agrees to sign and return to the Counties the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Transactions" (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17).

**22.15 Domestic Partners.** Contractor certifies that it is in compliance with Public Contract Code Section 10295.3 with regard to benefits for domestic partners. For contracts executed or amended after July 1, 2004, Contractor may elect to offer domestic partner benefits to Contractor's employees in accordance with Public Contract Code Section 10295.3. However, Contractor cannot require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic status.

**22.16 Drug Free Workplace Certification.**

**22.16.1** The Federal government implemented the Drug Free Workplace Act of 1988 in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, and a higher absenteeism, and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, the following guidelines have been adopted:

- a. The unlawful manufacture, distribution dispensation, possession or use of a controlled substance is prohibited in the work place.
- b. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
- c. Employees must notify their employer of any conviction of a criminal drug statue no later than five days after such conviction.
- d. Although alcohol is not a controlled substance, it is nonetheless a drug. It is the policy of the California WIC Program that abuse of this drug will also not be tolerated in the workplace.

e. Contractors of federal agencies are required to certify that they will provide drug-free workplaces for their employees.

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

**22.16.2.1** Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by California Government Code 8355(a).

**22.16.2.2** Establish a Drug Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:

- (i) The dangers of drug abuse in the workplace;
- (ii) Contractor's policy of maintaining a drug free workplace;
- (iii) Any available counseling, rehabilitation, and employee assistance programs; and
- (iv) Penalties that may be imposed upon employees for drug abuse violations.

**22.16.2.3** Provide, as required by California Government Code Section 8355(c), that every employee who works on the Agreement:

- (v) Will receive a copy of the Contractor's drug free policy statement; and
- (vi) Will agree to abide by the terms of the Contractor's statement as a term of condition of employment on the Agreement.

**22.16.2.4** Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future agreements by the Counties if the Counties determine that any of the following has occurred:

- (vii) Contractor has made false certification; or
- (viii) Violates the certification by failing to carry out the requirements as noted above.

**22.16.3** In addition, Contractor agrees as follows to comply with the Drug Free Workplace Act of 1988:

**22.16.3.1** The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place;

**22.16.3.2** Violators may be terminated by the Counties or requested to seek counseling from an approved rehabilitation service;

**22.16.3.3** Contractor and Subcontractor employees must notify Contractor or Subcontractor, respectively, of any conviction of a criminal drug statute no later than five days after such conviction; and

**22.16.3.4** Contractor shall certify to the Counties that it shall provide drug-free workplaces for its employees.

**22.17 Entire Agreement; Acknowledgement of Understanding.** The Counties and Contractor acknowledge that they have read the Agreement, the attached Exhibits which are incorporated herein by this reference, and other documents incorporated into the Agreement by reference, understand them and agree to be bound by their terms and conditions. Further, the Counties and Contractor agree that the Agreement (including the Exhibits and documents incorporated into the Agreement by reference) are the complete and exclusive statement of the Agreement between the parties relating to the subject matter of the Agreement and supersede all letters of intent or prior contracts or prior representations, oral or written, between the parties relating to the subject matter of the Agreement.

**22.18 Environmental Protection Standards.**

**22.18.1** General. Contractor shall comply with Section 306 of the Clean Air Act, Section 309 of the Clean Water Act), Executive Order 11246 of the Equal Employment Opportunity, and Environmental Protection Agency Regulations (40 C.F.R. Part 15).

**22.18.2** The Clean Air Act, Section 306.

a. No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.

b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180

days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

e. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]

f. The Counties may extend this prohibition to other facilities owned or operated by Contractor.

### **22.18.3 The Clean Water Act.**

a. No federal agency may enter into any contract with any person who has been convicted of any offense under Section 309(c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:

1. requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and
2. setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.



d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

e. The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

f. (1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

(2) In paragraph (1), the term “commercial item” has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

**22.19 Fair Labor Standards.** Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless the Counties, its officers, employees and agents from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys’ fees arising under any wage and hour law, including, but not limited to the Federal Fair Labor Standards Act for work performed by Contractor’s employees for which the Counties may be found jointly or solely liable.

#### **22.20 Force Majeure**

Neither Contractor nor the Counties shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except third parties do not include Subcontractors, suppliers or vendors of Contractor, e.g., telecommunications services vendors for the Network, or subcontractors, suppliers or vendors of the Counties), except to the extent such third party entities experience an event beyond its reasonable control and without the fault or negligence of such entity.

#### **22.21 Governing Law**

This Agreement shall be governed in all respects by the law and statutes of the State of California, without reference to conflict of law principles. The exclusive jurisdiction and venue of any action hereunder shall be in the State or Federal courts in the County of Sacramento. Contractor accepts the personal jurisdiction of such courts.

#### **22.22 Headings**

The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

### **22.23 Independent Status of Contractor**

Contractor will perform all work and Services herein as an independent contractor and not as an officer, agent, servant or employee of Counties. Likewise, the Counties will perform all work and services herein as an independent contractor and not as an officer, agent, servant or employee of Contractor. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for the purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party has the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publication or advertisements, except with the written consent of the other party or as explicitly provided herein. Contractor will be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any.

**22.24 Licensing Standards.** Any licenses, certificates, or permits required by the Federal, State, County, or municipal governments for Contractor to provide the Services described in the Agreement must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to drivers' licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and remain in full force by Contractor at no expense to the Counties.

### **22.25 Litigation.**

**22.25.1 Notice of Litigation.** Contractor shall promptly notify the Counties in the event that Contractor learns of any actual litigation in which it is a party in a case which involves Services provided under this Agreement. Contractor shall promptly, after being served with a summons, complaint, or other pleading which has been filed in any federal or State court or administrative agency, deliver copies of such document(s) to the Counties' Executive Director. The term "litigation" includes but is not limited to an assignment for the benefit of creditors and filings in bankruptcy, reorganization or foreclosure.

**22.25.2 Costs.** In the event that the Counties are, without any fault on their part, made a party to any litigation commenced by or against Contractor in connection with this Agreement, Contractor shall pay all costs and expenses incurred by or imposed on the Counties, including attorneys' fees, to the extent arising from the acts or omissions of Contractor, its officers, employees, agents, or Subcontractors.

### **22.25.3 Lobbying Restrictions.**

**22.25.3.1 Federal Restrictions.** Contractor shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121

(31 U.S.C. § 1352) and any implementing regulations, and shall be responsible for ensuring that all Subcontractors or sub-grantees of funds provided under this Agreement also fully comply with all such certifications and disclosure requirements.

**22.25.3.2 State and County Restrictions.** Contractor shall be responsible for its lobbyists' compliance with Federal, State and County lobbyist laws and regulations in connection with their lobbyist activities related to this Agreement. Failure of any such lobbyist to fully comply with such statutes, regulations, and ordinances constitutes a material breach of this Agreement by Contractor.

**22.25.3.3 Certification Regarding Lobbying.** For Agreements with contractors who are state entities not under the authority of the Governor, or cities, private firms or agencies which are receiving in excess of \$100,000 in federal funds from the State to perform services, the Contractor agrees to sign and submit to the State the 'Certification Regarding Lobbying' form. (Section 1352, Title 31 of the U.S. Code).

**22.25.3.4** Contractor acknowledges that the Anti-Lobbying Act prohibits the recipients of federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82, Contractor certifies that:

(i) No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;

(ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, Contractor shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(iii) Contractor shall require that the language of this certification in Section 22.25.3.4 be included in the award documents for all sub-awards at all (including but not limited to sub-grants, contracts under grants and cooperative agreements, and Subcontractor subcontracts) and that all Subcontractors shall certify and disclose accordingly.

## **22.26 Modifications and Amendments.**

**22.26.1** No modification, amendment, alteration, addition or waiver of any Section or condition of this Agreement shall be effective or binding unless it is in writing and signed by an authorized representative of Contractor and the Counties' Executive Director or designee if there is not an increase or decrease to the Maximum Amount. If there is an increase or decrease to the Maximum Amount, then the Counties' Executive Director or designee must

obtain approval from the County Boards of Supervisors or their delegates before any such increase or decrease is effective. In no event will Contractor be required to perform services above the Maximum Amount if approval has not been received.

**22.26.2** Only the Counties' Executive Director or authorized delegate by writing (with the delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement on behalf of the Counties. Furthermore, unless otherwise provided herein, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding until made in writing and signed by an authorized representative of Contractor and the Counties' Executive Director or designee if there is not an increase or decrease to the Maximum Amount therefrom. If there is an increase or decrease to the Maximum Amount, then Counties' Executive Director or designee must obtain approval from the Counties' Boards of Supervisors or their delegates before any such increase or decrease is effective.

**22.26.3** Contractor shall notify the Counties of the names of individuals who have authority to bind Contractor to modifications to the Agreement and of the limits of such authority at the time Contractor submits its Response and at such other times as required. The State reserves the right to review and approve all amendments to the Agreement.

#### **22.27 Nondiscrimination.**

**22.27.1** During the performance of this Agreement, Contractor, its agents, officers, employees and Subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee, applicant for employment, or person receiving services under this Agreement because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV or AIDS), medical conditions (cancer), mental handicap, marital status, age (over 40), political affiliation, sexual orientation (for Contractor's employees and Subcontractors located in California), or denial of family care leave. In addition, in accordance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations (41 CFR Part 60), Contractor shall not discriminate in employment decisions on the basis of race, color, religion, sex, or national origin and shall take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

**22.27.2** Contractor, its agents, officers, employees and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its agents, officers, employees and subcontractors shall comply with all federal and applicable State nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101, *et seq.*; the Americans with Disabilities Act (ADA); and the provisions of the Fair Employment and Housing Act (Government Code Section 12900, *et seq.*) and the applicable regulations promulgated thereunder in the California Code of Regulations (Title 2, Section 7285.0, *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, CDSS Manual of Policies and Procedures, Division 21, and Welfare and Institutions Code, Section 10000 are incorporated into this Agreement by reference

and made a part hereof as if set forth in full. Contractor, its agents, officers, employees and subcontractors shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said Act. Contractor further agrees to abide by the Counties' nondiscrimination policy. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements.

**22.27.3** Contractor shall include the nondiscrimination and compliance provisions of this Section in agreement with all Subcontractors to perform work under this Agreement.

**22.28 Nonwaiver.** Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Agreement shall not be deemed a waiver of any such right, power, or privilege under the Agreement. Any waivers granted by a party for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. One party's pursuit or nonpursuit of a remedy under this Agreement for the other party's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that a party may have at law or equity for any other occurrence of the same or similar breach, nor estop a party from pursuing such remedy.

**22.29 Notices.**

**22.29.1** Except as otherwise permitted herein, any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, to the parties at the following addresses:

The Counties:

Welfare Client Data System Consortium  
Executive Director  
620 Roseville Parkway  
Roseville, CA 95747  
Email: [diane.alexander@calwin.org](mailto:diane.alexander@calwin.org)

Contractor:

DXC Technology  
Account Executive  
620 Roseville Parkway  
Roseville, CA 95747  
Email: [chris.van-vlack@dxc.com](mailto:chris.van-vlack@dxc.com)

**22.29.2** Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

**22.30 Pro Children Act of 1994.** Contractor shall comply with Public Law 103-227, Part C – Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994.

**22.31 Publicity.** The award of this Agreement to Contractor is not in any way an endorsement of Contractor or Contractor’s Services by the Counties and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the Counties’ Executive Director in advance all advertising, sales promotion, and other publicity matters relating to this Agreement wherein the Counties’ name is mentioned or language used from which the connection of the Counties’ name therewith may, in the Counties’ judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of the Counties. Contractor shall not in any way contract on behalf of or in the name of the Counties. Nor shall Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of the Counties.

**22.32 Recycling.** Contractor shall use recycled and recyclable products, whenever practicable, in fulfilling the terms of this Agreement. Recycled printed products shall include a symbol identifying the recycled material.

**22.33 Remedies.** Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

**22.34 Severability.** If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

**22.35 Sovereign Immunity.** The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by the Counties of any immunities from suit or from liability that the Counties may have by operation of law.

**22.36 State Energy Conservation Plan.** Contractor agrees to recognize and comply with the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan Title 23 and 24, the California Code of Regulations, as required by the U.S. Energy, Policy and Conservation Act (P.L. 94-165).

**22.37 Subcontractors.**

**22.37.1** Contractor may, with prior written permission from the Counties’ Executive Director, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor’s duties and obligations. Subject to the other provisions of this Section, the Counties expressly consent to Contractor’s use of the

Subcontractors designated in its Response for the provision of the Services specified in the Response. Any such approval may be rescinded in the Counties' sole discretion.

**22.37.2** Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors and their compliance with the Agreement and the subcontract terms and conditions. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the Counties for any breach in the performance of Contractor's duties. In addition, Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor. All subcontracts will be made in writing and copies provided to the Counties upon request. The Counties have the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Agreement.

**22.37.3** For purposes of this Agreement, Contractor agrees to indemnify, defend, and hold the Counties harmless from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including reasonable attorney fees) arising out of or related to acts or omissions of Contractor's Subcontractors, their agents, or employees.

**22.37.4** For any Subcontractor, Contractor shall include in the Subcontractor's subcontract substantially similar terms as are provided in Sections 4.6 (Reference and Background Checks), 4.7 (Records Retention and Access Requirements), 9 (Ownership), 16 (Insurance), and 17 (Confidential Information).

**22.37.5** Upon expiration or termination of this Agreement for any reason, the Counties will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with the Counties.

**22.38 Subpoena.** In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this Agreement is served upon Contractor or the Counties, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and the Counties further agree to cooperate with each other in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by one party to another as provided in Section 19.

**22.39 Survival.** All Services performed and Deliverables provided pursuant to the authority of this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive. In addition, the terms of Sections 4.7 (Records Retention and Access Requirements), Section 4.8 (Accounting Requirements), Section 9 (Ownership), Section 10.1 (Pre-existing Software, Other Contractor Technology, and Third-Party Software Licenses), Section 12.6 (Legal and Regulatory

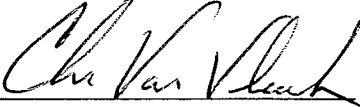
Compliance), Section 15.8 (Letter of Credit), and Sections 16 -17 and 19-22 shall survive the termination of this Agreement.

**22.40 Waiver.** Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by the parties, for all purposes. In witness thereof, this Agreement is effective as of the Agreement Effective Date.

HP ENTERPRISE SERVICES, LLC

"California Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract."

By	
Title	<u>Sector General Manager and Director</u>
Printed Name	<u>Chris Van Vlack</u>
Dated	<u>March 26, 2019</u>



THE WCDS CONSORTIUM COUNTIES

COUNTY OF SANTA CLARA

\_\_\_\_\_  
S. JOSEPH SIMITIAN, President  
Board of Supervisors  
Dated \_\_\_\_\_

Signed and certified that a copy of this document  
has been delivered by electronic or other means to  
the President, Board of Supervisors.

ATTEST:

By \_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors  
  
Dated \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGALITY

\_\_\_\_\_  
Deputy County Counsel  
  
Dated \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF SAN MATEO

By \_\_\_\_\_  
President, Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF SAN DIEGO

By \_\_\_\_\_  
Clerk of the Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF SONOMA

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF TULARE

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_



ATTEST:

\_\_\_\_\_

Dated: \_\_\_\_\_

COUNTY OF SANTA CRUZ

By \_\_\_\_\_

Director

Human Service Department

APPROVED AS TO FORM:

\_\_\_\_\_  
County Counsel

ATTEST:

\_\_\_\_\_

COUNTY OF FRESNO

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_



ATTEST:

\_\_\_\_\_

COUNTY OF SOLANO

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO

By \_\_\_\_\_  
President, Social Services Commission

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF SAN LUIS OBISPO

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Deputy County Counsel

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF CONTRA COSTA

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF PLACER

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF ALAMEDA

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF YOLO

By \_\_\_\_\_

Chairperson, Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF ORANGE

By \_\_\_\_\_  
Chairperson, Board of Supervisors


Dated: \_\_\_\_\_

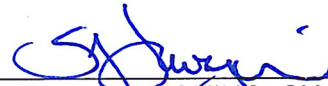


COUNTY OF SANTA BARBARA

**ATTEST:**

MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

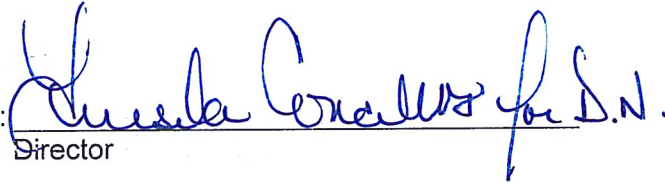
By:   
Deputy Clerk

By:   
STEVE LAVAGNINO, CHAIR  
BOARD OF SUPERVISORS

Date: 5-7-19

**RECOMMENDED FOR APPROVAL:**

DANIEL NIELSON  
DIRECTOR  
DEPARTMENT OF SOCIAL SERVICES

By:   
Director


**APPROVED AS TO FORM:**  
MICHAEL C. GHIZZONI  
DEPUTY COUNTY COUNSEL

By:   
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**  
BETSY M. SCHAFFER, CPA  
AUDITOR-CONTROLLER

By:   
Deputy

**APPROVED AS TO FORM:**  
RISK MANAGEMENT

By:   
Risk Management

ATTEST:

\_\_\_\_\_

COUNTY OF SACRAMENTO

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

COUNTY OF VENTURA

By \_\_\_\_\_  
Chairperson, Board of Supervisors

Dated: \_\_\_\_\_