

AGREEMENT

BETWEEN

**CALIFORNIA AUTOMATED CONSORTIUM ELIGIBILITY SYSTEM
AND**

CLEARBEST, INCORPORATION

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AGREEMENT

This Agreement (the “Agreement”) is entered into as of the ___ day of _____, 2019 (the “Execution Date”), by and between the California Automated Consortium Eligibility System (“CalACES CONSORTIUM”), and any successor entity, and ClearBest, Incorporation , a California corporation (“CONTRACTOR”) (collectively, “Parties”).

CONTRACTOR RECITALS

WHEREAS, the four (4) Counties of Merced, Riverside, San Bernardino, and Stanislaus contractually joined together in December 1998 to create the California Statewide Automated Welfare System Consortium IV Joint Powers Authority (C-IV Consortium) that developed and implemented a system for the administration of certain public assistance programs; and

WHEREAS, in June 2007, the thirty-five (35) counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Modoc, Mono, Monterey, Napa, Nevada, Plumas, San Benito, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, and Yuba joined the C-IV Consortium; and

WHEREAS the 39 C-IV Counties administer certain public assistance programs through the California Automated Consortium Eligibility System (CalACES System); and

WHEREAS Los Angeles County administers certain public assistance programs through a separate system known as the LEADER Replace System (“LRS”); and

WHEREAS, California Assembly Bill ABX1 16 (2011), as codified in Welfare and Institutions Code section 10823, requires that the 39 counties composing the C-IV CONSORTIUM migrate to a system jointly designed by the 39 counties and Los Angeles County and that the migration result in a consortium composed of the 40 counties; and

WHEREAS, Los Angeles County joined the C-IV Consortium in compliance with California Assembly Bill ABX1 16 (2011); and

WHEREAS, the remaining eighteen counties in California, consisting of Alameda, Contra Costa, Fresno, Placer, Orange, Sacramento, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Tulare, Ventura and Yolo, (the Welfare Client Data Systems [WCDS] Consortium) administer certain public assistance programs in those counties through a separate system, the CalWIN System; and

WHEREAS, the CalACES CONSORTIUM has been established for the purpose of overseeing the consolidation of the three current automated welfare systems (the C-IV System, LRS, and CalWIN System) for the purpose of implementing a single California Statewide Automated Welfare System (“CalSAWS System”) in all 58 California counties; and

WHEREAS, on February 28, 2019, the CalACES CONSORTIUM entered into a Design, Development and Implementation (DD&I) Agreement (the “DD&I Agreement”) that amends and restates the Leader Replacement System Agreement previously executed between the County of Los Angeles and the DD&I Vendor on November 7, 2012, in order to provide the State of California with the California Statewide Automated Welfare System (hereafter “CalSAWS”); and

WHEREAS, the CalACES CONSORTIUM will also issue a request for proposals for products and services from another vendor (the “CalWIN Implementation Support Vendor”) to perform services to assist the CalSAWS with the CalWIN Migration pursuant to an agreement to be executed between the CalACES CONSORTIUM and the CalWIN Implementation Support Vendor (the “CalWIN Implementation Support Agreement”);

WHEREAS, the CalACES CONSORTIUM has the need for professional quality assurance (“QA” and as defined further below) services to ensure the quality of the services and products of the DD&I Vendor and the Implementation Vendor;

WHEREAS, the CalACES CONSORTIUM issued a request for proposal (“RFP”) to obtain such QA services and associated products, which was dated December 14, 2018 and which is incorporated into this Agreement by this reference;

WHEREAS, CONTRACTOR submitted a proposal in response to the RFP, which is dated February 8, 2019 (the “Proposal” as defined further below) and which is incorporated herein by this reference;

WHEREAS, the CalACES CONSORTIUM exercised its right under the RFP to issue a Best and Final Offer (BAFO), which was released on March 25, 2019 and which is incorporated by reference;

WHEREAS, CONTRACTOR provided its BAFO response on or about April 1, 2019, which is incorporated by reference;

WHEREAS, the CalACES CONSORTIUM evaluated the Proposal and identified CONTRACTOR as the apparently successful contractor that can provide the services and products requested in the RFP;

WHEREAS, CONTRACTOR is trained, experienced, and competent to provide the CalACES CONSORTIUM with products and services in accordance with the terms of the RFP, Proposal, and this Agreement;

WHEREAS, CONTRACTOR acknowledges that the CalACES CONSORTIUM is relying on CONTRACTOR’s expertise in QA and project management support services; and

WHEREAS, the parties agree they will perform their respective obligations as described below in this Agreement, subject to approval by Federal government and State of California (the “State”) agencies of this Agreement.

THEREFORE, in consideration of the foregoing premises and the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. DEFINITIONS.

“Acceptance”: A Notice from CalSAWS to CONTRACTOR that a QA Deliverable or a QA Service has met CalSAWS’s reasonable satisfaction and applicable Specifications.

“Agreement”: This Agreement, the Exhibits attached hereto, which are incorporated in this Agreement by this reference, and other documents incorporated by reference herein.

“Change Order”: A written form used by CONTRACTOR and CalSAWS to modify, delete or add to the QA Deliverables or QA Services, in whole or in part, made in accordance with the terms of Section 9.

“Charge(s)”: The amount(s) to be paid for the QA Services authorized under this Agreement, in whole or in part, for the DD&I Vendor maintenance and operations services, as described in Exhibit A.

“Confidential Information”: Subject to applicable Federal, State and County laws and regulations, trade secrets and confidential information of CalSAWS and CONTRACTOR (and CONTRACTOR’s licensors and Subcontractors), including, without limitation: all proprietary and confidential information of CalSAWS, such as the Data, CalSAWS trade secrets, designs, drawings, specifications, computer programs, support materials and other records concerning CalSAWS and its finances, citizens, contracts, services or personnel; the Documentation and the other Specifications; the QA Deliverables and QA Services; any information or documentation concerning CalSAWS’s plans or business that is learned by CONTRACTOR during the performance of this Agreement including, without limitation, client and employee information, technical data, proprietary processes or designs; information CalSAWS desires to protect against unrestricted disclosure or competitive use; CONTRACTOR’s proprietary software development methodology (if any); proprietary and confidential information of the Vendors and their subcontractors and vendors; and information designated as confidential by CalSAWS.

“CalACES Consortium”: The forty (40) Counties making up the CalACES Consortium, which consist of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, San Benito, San Bernardino, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, and Yuba.

“CalSAWS CONSORTIUM”: Once formed and legally established, the CalSAWS CONSORTIUM is a Joint Powers Authority that will comprise all fifty-eight (58) Counties in the State of California.

“CalSAWS Staff”: Employees and contractors of the CalSAWS and the Counties other than CONTRACTOR or its Staff.

“CalWIN System”: The on-line and fully integrated case management system currently being managed and operated by the Counties in the WCDS Consortium to manage data in identified public assistance programs.

“Cosmetic Deficiency”: A cosmetic and inconsequential Deficiency, in CalSAWS’s reasonable judgment, e.g., a spelling or grammatical error.

“Counties”: All of the California counties in the CalSAWS.

“County”: One of the California counties in the CalSAWS.

“Data”: CalSAWS’s and Counties’ records, employee information, files, forms, data and other information that will be processed by the System.

“Days”: Calendar days, unless otherwise indicated.

“DED”: Deliverable Expectation Document.

“Deficiency”: A failure of a Deliverable or Service, or an omission, defect or deficiency in a Deliverable or Service, 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.

“Deliverables”: CONTRACTOR’s products which are based on applicable Specifications and which are provided by CONTRACTOR to the Consortium (either independently or in concert with the Counties or third parties) during the course of CONTRACTOR’s performance under this Agreement.

“Delivery Date(s)”: The dates described in the QA Work Plan for the delivery of the QA Deliverables and QA Services to CalSAWS.

“DD&I DED”: A DED for DD&I Vendor Deliverables as described in the System Agreement.

“DD&I Vendor Deficiency”: A failure of a DD&I Vendor Deliverable or an omission, defect or deficiency in a DD&I Vendor Deliverable or Service, which causes it not to conform to the DD&I Vendor Specifications.

“DD&I Vendor Deliverables”: Deliverables for the DD&I Vendor, as described in the System Agreement.

“DD&I Vendor Services”: Services for the DD&I Vendor, as described in the System Agreement.

“DD&I Vendor Specifications”: Specifications for the DD&I Vendor, as described in the System Agreement.

“DD&I Vendor Work Plan(s)”: The plan and delineation of tasks, activities and events to be performed, DD&I Vendor Deliverables to be produced, the dates for deadlines for performance therefor and associated resource requirements with regard to the Project developed and provided by Vendor to CalSAWS pursuant to the System Agreement, and any updates or modifications thereof.

“Documentation”: All definitions, descriptions of methodology, standards, design, tests, operations, technical and user manuals used in conjunction with the QA Deliverables and QA Services, in whole and in part.

“Execution Date”: The date by which this Agreement has been executed by all parties. If the parties to this Agreement execute it on different dates, the Execution Date shall be the later of the dates on which such execution has occurred.

“Executive Director”: The individual chosen by CalSAWS with management responsibilities for the Project for CalSAWS.

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

“Implementation DED”: A DED for Implementation Vendor deliverables as described in the Implementation Agreement.

“Implementation Vendor Deficiency”: A failure of an Implementation Vendor Deliverable or an omission, defect or deficiency in an Implementation Vendor Deliverable or Implementation Vendor Service, which causes it not to conform to the Implementation Vendor Specifications.

“Implementation Vendor Deliverables”: Deliverables for the Implementation Vendor, as described in the Implementation Agreement.

“Implementation Vendor Services”: Services for the Implementation Vendor, as described in the Implementation Agreement.

“Implementation Vendor Specifications”: Specifications for the Implementation Vendor, as described in the Implementation Agreement.

“Implementation Vendor Work Plan(s)”: The plan and delineation of tasks, activities and events to be performed, Implementation Vendor Deliverables to be produced, the dates for deadlines for performance therefor and associated resource requirements with regard to the Project developed and provided by Implementation Vendor to CalSAWS pursuant to the Implementation Agreement, and any updates or modifications thereof.

“Independent Verification and Validation” or “IV & V”: An independent assessment activity or function further defined as set forth in IEEE Standard 1012-2004.

“Initial Term”: The initial period of time during which this Agreement shall be effective, beginning on the Execution Date and continuing for 47 months.

“Key Milestone(s): The event(s) listed in Section 13.1.4.

“Key Personnel”: The positions of CONTRACTOR Staff identified as Key Personnel in Exhibit A.

“Migration Project”: The project for transitioning the Migration of both the CalACES Counties and the WCDS Counties to use of the CalSAWS System. The DD&I Vendor will support the CalACES Migration. The Implementation Vendor will assist the DD&I Vendor with the migration of the WCDS Counties.

“Notice”: A written document given by a party to the other in accordance with Section 17.26.

“Price”: The amounts which are identified in the QA Cost Proposal for the QA Deliverables during development activities for the DD&I Vendor and during the implementation for the Implementation Vendor, and for which CONTRACTOR can invoice CalSAWS as provided in Section 6.6.

“Project”: The planned undertaking regarding the subject matter of this Agreement and the activities of all parties related thereto.

“Project Manager”: The individual chosen by CONTRACTOR with management responsibilities for the Project, as described in Section 7.3 of this Agreement.

“Project Report(s)”: Documents provided by CONTRACTOR to CalSAWS regarding Project activities, events and QA Services provided.

“Property”: All CalSAWS and County equipment, real and other personal property.

“Quality Assurance” or “QA”: An activity or function that reviews, assesses and/or ensures the quality of a product and development thereto and as defined in the RFP, Proposal and Specifications.

“QA Cost Proposal”: The QA Cost Proposal Schedules which is Attachment D to the Proposal and the Cost Proposal as discussed in Section 6.3.4 of the RFP and Proposal.

“QA DED”: A DED for CONTRACTOR Deliverables.

“QA Deficiency”: A failure of a QA Deliverable or an omission, defect or deficiency in a QA Deliverable, which causes it not to conform to its Specifications or in accordance with CalSAWS’s reasonable satisfaction.

“QA Deliverables”: CONTRACTOR’s products that are described as deliverables or sub-deliverables in the RFP, Proposal, or QA Work Plan or that result from the QA Services, as well as all written designs, documents, structures, materials and models, developed in the course of rendering the QA Services.

“QA Services”: The tasks and professional services to be performed by CONTRACTOR as part of the Project, as described in this Agreement.

“QA Work Plan”: The Work Plan included in the Proposal and updated as provided in Section 3.2.

“Schedule”: The dates described in the QA Work Plan for deadlines for performance of QA Services, delivery of QA Deliverables, and other Project events and activities.

“Specifications”: The Documentation; all applicable County, State and Federal policies, laws, codes, regulations and guidelines; the RFP; the Proposal; subsequent Deliverables which have received Acceptance; DEDs; Service Level Agreements; IEEE Standard [1012-2016]; and other specifications and requirements described in Exhibit A, if any. The Specifications are, by this reference, incorporated into this Agreement, as though completely set forth herein.

“Staff”: CONTRACTOR’s employees, Subcontractors, independent contractors, and agents who will provide the QA Services on behalf of CONTRACTOR.

“Start Date”: The Start Date shall be that date on which the Consortium and CONTRACTOR agree CONTRACTOR shall commence QA Services as provided for in Section 4.1 of this Agreement.

“State”: The State of California.

“Subcontractor”: A person, partnership or company not in the employment of or owned by CONTRACTOR, that is performing QA Services under this Agreement under a separate agreement with or on behalf of CONTRACTOR.

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

“System”: The System as defined in the System Agreement.

“Welfare Client Data Systems (WCDS) Consortium”: The eighteen counties that make up the WCDS Consortium consisting of Alameda, Contra Costa, Fresno, Placer, Orange, Sacramento, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Tulare, Ventura and Yolo that currently operate under the CalWIN System.

2. TERM

2.1 Initial Term. The Agreement shall be effective for the Initial Term, unless terminated earlier as provided herein.

2.2 Term Extension. At CalACES CONSORTIUM’s option and CalACES CONSORTIUM’s receipt of State and Federal approval and funding therefor, CalACES

CONSORTIUM may elect to extend the term of this Agreement for up to three additional one-year extensions beyond the Initial Term, using increments of 6 months or 12 months. If CalACES CONSORTIUM exercises its option, CalACES CONSORTIUM shall provide CONTRACTOR with written Notice of such election on or before one month prior to the start of an additional one-year extension and CONTRACTOR shall provide QA Deliverables for Prices and QA Services for the Charges as described in the QA Cost Proposal.

3. DELIVERABLES AND SERVICES.

3.1 General. CONTRACTOR shall provide CalACES CONSORTIUM with the QA Deliverables and QA Services as described in the RFP, Proposal, and this Agreement, and in accordance with the QA Work Plan and Specifications. CONTRACTOR shall utilize the RFP, the Proposal, the QA Work Plan, the QA Deliverables and QA Services for which CalACES CONSORTIUM has previously granted Acceptance, Change Orders agreed to by the CalACES CONSORTIUM and the Vendor, the DEDs (if any), the Vendor QA Deliverables, CONTRACTOR's expert knowledge and CONTRACTOR's unique and specialized knowledge and experience with the System, Migration, the Counties and CalACES CONSORTIUM, and this Agreement as the basis of subsequent QA Deliverables and QA Services. CONTRACTOR shall ensure that the QA Deliverables, QA Services, Vendor QA Deliverables, and other documents and materials provided or presented to or developed for CalACES CONSORTIUM are consistent with Quality Assurance industry standards, easily understandable and logically organized, accurate and complete in their data, and provide the appropriate level of detail for their respective purposes. CONTRACTOR shall retain backup copies in writing and on electronic media of all QA Deliverables until termination of this Agreement and shall provide CalACES CONSORTIUM on its request with a copy thereof until that time.

3.2 QA Work Plan. CONTRACTOR shall update the QA Work Plan regularly in accordance with the approved applicable changes to Vendor QA Work Plans and as otherwise necessary throughout the Project to accurately reflect the status of activities, tasks, events, QA Services, and projected Schedule therefor. CONTRACTOR shall present updated QA Work Plan to CalACES CONSORTIUM within 10 Days of request by the Executive Director or designee. Any such update changes must be approved in writing by the Executive Director or designee prior to their final incorporation into the QA Work Plan. However, unless otherwise specifically agreed to in writing, CalACES CONSORTIUM's agreement on a change to the QA Work Plan will not relieve CONTRACTOR of liability from failures to perform its obligations as required herein under the previously approved QA Work Plan.

3.3 QA Deliverables.

3.3.1 CONTRACTOR shall deliver all QA Deliverables pursuant to this Agreement to the Executive Director or designee. The QA Deliverables shall be delivered in one hard copy form and on electronic media and in formats approved by CalACES CONSORTIUM.

3.3.2 CONTRACTOR shall be responsible for drafting and completing its QA Deliverables in accordance with the applicable Specifications and the QA Work Plan.

3.3.3 CalACES CONSORTIUM will identify Deficiencies in the QA Deliverables and will suggest changes thereto to CONTRACTOR.

3.3.4 CalACES CONSORTIUM shall give Acceptance when it determines that each QA Deliverable conforms to its applicable Specifications, and has no Deficiencies (other than Cosmetic Deficiencies). CalACES CONSORTIUM may, at its option, provide Acceptance of any QA Deliverable notwithstanding identified Deficiencies; provided however that CONTRACTOR shall correct all such remaining and permitted Deficiencies in accordance with this Section.

3.3.5 If a Deficiency (other than a Cosmetic Deficiency) is found in a QA Deliverable, CalACES CONSORTIUM shall promptly give CONTRACTOR Notice of its non-acceptance, with such Notice delineating Deficiencies used as the grounds for CalACES CONSORTIUM's decision. CONTRACTOR shall promptly, as applicable, correct Deficiencies (including in CONTRACTOR's discretion and to the extent feasible Cosmetic Deficiencies) described in any Notice(s) of non-acceptance from CalACES CONSORTIUM. After CONTRACTOR has corrected such Deficiencies (including CONTRACTOR's discretion and to the extent feasible Cosmetic Deficiencies), CalACES CONSORTIUM shall verify whether the QA Deliverable lacks Deficiencies (other than Cosmetic Deficiencies) and in writing shall either accept or not accept it following such review. If CONTRACTOR corrects all Deficiencies (other than Cosmetic Deficiencies) in the QA Deliverable, which then is found by CalACES CONSORTIUM to lack Deficiencies (other than Cosmetic Deficiencies), CalACES CONSORTIUM shall give CONTRACTOR its Acceptance therefor.

3.3.6 If a Deficiency (other than a Cosmetic Deficiency) is found in QA Deliverables which are CONTRACTOR's monthly reports or in QA Deliverables revised pursuant to Section 3.4, or if CONTRACTOR fails to deliver a QA Deliverable or revised version thereof with sufficient time for CalACES CONSORTIUM to review, evaluate and comment on such QA Deliverable, CalACES CONSORTIUM may, at its option: (a) continue reviewing the QA Deliverable and require CONTRACTOR to continue until Deficiencies (other than Cosmetic Deficiencies) are corrected or eliminated; (b) request CONTRACTOR to provide, at its expense, a replacement QA Deliverable for further review; or (c) terminate this Agreement as described in Section 16.2. CalACES CONSORTIUM's options under this Section 3 shall remain in effect until Acceptance of all of the QA Deliverables.

3.3.7 CONTRACTOR shall correct all Cosmetic Deficiencies which remain at Acceptance of the QA Deliverable and all other Deficiencies permitted by CalACES CONSORTIUM to exist at Acceptance of the QA Deliverable, if any, as soon as reasonably practicable and, in all cases, within 90 Days of its Acceptance.

3.3.8 CONTRACTOR shall continuously protect all QA Deliverables and backups therefor from damage, destruction or loss caused by the acts or omissions of CONTRACTOR and its Staff. During the period QA Deliverables are in transit and in possession of CONTRACTOR, its carriers or CalACES CONSORTIUM prior to their Acceptance, CONTRACTOR and its insurers, if any, will bear the risk of loss or damage

thereto, unless such loss or damage is caused by the negligence or intentional misconduct of CalACES CONSORTIUM. After CalACES CONSORTIUM provides Acceptance for a QA Deliverable, the risk of loss or damage shall be borne by CalACES CONSORTIUM, except loss or damage attributable to the acts or omissions of the Staff.

3.4 Representation. By submitting a QA Deliverable, CONTRACTOR represents that, to the best of its knowledge, it has met the Specifications in this Agreement. By unconditionally giving Acceptance for a QA Deliverable, CalACES CONSORTIUM represents only that it has reviewed the QA Deliverable and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed. CalACES CONSORTIUM's Acceptance of a QA Deliverable does not discharge any of CONTRACTOR's responsibilities for comprehensiveness, effectiveness or conformance of the QA Deliverables and QA Services, as a whole, to the Specifications.

4. SERVICES.

4.1 General. CONTRACTOR shall begin to perform its QA Services on July 1, 2019 and shall continue for the Initial Term. CONTRACTOR shall provide CalACES CONSORTIUM with the QA Services as described in this Agreement, the QA Work Plan and the Specifications. The parties agree that time is of the essence with respect to CONTRACTOR's performance under the Agreement.

4.2 Report to the CalACES CONSORTIUM Board of Directors. CONTRACTOR shall provide the CalACES CONSORTIUM Board of Directors with a summary report promptly upon the following circumstances: (a) any and all significant or serious Vendor Deficiencies, risks or concerns with the System or its quality, or the design, development or implementation of changes thereof; or (b) any other circumstances which have or if not remedied will likely have a significant or serious negative impact on the Migration Project, the System, the design, development or implementation of changes thereof, or the Vendors QA Deliverables or Vendor QA Services, or including without limitation the cost or time for completion.

5. CONSORTIUM PROPERTY.

5.1 Ownership. Title to all Property furnished by CalACES CONSORTIUM shall remain in CalACES CONSORTIUM. Title to all Property purchased by CONTRACTOR, for which CONTRACTOR has been reimbursed by CalACES CONSORTIUM under this Agreement, shall pass to and vest in CalACES CONSORTIUM upon the earlier of Acceptance of the applicable QA Deliverable in which the Property is included.

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

5.3 Damage to Property. CONTRACTOR shall continuously protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by CONTRACTOR's acts or omissions or from the failure on the part of CONTRACTOR to

maintain and administer that Property. Notwithstanding anything to the contrary herein, CONTRACTOR shall be liable to CalACES CONSORTIUM for any damages resulting from damage to Property, which damages result from or are caused by CONTRACTOR's acts or omissions. CONTRACTOR shall ensure that the Property is returned to CalACES CONSORTIUM 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 CalACES CONSORTIUM Site, and shall do so without requesting contribution or assistance from CalACES CONSORTIUM.

5.4 Notice of Damage. Upon the loss of, destruction of, or damage to any of the Property, CONTRACTOR shall notify the Executive Director thereof and shall take all steps necessary to protect that Property from further damage.

5.5 Surrender of Property. CONTRACTOR shall surrender to CalACES CONSORTIUM all Property upon the earliest of completion, termination, or cancellation of this Agreement.

5.6 CalACES CONSORTIUM Property and Facility. CalACES CONSORTIUM will provide CONTRACTOR access to and use of the CalACES CONSORTIUM equipment, subject to CONTRACTOR's compliance with CalACES CONSORTIUM's security, administrative and other requirements.

6. FINANCIAL MATTERS.

6.1 Payment. Except as otherwise provided herein, and subject to CalACES CONSORTIUM's receipt of correct invoices, exercise of its remedies, and CONTRACTOR's performance of its obligations hereunder, CalACES CONSORTIUM shall pay CONTRACTOR the Prices for QA Deliverables and Charges for QA Services. Each month, CalACES CONSORTIUM shall pay for the Price for each QA Deliverable which has received Acceptance and Charges for QA Services for the time expended in each month multiplied by the labor rate described in the QA Cost Proposal for QA Services provided to CalACES CONSORTIUM. These Prices and Charges must conform to the current approved CalACES CONSORTIUM Project budget for each applicable state fiscal year.

6.2 No Increases. CONTRACTOR shall not increase Prices or Charges during the term of this Agreement, except as specifically permitted herein or as otherwise mutually agreed to by the parties in writing and pursuant to Section 17.3.

6.3 Transportation and Insurance Costs. The costs associated with transportation, delivery and insurance for each QA Deliverable and QA Services shall be paid for by CONTRACTOR.

6.4 Taxes. CalACES CONSORTIUM is exempt from Federal excise taxes, and no payment shall be made for any personal property taxes or income taxes levied on the CONTRACTOR or on any taxes levied on employee wages. CalACES CONSORTIUM will only pay for any State or local sales or use taxes on the QA Services rendered or QA Deliverables provided to the CalACES CONSORTIUM in accordance with this Agreement.

6.5 CONTRACTOR Expenses. Unless otherwise provided in the QA Cost Proposals, Section 6.1 or a subsequent Change Order, CONTRACTOR will pay and shall be solely responsible for CONTRACTOR's travel expenses and out-of-pocket expenses incurred in connection with providing the QA Services. CONTRACTOR shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, and insurance for its Staff.

6.6 Invoices. CONTRACTOR shall submit detailed, correct invoices and in accordance with CalACES CONSORTIUM's standard invoicing requirements to the Executive Director for all Charges, Prices and other amounts to be paid by CalACES CONSORTIUM hereunder. CONTRACTOR shall submit invoices for its Prices and Charges as described in Section 6.1 for QA Deliverables which receive Acceptance in the previous month and QA Services provided in the prior month in accordance with the terms of the Agreement. All invoices submitted must meet with the approval of the Executive Director or her or his designee prior to payment. Invoices shall include all information reasonably requested in writing by CalACES CONSORTIUM, including, without limitation, this Agreement name and reference number, Federal Tax Identification Number, itemization of each QA Deliverable or QA Service provided for which payment is requested, and total amount due. All hourly billable QA Services will include the date of QA Service, type of QA Services provided, number of hours required and the Charges. CalACES CONSORTIUM shall have the right to dispute any invoices submitted for payment by CONTRACTOR.

6.7 Funding.

6.7.1 Lack of Funding; Conditions Subsequent. The parties acknowledge and agree that this Project is dependent upon the availability of County, State and Federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the State legislature or the Federal government for the Project, or is not allocated or allotted to CalACES CONSORTIUM by the State Department of Finance for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of CalACES CONSORTIUM to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.

6.7.2 Delayed or Reduced Funding; Conditions Subsequent. If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the State or the Federal government for the Project, or is not allocated or allotted in full to CalACES CONSORTIUM by the State Department of Finance for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of CalACES CONSORTIUM to make payments will be delayed or be reduced accordingly. If such funding is reduced, CalACES CONSORTIUM in its sole discretion shall determine which aspects of the Project shall proceed and which QA Services shall be performed, with CONTRACTOR's costs related to such QA Services and associated QA Deliverables determined in accordance with those in the Cost Proposal. In this situation, CalACES CONSORTIUM shall pay CONTRACTOR for QA Services and QA Deliverables in accordance with the terms of Section 16.6 and Section 16.8.2. Any obligation to pay by CalACES CONSORTIUM will not extend beyond the end of CalACES CONSORTIUM's then-current funding period.

6.7.3 No Damages. CalACES CONSORTIUM, through its agents and employees, will exercise reasonable efforts to obtain the necessary funding to pay CONTRACTOR in accordance with this Agreement and all its terms. CONTRACTOR expressly agrees, however, that no penalty or damages shall be applied to, or shall accrue to, CalACES CONSORTIUM or to any of the Counties or the State 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.

6.8 Overpayments to CONTRACTOR. CONTRACTOR shall promptly, but in all cases within 30 Days, pay to CalACES CONSORTIUM the full amount of any erroneous payment or overpayment upon notice of an erroneous payment or overpayment to which CONTRACTOR is not entitled.

6.9 Advance Payments Prohibited. No advance payment shall be made for QA Deliverables or QA Services furnished by CONTRACTOR pursuant to this Agreement. No compensation or payments of any nature will be made in advance of the receipt of an invoice for QA Services performed or goods provided pursuant to this Agreement.

6.10 Credits. Any credits due CalACES CONSORTIUM under this Agreement may be applied against CONTRACTOR's invoices with appropriate information attached, upon giving of prior notice required herein, if any, by CalACES CONSORTIUM to CONTRACTOR.

6.11 No Additional Consideration. Except as expressly provided in Exhibit A or in this Agreement, CONTRACTOR shall not be entitled to nor receive from CalACES CONSORTIUM any additional consideration, compensation, salary, wages, or any other type of remuneration for QA 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.

7. PROJECT MANAGEMENT.

7.1 Overall Responsibility. CONTRACTOR shall assist the Executive Director in managing the DD&I Vendor and Implementation Vendor. CONTRACTOR shall provide such resources needed and perform its obligations as required herein to oversee and assess the further design, development, maintenance and operations support of the DD&I Vendor, the Implementation Vendor, the Migration Project, and its other tasks as provided in the QA Work Plan and this Agreement.

7.2 Reporting Requirements. During the term of this Agreement, CONTRACTOR shall produce the QA monthly status Reports and the parties shall participate in the meetings as provided in the QA Work Plan, the RFP and the Proposal, or as otherwise agreed to by the parties.

7.3 Project Manager.

7.3.1 CONTRACTOR shall assign to the Project a 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 Consortium prior to his or her appointment as Project Manager. The Project Manager shall be responsible for acting as a liaison with the Executive Director.

7.3.2 CONTRACTOR agrees that the Project Manager shall be fully qualified to perform the tasks required of that position under this Agreement. The Project Manager shall function as CONTRACTOR's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The Project Manager shall have authority to make decisions. The Project Manager shall devote his or her full-time efforts to the Project. The Project Manager or other substitute Project management personnel for CONTRACTOR shall be on-site or otherwise reasonably available to provide immediate responses to CalACES CONSORTIUM full time during the Project.

7.3.3 If CONTRACTOR's Project Manager is removed or replaced, CONTRACTOR shall promptly (and in all cases within 48 hours) provide Notice to CalACES CONSORTIUM, submit at least two resumes of other qualified candidates within 30 Days of removal or replacement of the Project Manager. CONTRACTOR must obtain approval of the replacement Project Manager from CalACES CONSORTIUM prior to his or her beginning work under this Agreement. CONTRACTOR shall use its best efforts to find the replacement Project Manager and have such replacement Project Manager begin work before the incumbent Project Manager departs.

7.4 CONTRACTOR Project Staff.

7.4.1 CONTRACTOR's organization chart of CONTRACTOR's Project team and the names of mutually agreed to Key Personnel must be provided to the Executive Director. Any such Key Personnel shall be subject to the Executive Director's approval. Key Personnel positions shall not be modified or removed except upon the express written approval of the Executive Director.

7.4.2 CONTRACTOR agrees to make available to CalACES CONSORTIUM a matrix of all Staff providing QA Services under this Agreement and their experience as described in Section 4.6 of the RFP, and to maintain that matrix for changes as they occur. This matrix shall include all full or part-time staff names, working Project titles, a brief description of each position, and the average monthly hours worked or to be worked. CONTRACTOR shall also provide to CalACES CONSORTIUM resumés and three references for all Staff prior to commencing QA Services.

7.4.3 During the term of this Agreement, CalACES CONSORTIUM reserves the right to approve or disapprove CONTRACTOR's Staff, to approve or disapprove any proposed changes in such Staff, or to require the removal or reassignment of any CONTRACTOR or Subcontractor Staff found unacceptable by CalACES CONSORTIUM, to the extent permitted by law.

7.4.4 All Staff proposed by CONTRACTOR as replacements for other Staff shall have comparable or greater skills to perform the Project activities as were

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 Consortium does 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.

7.4.5 CONTRACTOR shall not remove from the Project the Key Personnel, nor temporarily reassign or reduce the time of the Key Personnel to the Project or divide the time of the Key Personnel between the work on this Agreement and any other project or task, event or activity unrelated to the Agreement, except in the event of: illness; retirement; disability; termination of employment or completion of assignments as defined in the QA Work Plan or otherwise leaving CONTRACTOR's employment; or by mutual agreement of the parties. CONTRACTOR shall not rehire any such personnel as a consultant or contractor to CONTRACTOR. CalACES CONSORTIUM shall not arbitrarily or capriciously withhold agreement to such removal, reassignment or reduction or division of time of Key Personnel and shall work with CONTRACTOR in scheduling Key Personnel and Staff vacations or other reasonable and foreseeable absences from the Project. CalACES CONSORTIUM shall also not arbitrarily or capriciously withhold agreement to reasonable absences from the Project by Key Personnel or Staff for training, corporate meetings and personal emergencies.

7.4.6 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 Consortium. CONTRACTOR will indemnify and hold the Consortium harmless from any and all such claims asserted against the Consortium. 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 Consortium (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

7.5 Executive Director. The Project Manager's primary point of contact in matters of Project management will be the Executive Director. The Executive Director or designee will be responsible for applicable CalACES CONSORTIUM tasks identified in the QA Work Plan for CalACES CONSORTIUM, and for the daily administration of this Agreement, including the review of QA Deliverables submitted and QA Services rendered by CONTRACTOR, and the provision of Acceptance or non-acceptance with respect thereto.

7.6 Dispute Resolution Process.

7.6.1 The parties shall use their best efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. When a dispute arises between CalACES CONSORTIUM and CONTRACTOR, both parties will attempt to resolve the dispute and will continue without delay to carry out all their respective responsibilities under this Agreement. The parties may, but are not required to, pursue

the dispute resolution process in this Section if they deem it to be in the best interests of the parties.

7.6.2 CalACES CONSORTIUM and CONTRACTOR shall use their commercially reasonable efforts to resolve disputes arising in the normal course of business at the lowest organizational level between each party's staff with appropriate authority to resolve such disputes. When a dispute arises between CalACES CONSORTIUM and CONTRACTOR which cannot be resolved in the normal course of business, the Executive Director and Project Manager shall each notify the other of the dispute, with the Notice specifying the disputed issues. The Executive Director and Project Manager shall use their reasonable best efforts to resolve the dispute within five business days of submission by either party to the other of such dispute Notice.

7.6.3 If the Executive Director and Project Manager are unable to resolve the dispute within such five business days, they shall immediately escalate the matter to CONTRACTOR's Executive Vice President or President and CalACES CONSORTIUM's Chair of the CalACES CONSORTIUM Board of Directors, who shall have ten business days to resolve the dispute. If these representatives are unable to resolve the dispute within such period, either party may pursue its available legal and equitable remedies.

7.7 Subcontractors. CONTRACTOR may, with prior written permission from CalACES CONSORTIUM, enter into subcontracts with third parties for the performance of any part of CONTRACTOR's duties and obligations. Any such approval may be rescinded in CalACES CONSORTIUM's sole discretion. CalACES CONSORTIUM reserves the right to reject any proposed Subcontractor at its own discretion. CONTRACTOR is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In addition, CONTRACTOR's use of any Subcontractor shall not cause the loss of any warranty from CONTRACTOR. CalACES CONSORTIUM reserves the right to reject or refuse admission to any CONTRACTOR or Subcontractor personnel whose workmanship, in the reasonable judgment of CalACES CONSORTIUM, is deemed to be substandard. In no event shall the existence of a subcontract operate to release or reduce the liability of CONTRACTOR to CalACES CONSORTIUM for any breach in the performance of CONTRACTOR's duties. All Federal, State, and County laws and regulations pertaining to service agreements also apply to subcontracts of any tier under such agreements. All subcontracts will be made in writing and copies provided to CalACES CONSORTIUM upon request. CalACES CONSORTIUM has the right to refuse reimbursement for obligations incurred under any subcontract that does not comply with the terms and conditions of this Agreement. CONTRACTOR shall include in each subcontracts all provisions that are required by CalACES CONSORTIUM, including but not limited to Sections 7.8 – 7.10.

7.8 Accounting Requirements.

7.8.1 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 QA Deliverables and QA

Services and all other costs and expenditures made under this Agreement, and the costs properly applicable to the Agreement shall be readily ascertainable therefrom.

7.8.2 Accounting records and procedures are subject to CalACES CONSORTIUM and State approval. Accounting procedures, policies, and records shall be open to CalACES CONSORTIUM, Counties, State, or federal audit at any time during the term and for five years thereafter and, as applicable, during the period described in Section 7.9.3.

7.9 Records Retention and Access Requirements.

7.9.1 Subject to confidentiality privileges provided by law, CONTRACTOR shall agree to the conditions of all applicable Federal and State 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 following terms regarding retention of records and access for CalACES CONSORTIUM, State and Federal government officials.

7.9.2 CONTRACTOR shall prepare, maintain and preserve all QA Deliverables and all writings, documents, and records prepared or complied by CONTRACTOR and its Subcontractors in connection with the performance of this Agreement for a minimum of five years from the termination or completion of this Agreement, or until such records and their supporting documentation are released due to closure of CalACES CONSORTIUM, State, or federal audit, whichever is longer. These writings include any handwriting, typewriting, printing, photostatic, photographing, and every other hard copy and electronic means of recording, any form of communication or representation including letters, words, pictures, sounds, or symbols, or any combination thereof.

7.9.3 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 five years.

7.9.4 CONTRACTOR shall agree that Federal, State, County and CalACES CONSORTIUM representatives shall have access to and the right to examine, audit, inspect and copy the records, documents, billings and other items described in Sections 7.8 and 7.9, including without limitation those of any Subcontractor, during the term and during the five-year period thereafter. CalACES CONSORTIUM shall pay copy expenses associated with these activities. During the term, the access to these items will be provided Sacramento County, California at all reasonable times. During the five-year period after the term, delivery of and access to the listed items will be at no cost to CalACES CONSORTIUM. CalACES CONSORTIUM's personnel in connection with this Agreement shall be accompanied by CONTRACTOR personnel at all times during any such examination, inspection, review or audit.

7.9.5 CONTRACTOR shall work with any CalACES CONSORTIUM appointed or retained auditor to provide the information necessary for its independent

assessment of CONTRACTOR's compliance with the Agreement. CONTRACTOR agrees to make internal records, personnel, project control systems and other support information available on a reasonable basis as requested by such auditor on behalf of CalACES CONSORTIUM.

7.9.6 CONTRACTOR agrees that its financial records shall contain itemized records of all costs and be available for inspection by CalACES CONSORTIUM within three working days of the request by CalACES CONSORTIUM, County, State, or Federal agencies.

7.10 Inspections. The QA Deliverables and QA Services being provided by CONTRACTOR and its Subcontractors, if any, pursuant to this Agreement shall be available for inspection and review at any reasonable time by representatives of CalACES CONSORTIUM, Counties, State (including IV&V representatives) and Federal agencies, who 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 the QA Deliverables and QA Services. CONTRACTOR and all Subcontractors must provide reasonable access to all facilities and assistance to CalACES CONSORTIUM, County, State and Federal Government authorized representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay work.

7.11 Staff Checks. Due to the confidential nature of the information and materials which will be accessible to CONTRACTOR, CONTRACTOR shall perform criminal background checks on CONTRACTOR Staff proposed, including Subcontractors, to provide the QA Services. In addition, CalACES CONSORTIUM shall conduct reference checks on CONTRACTOR Staff proposed to be used to provide the QA Services, and CalACES CONSORTIUM reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such reference checks or additional sources of information.

7.12 Supplemental Contracts.

7.12.1 CONTRACTOR acknowledges that CalACES CONSORTIUM has undertaken and awarded to DD&I Vendor a Revised System Agreement, and shall undertake and award more supplemental contracts for work related to this Agreement, or any portion thereof, including but not limited to the Implementation Vendor. CONTRACTOR shall fully cooperate with the Vendors and all such other contractors (including but not limited to equipment suppliers and third party licensors) and CalACES CONSORTIUM 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 any such Vendors and contractors or for any delays which may be caused by any such Vendors and contractors, except that CONTRACTOR shall be responsible for delays of, or acts or failures to act of, such Vendors and other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of CONTRACTOR or its failure to mitigate the effect of such delays caused by such other contractors.

7.12.2 CONTRACTOR shall continue to perform its obligations that are not affected by the Vendors or such other contractors and shall mitigate any impact on CONTRACTOR from such delays caused by CalACES CONSORTIUM's other contractors, e.g., redirecting its Staff to perform other tasks, to the extent reasonably possible. To the extent it cannot redirect staff and mitigate such impacts, then an adjustment, if any, to the Charges and/or Schedule may be made pursuant to Section 9 (Change Orders), if appropriate, based upon the Executive Director's reasonable consideration of all relevant circumstances, including but not limited to CONTRACTOR's opportunity and efforts to mitigate the effect of the impact and if CalACES CONSORTIUM's failure to perform is not due to an event described in Section 17.14 (Force Majeure).

8. WARRANTIES.

8.1 QA Services. CONTRACTOR represents and warrants that CONTRACTOR shall perform the QA Services as described in this Agreement, including without limitation the QA Work Plan, that CONTRACTOR shall give high priority to the performance of the QA Services, and that CONTRACTOR shall perform all QA Services required pursuant to this Agreement in accordance with high professional standards but at least in accordance with the standards described in the applicable Specifications. At CalACES CONSORTIUM's request and discretion, CONTRACTOR shall promptly re-perform any QA Services that do not meet the requirements of this Section 8.1 without charge to CalACES CONSORTIUM.

8.2 QA Deliverables. CONTRACTOR represents and warrants that it shall deliver the QA Deliverables in accordance with the Schedule and that each QA Deliverable shall meet its requirements and Specifications as provided herein following its Acceptance. At CalACES CONSORTIUM's request and discretion, CONTRACTOR shall promptly repair or replace a QA Deliverable or any portion thereof, without charge, which does not meet its Specifications as provided herein.

8.3 Power and Authority. CONTRACTOR represents and warrants that it has the full power and authority to grant to CalACES CONSORTIUM the rights described in this Agreement, that the person executing this Agreement for CONTRACTOR has actual authority to bind CONTRACTOR to each and every term, condition, and obligation of this Agreement and that all requirements of CONTRACTOR have been fulfilled to provide such actual authority.

8.4 No Conflicts of Interest. CONTRACTOR warrants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of the work and QA Services under this Agreement.

8.5 Intellectual Property Rights. CONTRACTOR represents and warrants that:

8.5.1 CONTRACTOR is the owner of the QA Deliverables that are to be transferred and assigned to CalACES CONSORTIUM in accordance with Section 12.1 or otherwise has the right to grant to CalACES CONSORTIUM the licenses described herein without violating any rights of any third party;

8.5.2 As of the Execution Date of this Agreement, there is no actual or any threatened suit by any such third party based on an alleged violation of the rights granted or licensed by CONTRACTOR to CalACES CONSORTIUM hereunder;

8.5.3 The QA Deliverables 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; and

8.5.4 CalACES CONSORTIUM shall peacefully and quietly have, hold, possess, and enjoy each QA Deliverable without suit or interruption.

8.6 Legal and Regulatory Compliance. Contractor represents and warrants that the Services, Deliverables, shall comply with all applicable federal and State laws, regulations, codes, standards and ordinances. In the event that any Services performed or any Deliverables 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, into compliance. In addition, Contractor shall be responsible for and shall indemnify the CalACES CONSORTIUM against any fines, penalties, sanctions, or disallowances which are imposed on the CalACES CONSORTIUM 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.

8.6.1 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 CalACES CONSORTIUM on curing such breaches. This representative will be dedicated to remedy the Deficiency, failure, malfunction, defect, or problem at no cost to the CalACES CONSORTIUM.

8.7 Authorization. Contractor represents and warrants that:

8.7.1 Contractor is a California corporation , validly existing and in good standing under the laws of the State of California and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

8.7.2 It has the full power and authority to grant to the CalACES CONSORTIUM the rights described in this Agreement 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;

8.7.3 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;

8.7.4 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;

8.7.5 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;

8.7.6 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

8.7.7 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.

8.8 Ability to Perform. Contractor represents and warrants that:

8.8.1 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; and

8.8.2 Each Subcontractor, if any, providing a substantial amount of the Services under this Agreement has the financial resources to carry out its duties under this Agreement.

8.9 Disclaimers. EXCEPT FOR EXPRESS WARRANTIES SPECIFIED IN THIS AGREEMENT, CONTRACTOR GRANTS NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. CHANGE ORDERS.

9.1 Issuance of Change Orders. CalACES CONSORTIUM may, at any time by a written Change Order, make changes within the scope of the Agreement. Such changes may include, without limitation, revisions or additions to QA Deliverables and QA Services. All Change Orders shall be subject to requirements and limitations in applicable Federal, State and County law.

9.2 CONTRACTOR Proposal. CONTRACTOR shall respond in writing to a Change Order request within 10 Days of receipt or as otherwise agreed to by the parties, advising CalACES CONSORTIUM of any cost and schedule impacts. CalACES CONSORTIUM will not pay for CONTRACTOR's efforts in responding to a Change Order request. When there is a cost impact, *i.e.*, increase or decrease in Charges, CONTRACTOR shall advise CalACES CONSORTIUM in writing of the increase or decrease involved, including a breakdown of the number of staff hours and/or additional requirements by level of personnel needed to effect this change.

9.3 Details. Each Change Order shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by CONTRACTOR, the job classification of approximate skill level of the personnel to be made available by CONTRACTOR, an identification of all

material and QA Deliverables to be developed by CONTRACTOR and delivered to CalACES CONSORTIUM, a time schedule for the provision of these QA Services by CONTRACTOR, completion criteria for the work to be performed, the name and identification of CONTRACTOR personnel to be assigned, CONTRACTOR's work hours required to accomplish the purpose, objective, or goals, CONTRACTOR's billing rates per work hour, and CONTRACTOR's total cost for the Change Order.

9.4 Agreement on Change Order. The Project Manager and Executive Director shall negotiate in good faith and in a timely manner as to the price and the impact on the Schedule of any Change Orders. If the parties reach an agreement in writing the Executive Director shall submit the written Change Orders for review and evaluation by the CalACES CONSORTIUM Board of Directors, except that the Executive Director shall have the authority to approve written Change Orders that do not result in an increase in the maximum amount of Charges for this Agreement as described in Exhibit A if and to the extent authorized in writing by the CalACES CONSORTIUM Board of Directors. Upon the express written approval of the CalACES CONSORTIUM Board of Directors pursuant to Section 17.3 or the Executive Director pursuant to this Section 9.4, as applicable, the Change Order will be incorporated herein, and CONTRACTOR shall begin to work on the Change Order. Such Change Orders shall in no way constitute an agreement other than as provided pursuant to this Agreement nor in any way amend or supersede any of the other provisions of this Agreement.

9.5 Disagreement on Change Order. If the parties are unable to reach an agreement in writing within 15 Days of CONTRACTOR's response to a Change Order, the Executive Director if and to the extent authorized by the CalACES CONSORTIUM Board of Directors pursuant to Section 17.3 may make a determination of the revised price and Schedule, and CONTRACTOR shall proceed with the work according to such price and Schedule, subject to CONTRACTOR's right to appeal the Executive Director's determination of the price and/or Schedule pursuant to Section 7.6 (Dispute Resolution Process). Nothing in this Section shall in any manner excuse CONTRACTOR from proceeding diligently with performing its obligations under this Agreement as changed by the Change Order.

9.6 Termination and/or Use of Third Party. If CONTRACTOR fails or refuses to perform its QA Services or provide a QA Deliverable pursuant to a Change Order, or if CONTRACTOR has appealed CalACES CONSORTIUM's determination that CONTRACTOR should proceed with performing its obligations under this Agreement as charged by the Change Order, and the parties have been unable to resolve the dispute in accordance with the procedures in Section 7.6.3, CalACES CONSORTIUM shall have the right to immediately terminate this Agreement for such a refusal, which shall be deemed a termination for CONTRACTOR's default. In addition, CalACES CONSORTIUM may engage the services of a third party to perform the Change Order if CONTRACTOR fails or refuses to perform its QA Services or provide a QA Deliverable pursuant to a Change Order, or if the parties are unable to agree on the terms of the Change Order.

10. INSURANCE.

10.1 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 CalACES CONSORTIUM. Contractor shall include the CalACES CONSORTIUM, its board, 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 CalACES CONSORTIUM may terminate this Agreement under Section 16.1 (Termination for Material Breach). The minimum acceptable limits shall be as indicated below with no deductible except as indicated below:

10.1.1 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;

10.1.2 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;

10.1.3 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;

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

10.1.5 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.

10.2 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 CalACES CONSORTIUM 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 CalACES CONSORTIUM 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.

10.3 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.

10.4 Premiums. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for the CalACES CONSORTIUM pursuant to this Section shall expressly provide therein that the CalACES CONSORTIUM 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 CalACES CONSORTIUM and the State by such insurer.

10.5 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 CalACES CONSORTIUM Executive Director, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section 10. Contractor's insurance policies shall not be reduced in scope without the CalACES CONSORTIUM's prior written consent.

10.6 Insurance Documents. Contractor shall furnish to the CalACES CONSORTIUM copies of certificates of all required insurance prior to the Start 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 CalACES CONSORTIUM for material breach. The CalACES CONSORTIUM 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.

10.7 Increased Coverage. The CalACES CONSORTIUM 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.

10.8 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 CalACES CONSORTIUM and shall include a severability of interests (cross-liability) provision.

11. CONFIDENTIAL INFORMATION.

11.1 Protection Obligations.

11.1.1 Access and Protection. During the term of the Agreement, Contractor and the CalACES CONSORTIUM will have access to and become acquainted with each party's Confidential Information. The CalACES CONSORTIUM 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. In addition, the CalACES CONSORTIUM and each of their officers, employees, and authorized contractors and agents, including State

and federal agencies shall maintain Contractor's Confidential Information 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, 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, 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, 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 with respect to the Confidential Information. In addition to the requirements expressly stated in this Section, 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 CalACES CONSORTIUM's services, Contractor's operations, or the Services performed by Contractor under this Agreement.

11.1.2 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 Section 11.1.1 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. The CalACES CONSORTIUM Executive Director shall resolve conflicts between security standards, practices, and procedures of two or more Counties.

11.1.3 HIPAA Compliance. In addition to its obligations under 11.1.1 and 11.1.2 above, Contractor agrees to be bound by the requirements stated in Exhibit C – HIPAA Business Associate Agreement. This includes safeguards for data and information systems as well as prohibitions against disclosure.

11.2 Audit. The CalACES CONSORTIUM 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.

11.3 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.

11.4 Injunctive Relief.

11.4.1 Contractor shall immediately report to the CalACES CONSORTIUM any and all unauthorized disclosures or uses of the CalACES CONSORTIUM's Confidential

Information by Contractor of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of the CalACES CONSORTIUM's Confidential Information to others may cause immediate and irreparable harm to the CalACES CONSORTIUM. If Contractor should publish or disclose such Confidential Information to others without authorization, the CalACES CONSORTIUM 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.

11.4.2 The CalACES CONSORTIUM will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information by CalACES CONSORTIUM of which the CalACES CONSORTIUM are aware or have knowledge. The CalACES CONSORTIUM acknowledges that any publication or disclosure of Contractor's Confidential Information to others may cause immediate and irreparable harm to Contractor. If the CalACES CONSORTIUM 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.

11.5 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.

11.6 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 CalACES CONSORTIUM will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view Contractor's Confidential Information, the CalACES CONSORTIUM 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 CalACES CONSORTIUM may release the identified requested information on the date specified without penalty or liability. The CalACES CONSORTIUM reserve the right to also seek reimbursement for all costs and expenses incurred by the CalACES CONSORTIUM in their refusal to produce Contractor's confidential documents.

11.7 Compliance with State Requirements.

11.7.1 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.

11.7.2 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.

11.7.3 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.

11.8 Written Staff Agreements. Contractor agrees to cause Staff to which Contractor makes available (as permitted by this Agreement) CalACES CONSORTIUM's, and the State's Confidential Information to agree in writing to observe and perform all provisions of this Section 11 applicable to such Staff.

11.9 Subpoena. In the event that a subpoena or other legal process in any way concerning the CalACES CONSORTIUM's or any County's Confidential Information is served upon Contractor, then Contractor agrees to notify the CalACES CONSORTIUM within 24 hours following receipt of such subpoena or other legal process and to cooperate with the CalACES CONSORTIUM or any County in any lawful effort by the CalACES CONSORTIUM 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 CalACES CONSORTIUM or any County, then the CalACES CONSORTIUM 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.

11.10 Survival. The provisions of this Section 11 shall remain in effect following the termination or expiration of this Agreement.

12. OWNERSHIP AND LICENSES.

12.1 CalACES CONSORTIUM Ownership Rights. CalACES CONSORTIUM shall own all right, title and interest in and to its Confidential Information and the QA Deliverables, including without limitation the Specifications, the QA Work Plan in whatever stage of completion as may exist from time to time, including without limitation all copyright, trademark, patent, trade secret and other intellectual property and proprietary rights therein. CONTRACTOR shall take all actions necessary and transfer ownership of the QA Deliverables to CalACES CONSORTIUM. All QA Deliverables, in whole and in part, shall be deemed works made for hire of CalACES CONSORTIUM for all purposes of copyright law, and all right, title and interest in and to copyright rights therein shall belong solely to CalACES CONSORTIUM. To the extent that any QA Deliverable does not qualify as a work for hire under applicable law and to the extent that the QA Deliverable includes materials subject to patent, trade secret, trademark or other proprietary right protection, CONTRACTOR agrees to assign, and hereby

assigns, all right, title and interest in and to QA Deliverables, including without limitation all copyrights, inventions, patents, trade secrets, trademarks and other intellectual property and proprietary rights therein (including registrations in any U.S. or foreign jurisdiction and any renewals thereof) to CalACES CONSORTIUM. CONTRACTOR shall, at the expense of CalACES CONSORTIUM, assist CalACES CONSORTIUM or its nominees to obtain and register copyrights, trademarks, or patents for all QA Deliverables in the United States and any other countries. CONTRACTOR agrees to execute all papers and to give all facts known to it necessary to register and secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to CalACES CONSORTIUM all the right, title and interest in and to QA Deliverables. CONTRACTOR also agrees not to assert any moral rights under applicable law with regard to QA Deliverables.

12.2 CONTRACTOR. CONTRACTOR shall own all right, title and interest in and to its Confidential Information. Notwithstanding CalACES CONSORTIUM's ownership rights as described in Section 12.1, CalACES CONSORTIUM acknowledges and agrees that: (a) CONTRACTOR shall be free to use its general knowledge, skills and experience, and any ideas, concepts and know-how within the scope of its consulting practice that are used in the course of providing the QA Deliverables and QA Services and that do not include CalACES CONSORTIUM's Confidential Information or the QA Deliverables, in whole or in part, and (b) CONTRACTOR retains ownership of any and all of its intellectual property rights that CONTRACTOR can demonstrate by documentary evidence existed prior to the execution of this Agreement, including but not limited to, methods, concepts, designs, reports, programs and templates.

12.3 State and Federal Governments. All appropriate State and Federal agencies (including, without limitation, the Federal government agencies providing Federal financial participation) shall 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 all materials designed, developed, or installed with federal financial participation.

12.4 Notices. CONTRACTOR 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 QA Deliverables.

13. ADDITIONAL RIGHTS AND REMEDIES.

13.1 Liquidated Damages.

13.1.1 Delays or Failures. CalACES CONSORTIUM and CONTRACTOR agree that failed, delayed, and/or other performance not in compliance with the terms of this Agreement by CONTRACTOR will cause damages to CalACES CONSORTIUM which may be uncertain and would be impractical or difficult to ascertain; and CalACES CONSORTIUM may assess, and if assessed, CONTRACTOR promises to pay CalACES CONSORTIUM in the event of such failed, delayed, and/or other performance not in accordance with the terms of this Agreement the amounts described below as liquidated damages and not as penalties. The schedule of liquidated damages represents damages in

conformity with California Civil Code Section 1671, incurred in case of failed, delayed, or other performance not in accordance with the terms of this Agreement.

13.1.2 Key Personnel. In the event that CONTRACTOR fails to provide all Key Personnel in accordance with the mutually agreed Key Personnel and subject to Section 7.4.5, CalACES CONSORTIUM, at its option, may reduce CONTRACTOR's monthly Charges by \$1,000 for each workday and for each Key Personnel member not working under this Agreement until the earliest of: (a) the assignment or reassignment of such Key Personnel member(s) to the Project,; or (b) the CalACES CONSORTIUM Executive Director's written approval of a replacement for or the diversion of such Key Personnel member(s).

13.1.3 Failure to Report to the CalACES CONSORTIUM Board of Directors. In the event CONTRACTOR fails to notify the CalACES CONSORTIUM Board of Directors as required in Section 4.2, CalACES CONSORTIUM may, at its option, impose liquidated damages of \$1000 per Day for each Day CONTRACTOR fails to notify the CalACES CONSORTIUM Board after any such circumstances as described in Section 4.2 become known to the CONTRACTOR.

13.1.4 Failure to Meet Key Milestones. CONTRACTOR shall pay liquidated damages as follows for CONTRACTOR's failure to timely perform the QA Services or provide the QA Deliverables following the dates specified in the QA Work Plan, subject to Section 3.2, for the following Key Milestone events.

Key Milestones	Amount of Liquidated Damages Per Day
QA Work Plan (Initial) Acceptance	\$1,000
QA Testing Plan Acceptance	\$1,000
QA Security Review Plan Acceptance	\$1,000

13.1.5 Available Remedies. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy CalACES CONSORTIUM may have under this Agreement for CONTRACTOR's breach of this Agreement, including without limitation, CalACES CONSORTIUM's right to withhold payment to CONTRACTOR for defective or untimely QA Deliverables or CalACES CONSORTIUM's right to terminate this Agreement, and CalACES CONSORTIUM shall be entitled in its discretion to recover actual damages caused by CONTRACTOR's failure to perform its obligations under this Agreement. However, CalACES CONSORTIUM will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

13.1.6 Payments. Amounts due CalACES CONSORTIUM as liquidated damages may be deducted by CalACES CONSORTIUM from any money payable to CONTRACTOR under this Agreement, or CalACES CONSORTIUM may bill CONTRACTOR as a separate item therefor and CONTRACTOR shall promptly make payments on such bills.

13.2 Liquidated Damages. CalACES CONSORTIUM shall have the right to withhold payments to CONTRACTOR, in whole or in part, to the extent CONTRACTOR fails to perform its obligations set forth in this Agreement.

13.3 Reductions in Payments Due. Amounts due CalACES CONSORTIUM by CONTRACTOR, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set-off by CalACES CONSORTIUM from any money payable to CONTRACTOR pursuant to this Agreement.

13.4 Liquidated Damages. If, in the reasonable judgment of CalACES CONSORTIUM, a default by CONTRACTOR is not so substantial as to require termination, reasonable efforts to induce CONTRACTOR to cure the default are unavailing, and the default is capable of being cured by CalACES CONSORTIUM or by another resource without unduly interfering with continued performance by CONTRACTOR, CalACES CONSORTIUM may provide or procure the deliverables or services reasonably necessary to cure the default, in which event CONTRACTOR shall reimburse CalACES CONSORTIUM an amount equal to the difference between CONTRACTOR's charges for such QA Deliverables or QA Services and the reasonable cost of the deliverables or services. In addition, CONTRACTOR must cooperate with these resources in allowing access to the QA Deliverables.

13.5 Suspension Due to Breach. In the event CalACES CONSORTIUM determines that a breach of this Agreement has occurred on the part of CONTRACTOR under this Agreement, and the situation is deemed by CalACES CONSORTIUM to merit corrective action, the following sequential suspension procedure may be implemented by CalACES CONSORTIUM:

13.5.1 CalACES CONSORTIUM shall send a Notice to CONTRACTOR in writing by certified mail or other hand deliveries to CONTRACTOR's Notice address below the signatures to the Agreement with a return receipt to CalACES CONSORTIUM of a perceived compliance breach describing CalACES CONSORTIUM's concerns.

13.5.2 CONTRACTOR shall respond to CalACES CONSORTIUM's concerns by letter describing proposed corrective actions and proposing completion dates for bringing the Agreement into compliance. Such response will be sent by registered mail or other hand delivery with evidence of receipt acknowledged and delivered to CalACES CONSORTIUM within ten Days of the date of receipt of CalACES CONSORTIUM's letter.

13.5.3 CalACES CONSORTIUM shall notify CONTRACTOR in writing by certified mail or other hand delivery with evidence of receipt acknowledged to CONTRACTOR's Notice address with a return receipt to CalACES CONSORTIUM as

to CalACES CONSORTIUM's final disposition of CalACES CONSORTIUM's concerns.

13.5.4 Upon receipt of notice of final disposition by CONTRACTOR, CalACES CONSORTIUM reserves the right to suspend all, or part of, the Agreement, and to withhold further payments, or to prohibit CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action, if necessary, by CONTRACTOR or a decision by CalACES CONSORTIUM to terminate in accordance with Section 16.1 below.

13.6 Suspension for Convenience. CalACES CONSORTIUM shall have the right at any time during the Project to order the QA Deliverables, QA Services or any part thereof, of CONTRACTOR or any of its Subcontractors or suppliers fully or partially stopped for its own convenience for a period not to exceed 30 Days within any six month period. Within 30 Days after issuance of such a stop work order, CalACES CONSORTIUM shall either cancel the stop work order, terminate the Agreement or modify the Agreement as may be agreed to in writing by the parties pursuant to Section 17.3. CONTRACTOR shall receive notice of the reasons for such an order. The Schedule shall be delayed on a day-for-day basis if CalACES CONSORTIUM has issued a stop work order to CONTRACTOR and such stop work order is causing delays in completing QA Services in accordance with the Schedule. To the extent that stop work orders are issued under this Section, 30 Days have passed since issuance of the stop order, and CONTRACTOR cannot redirect Staff and mitigate the effect of such stop work orders, then an adjustment, if any, to the Charges and/or Schedule shall be made pursuant to Section 9 (Change Orders), if appropriate, based on the Executive Director's reasonable consideration of relevant factors and circumstances, including but not limited to CONTRACTOR's opportunity and efforts to mitigate the effect of the stop work orders. CONTRACTOR shall have the right to submit claims in accordance with the terms of Section 17.7, as a result of stop work orders issued under this Section.

14. INDEMNIFICATIONS.

14.1 Intellectual Property.

14.1.1 CONTRACTOR shall, at its expense, defend, indemnify, and hold harmless the Consortium and their employees, officers, directors, contractors and agents, and the State from and against any third-party claim or action against the Consortium 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 Consortium 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 Consortium 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 Consortium unless:

14.1.2 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 Consortium's rights thereto is enjoined or restricted, CONTRACTOR shall, at its own expense and in the following order of priorities: (i) procure for the Consortium 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 Consortium upon receipt of notice from the Consortium and refund the Charges for such Deliverables.

14.1.3 The foregoing states CONTRACTOR's sole obligation and the Consortium's exclusive remedy with respect to any alleged infringement by all or part of the Deliverables.

14.1.4 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 Consortium and CONTRACTOR could not have avoided such claims through alternative products; or (ii) any changes made by the Consortium or any third party authorized by the Consortium to make changes unless CONTRACTOR authorized such changes or gave instructions on how to make the changes or the Consortium did so based on the advice of CONTRACTOR.

14.2 General. CONTRACTOR shall, at its expense, indemnify, defend, and hold harmless the Consortium, its employees, Boards of Supervisors, officers, directors, contractors 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; and (ii) a breach or alleged breach of its obligations in Section 11. The Consortium shall promptly give CONTRACTOR notice of such claim and shall cooperate in the defense of such claims at CONTRACTOR's expense.

14.3 Intellectual Property.

14.3.1 CONTRACTOR shall, at its expense, defend, indemnify, and hold harmless CalACES CONSORTIUM, the Counties, and their employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action against CalACES CONSORTIUM or a County which is based on a claim that CalACES CONSORTIUM's or a County's use of or rights to the QA Deliverables, or any one or part thereof, under this Agreement infringes a patent, copyright, or other proprietary right or misappropriates a trade secret, except where: (a) the violation of any third party's proprietary right in connection with this Agreement arises from CONTRACTOR's reliance on, or use of, tools, instructions, specifications or other materials provided by CalACES CONSORTIUM, or where CalACES CONSORTIUM or any third party modifies, adds to, or combines the QA Deliverables

with any other data or (b) CalACES CONSORTIUM fails to obtain intellectual property rights necessary to permit CONTRACTOR to perform QA Services.

14.3.2 In case the QA Deliverables or any one or part thereof, is in such action held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted, CONTRACTOR shall, at its own expense and election: (a) procure for CalACES CONSORTIUM the right to continue using the QA Deliverables; (b) modify the QA Deliverables to comply with the Specifications and not to violate any intellectual property rights; or (c) terminate the use of any infringing QA Deliverables upon receipt of Notice from CalACES CONSORTIUM and refund the Charges for all such QA Deliverables, as applicable.

15. DAMAGES LIMITATIONS.

15.1 CalACES CONSORTIUM. EXCEPT AS SPECIFICALLY PROVIDED UNDER SECTION 11 (CONFIDENTIAL INFORMATION), IN NO EVENT SHALL CONSORTIUM BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF CONSORTIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS SPECIFICALLY PROVIDED UNDER SECTION 11 (CONFIDENTIAL INFORMATION), CONSORTIUM'S MAXIMUM AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL CHARGES TO BE PAID AND TO BE PAID BY CONSORTIUM TO CONTRACTOR UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION CHANGE ORDER PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED.

15.2 CONTRACTOR.

15.2.1 EXCEPT FOR INDEMNIFICATION OBLIGATIONS AND DAMAGES ARISING UNDER SECTIONS 11, 14, AND 17.19, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15.2.2 EXCEPT FOR INDEMNIFICATION OBLIGATIONS AND DAMAGES ARISING UNDER SECTIONS 11, 14, AND 17.19, CONTRACTOR'S LIABILITY TO CONSORTIUM UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL CHARGES PAID AND TO BE PAID BY CONSORTIUM TO CONTRACTOR UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION CHANGE ORDER PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED.

15.3 Liability Among Counties. Except as specifically provided herein, CONTRACTOR acknowledges and agrees that, pursuant to a separate agreement between CalACES CONSORTIUM and each County, 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 the Project. The parties agree that this Agreement is conditioned upon execution of the above described agreement by each member County with the CalACES CONSORTIUM.

16. TERMINATION.

16.1 Termination for Material Breach. In addition to the termination rights described above, either CalACES CONSORTIUM may terminate this Agreement with prior Notice to CONTRACTOR if CONTRACTOR materially breaches this Agreement, provided CalACES CONSORTIUM has given CONTRACTOR Notice of such breach and CONTRACTOR failed to cure such breach within 30 Days after receipt of such Notice.

16.2 Termination for Rejection of QA Deliverables. If CONTRACTOR delivers a QA Deliverable containing Deficiencies or fails to timely deliver a QA Deliverable as described in Section 3.4.6, CalACES CONSORTIUM shall have the right to immediately terminate this Agreement, without penalty or liability to CalACES CONSORTIUM, with such a termination being deemed a termination due to the default of CONTRACTOR hereunder, and return the QA Deliverable to CONTRACTOR. If CalACES CONSORTIUM terminates this Agreement under this Section, CONTRACTOR shall, within 20 Days thereafter, refund to CalACES CONSORTIUM all payments made to CONTRACTOR for the returned QA Deliverable and related QA Services rendered therefor. CONTRACTOR shall be liable for all inbound and outbound preparation and shipping costs for the QA Deliverables returned pursuant to this provision.

16.3 Termination for CalACES CONSORTIUM's Nonpayment. If CalACES CONSORTIUM fails to pay CONTRACTOR undisputed, material Purchase Prices and Charges within 90 days of receipt of Notice from CONTRACTOR of the failure to make such payments when due, CONTRACTOR may, by giving Notice to CalACES CONSORTIUM, terminate this Agreement as of a date specified in the Notice of termination. CONTRACTOR shall not have the right to terminate the Agreement for CalACES CONSORTIUM's breach of the Agreement except as provided in this Section.

16.4 Termination Remedies. In the event of termination of this Agreement by CalACES CONSORTIUM under Sections 16.1, 16.2, or 16.3, in addition to its other remedies, CalACES CONSORTIUM shall have the right to procure the QA Deliverables and/or QA Services that are the subject of this Agreement on the open market and CONTRACTOR shall be liable for damages, up to the damages limitation in Section 15.2, for: (a) the cost difference between the original Agreement price for the QA Deliverables and/or QA Services and the replacement costs of such QA Deliverables and/or QA Services acquired from another vendor; and (b) if applicable, all administrative costs directly related to the replacement of this

Agreement, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs. CalACES CONSORTIUM shall have the right to deduct from any monies due to CONTRACTOR, or that thereafter become due, an amount for damages that CONTRACTOR will owe CalACES CONSORTIUM for CONTRACTOR's default.

16.5 Termination for Convenience.

16.5.1 In addition to its other rights to terminate, CalACES CONSORTIUM may terminate this Agreement in whole or in part for CalACES CONSORTIUM's convenience upon 60 Days prior Notice to CONTRACTOR when it is determined by CalACES CONSORTIUM to be in the best interests of CalACES CONSORTIUM. In addition, invocation of Section 16.6 (Termination for Withdrawal of Authority) or Section 16.7 (Termination for Non-Allocation of Funds) shall be deemed a termination for convenience but will not require such 60 Days Notice. During the above-described 60-day period, CONTRACTOR shall wind down and cease its QA Services as quickly and efficiently as possible, without performing unnecessary QA Services or activities and by minimizing negative effects on CalACES CONSORTIUM from such winding down and cessation of QA Services. If this Agreement is so terminated, CalACES CONSORTIUM shall be liable only for payment as provided below for QA Deliverables and QA Services rendered prior to the effective date of termination.

16.5.2 In case of such termination for convenience, CalACES CONSORTIUM shall pay to CONTRACTOR the agreed upon Price, if separately stated, for QA Deliverables for which Acceptance has been given by CalACES CONSORTIUM, amounts for QA Services performed on QA Deliverables which are in development but which have not received Acceptance, and amounts for QA Services which have been provided in accordance with the terms of the Agreement, for which no separate price is stated and which are not associated with or related to specific QA Deliverables. The amounts for such QA Services shall not exceed their reasonable value, but such amounts shall not exceed the Price for the QA Deliverables with which they are associated or, if not associated with a QA Deliverable, the price for the QA Services in the QA Cost Proposal or Change Order, and such amounts shall be verified in documentation submitted by CONTRACTOR to CalACES CONSORTIUM upon CalACES CONSORTIUM's request therefor. Failure to agree with such determination shall be a dispute. In no event shall CalACES CONSORTIUM pay to CONTRACTOR an amount greater than CONTRACTOR would have been entitled to if this Agreement had not been terminated.

16.6 Termination for Withdrawal of Authority. In the event that the authority of CalACES CONSORTIUM 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, CalACES CONSORTIUM may terminate this Agreement under Section 16.5 (Termination for Convenience).

16.7 Termination for Non-Allocation of Funds. If funds are not allocated to continue this Agreement in any future period, CalACES CONSORTIUM will not be obligated to pay any further charges for QA Deliverables and/or QA Services, and shall have the right to

terminate this Agreement. CalACES CONSORTIUM agrees to notify CONTRACTOR of such non-allocation at the earliest possible time. No penalty shall accrue to CalACES CONSORTIUM in the event this Section shall be exercised.

16.8 Termination for Conflict of Interest.

16.8.1 CalACES CONSORTIUM may terminate this Agreement by written notice to CONTRACTOR if it is found, after due notice and examination, that there is a violation by any of the parties hereto of any laws regarding ethics in public acquisitions and procurement and performance of contracts.

16.8.2 In the event this Agreement is terminated as provided above pursuant to a violation by CONTRACTOR, CalACES CONSORTIUM shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of a breach of this Agreement by CONTRACTOR under Section 16.1.

16.9 Termination Procedures.

16.9.1 Upon termination of this Agreement, CalACES CONSORTIUM, in addition to any other rights provided in this Agreement, may require CONTRACTOR to deliver to CalACES CONSORTIUM any property, including QA Deliverables, produced or acquired for the performance of such part of this Agreement up to the date of termination.

16.9.2 Upon termination of this Agreement (other than a termination for convenience), CalACES CONSORTIUM may withhold from any amounts due CONTRACTOR for QA Deliverables or QA Services such sum as the Executive Director determines to be necessary to protect CalACES CONSORTIUM from potential loss or liability.

16.9.3 After receipt of a Notice of termination, and except as otherwise directed by CalACES CONSORTIUM, CONTRACTOR shall:

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

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

16.9.3.3 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 CalACES CONSORTIUM to the extent required, which approval or ratification shall be final for the purpose of this Section;

16.9.3.4 Complete performance of such part of this Agreement as shall not have been terminated by CalACES CONSORTIUM;

16.9.3.5 Take such action as may be necessary, or as the 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 CalACES CONSORTIUM has an interest.

16.9.3.6 Transfer title to CalACES CONSORTIUM and deliver in the manner, at the times, and to the extent directed by the Executive Director, any property which is required to be furnished to CalACES CONSORTIUM and which has been accepted or requested by CalACES CONSORTIUM; and

16.9.3.7 Provide written certification to CalACES CONSORTIUM that CONTRACTOR has surrendered to CalACES CONSORTIUM all such property.

16.9.4 CONTRACTOR shall pay within 30 Days of Notice the damages due CalACES CONSORTIUM as the result of termination.

16.9.5 Upon the expiration or termination of this Agreement, CONTRACTOR shall assist CalACES CONSORTIUM in the orderly transfer of services rendered under this Agreement to a successor contractor or other mode of delivery and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each party without additional costs or fees, except as specified and approved in this Agreement.

16.9.6 CONTRACTOR shall provide to the CalACES CONSORTIUM all information requested by the CalACES CONSORTIUM that is necessary to facilitate a subsequent bidding process without additional costs or fees.

16.9.7 CONTRACTOR shall provide to CalACES CONSORTIUM, without additional cost to the CalACES CONSORTIUM and at least 30 Days prior to the expiration or termination of this Agreement, all files, data, and records necessary to effect a smooth transition.

17. General Conditions.

17.1 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 CalACES CONSORTIUM and their employees.

17.2 Antitrust Violations. CONTRACTOR and the CalACES CONSORTIUM recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by the CalACES CONSORTIUM. Therefore, CONTRACTOR hereby assigns to the CalACES CONSORTIUM 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 CalACES CONSORTIUM resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Charges under this Agreement.

17.3 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 CalACES CONSORTIUM Executive Director. The CalACES CONSORTIUM 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.

17.4 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.

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

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

17.7 Claims. CONTRACTOR must submit claims against the CalACES CONSORTIUM 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 CalACES CONSORTIUM Executive Director or his or her designee by CONTRACTOR in the form and with the certification prescribed by the CalACES CONSORTIUM 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.

17.8 Compliance with Civil Rights Laws.

17.8.1 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 Agreement because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or political affiliation or belief.

17.8.2 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 15.1 (Termination for Material Breach), and CONTRACTOR may be declared ineligible for further contracts with the CalACES CONSORTIUM. 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.

17.9 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.

17.10 Compliance with Health and Safety and Related Laws. Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476.

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

17.11.1 The terms and conditions in the body of this Agreement;

17.11.2 Exhibit A (Financial Matters);

17.11.3 The RFP; and

17.11.4 The Response.

17.12 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.

17.13 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 CalACES CONSORTIUM 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.

17.14 Covenant Against Contingent Fees.

17.14.1 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.

17.14.2 In the event of breach of this Section by CONTRACTOR, the CalACES CONSORTIUM shall have the right to either annul or terminate this Agreement without liability to the CalACES CONSORTIUM, or, in the CalACES CONSORTIUM' discretion, deduct from payments due to CONTRACTOR, or otherwise recover from CONTRACTOR, the full amount of such commission, percentage, brokerage, or contingent fee.

17.15 Debarment and Suspension

17.15.1 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 16.15.1(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.

17.15.2 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 CalACES CONSORTIUM 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).

17.16 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.

17.17 Drug Free Workplace Certification.

17.17.1 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.

17.17.2 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:

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

17.17.3 In addition, CONTRACTOR agrees as follows to comply with the Drug Free Workplace Act of 1988:

17.18 Entire Agreement; Acknowledgement of Understanding. The CalACES CONSORTIUM 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 CalACES CONSORTIUM 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.

17.19 Environmental Protection Standards 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)

17.19.1 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.

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.

d. 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].

e. The CalACES CONSORTIUM may extend this prohibition to other facilities owned or operated by CONTRACTOR.

17.19.2 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 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 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)).

17.20 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 CalACES CONSORTIUM, 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 CalACES CONSORTIUM may be found jointly or solely liable.

17.21 Force Majeure. Neither CONTRACTOR nor the CalACES CONSORTIUM 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 CalACES CONSORTIUM), except to the extent such third party entities experience an event beyond its reasonable control and without the fault or negligence of such entity.

17.22 Governing Laws. 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.

17.23 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.

17.24 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 CalACES CONSORTIUM. Likewise, the CalACES CONSORTIUM 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.

17.25 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 CalACES CONSORTIUM.

17.26 Litigation.

17.26.1 Notice of Litigation. CONTRACTOR shall promptly notify the CalACES CONSORTIUM 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 CalACES CONSORTIUM 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

17.26.2 Costs. In the event that the CalACES CONSORTIUM 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 CalACES CONSORTIUM, including attorneys' fees, to the extent arising from the acts or omissions of CONTRACTOR, its officers, employees, agents, or Subcontractors

17.26.3 Lobbying Restrictions.

17.27 Modifications and Amendments

17.27.1 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 CalACES CONSORTIUM 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 CalACES CONSORTIUM Executive Director or designee must obtain approval from the CalACES CONSORTIUM Board 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.

17.27.2 Only the CalACES CONSORTIUM 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 CalACES CONSORTIUM. 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 CalACES CONSORTIUM 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 CalACES CONSORTIUM Executive Director or designee must obtain approval from the CONSORTIUM'S Board of Directors or its designee before any such increase or decrease is effective.

17.27.3 CONTRACTOR shall notify the CalACES CONSORTIUM 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.

17.28 Nondiscrimination

17.28.1 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.

17.28.2 CONTRACTOR, its agents, officers, employees and subcontractors shall ensure 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 11000, 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 nondiscrimination policies of the member Counties in the CalACES CONSORTIUM. 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.

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

17.29 Non-Waiver. 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 non-pursuit 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.

17.30 Notices.

17.30.1 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 Consortium:

CalACES CONSORTIUM
John Boule
Executive Director
11290 Pyrites Way
Suites 150 and 175
Rancho Cordova, California 95670
Email: BouleJ@CalSAWS.org

The Contractor

ClearBest, Incorporation
Wendy Batterman
President
P.O. Box 188009
Sacramento, CA 95818
Email: wendyb@clearbest.com

17.30.2 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.

17.31 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.

17.32 Publicity. The award of this Agreement to CONTRACTOR is not in any way an endorsement of CONTRACTOR or CONTRACTOR's Services by the CalACES CONSORTIUM and shall not be so construed by CONTRACTOR in any advertising or publicity materials. CONTRACTOR agrees to submit to the CalACES CONSORTIUM Executive Director in advance all advertising, sales promotion, and other publicity matters relating to this Agreement wherein the CalACES CONSORTIUM name is mentioned or language used from which the connection of the CalACES CONSORTIUM name therewith may, in the CalACES CONSORTIUM's 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 CalACES CONSORTIUM. CONTRACTOR shall not in any way contract on behalf of or in the name of the CalACES CONSORTIUM. 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 CalACES CONSORTIUM.

17.33 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.

17.34 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.

17.35 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.

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

17.37 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).

17.38 Subcontractors

17.38.1 CONTRACTOR may, with prior written permission from the CalACES CONSORTIUM 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 CalACES CONSORTIUM 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 CalACES CONSORTIUM's sole discretion.

17.38.2 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 CalACES CONSORTIUM 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 CalACES CONSORTIUM upon request. The CalACES CONSORTIUM have the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Agreement.

17.38.3 For purposes of this Agreement, CONTRACTOR agrees to indemnify, defend, and hold the CalACES CONSORTIUM 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.

17.38.4 For any Subcontractor, CONTRACTOR shall include in the Subcontractor's subcontract substantially similar terms as are provided in Sections 4.5 (Reference and Background Checks), 4.6 (Records Retention and Access Requirements), 10 (Insurance), and 11 (Confidential Information).

17.38.5 Upon expiration or termination of this Agreement for any reason, the CalACES CONSORTIUM 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 CalACES CONSORTIUM.

17.39 Subpoena. In the event that a subpoena or other legal process in any way concerning the CalACES CONSORTIUM's or any County's Confidential Information is served upon CONTRACTOR, then CONTRACTOR agrees to notify the CalACES CONSORTIUM within 24 hours following receipt of such subpoena or other legal process and to cooperate with the CalACES CONSORTIUM or any County in any lawful effort by the CalACES CONSORTIUM 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 CalACES CONSORTIUM or any County, then the CalACES CONSORTIUM 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.

17.40 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 4.6 (Records Retention and Access Requirements), Section 4.7 (Accounting Requirements), Section 7.4 (Legal and Regulatory Compliance), and Sections 10-11 and 13-16 shall survive the termination of this Agreement.

17.41 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.

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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 Execution Date.

IN WITNESS WHEREOF, the parties have set their hands hereunto as of the Execution Date.

**CalACES CONSORTIUM JOINT
POWERS AUTHORITY**

CONTRACTOR

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Printed Name: _____
Title: _____
Date: _____

Notice Address:
CalACES CONSORTIUM Joint Powers Authority
Attention: Executive Director

Notice Address:

EXHIBIT A

FINANCIAL MATTERS

- A. CalACES CONSORTIUM shall pay CONTRACTOR for QA Deliverables and QA Services provided during the Initial Term of the Agreement a maximum of , Fifteen Million Six Hundred Forty One Thousand One Hundred Forty Dollars (\$15,641,140.00) as set forth in CONTRACTOR’S Revised Attachment D to its RFP for QA DDI Cost Proposal Schedules, which is incorporated herein by reference. . CalACES CONSORTIUM shall pay a maximum for QA Deliverables and QA Services provided under the optional first year extension period of Three Million Four Hundred Twenty Six Thousand Six Hundred Sixty Four Dollars (\$3,426,664).
- B. In all events, CalACES CONSORTIUM shall pay a maximum for QA Deliverables and QA Services described herein under this Agreement of Nineteen Million Sixty Seven Thousand Eight Hundred Four Dollars (\$19,067,804).

EXHIBIT B

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EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT

Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under 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’), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”).
- B. The Consortium wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”), including protected health information in electronic media (“ePHI”), under federal law, and personal information (“PI”) under state law.
- C. As set forth in this Agreement, Contractor, here and after, is the Business Associate of the Consortium acting on the Consortium’s behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of the Consortium and creates, receives, maintains, transmits, uses or discloses PHI and PI. The Consortium and Business Associate are each a party to this Agreement and are collectively referred to as the “parties.”
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that the Consortium must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act, and the Final Omnibus Rule as well as the Alcohol and Drug Abuse patient records confidentiality law 42 CFR Part 2, and any other applicable state or federal law or regulation. 42 CFR section 2.1(b)(2)(B) allows for the disclosure of such records to qualified personnel for the purpose of conducting management or financial audits, or program evaluation. 42 CFR Section 2.53(d) provides that patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by an appropriate court order.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

II. Definitions

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the Final Omnibus Rule.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the final Omnibus Rule.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and Final Omnibus Rule.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.

- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.
- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act, and the HIPAA regulations.

III. Terms of Agreement

A. Permitted Uses and Disclosures of PHI by Business Associate

Permitted Uses and Disclosures. Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of the Consortium, provided that such use or disclosure would not violate the HIPAA regulations, if done by the Consortium. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH

Act and any guidance issued pursuant to such Act, the HIPAA regulations, the Final Omnibus Rule and 42 CFR Part 2.

1. ***Specific Use and Disclosure Provisions.*** Except as otherwise indicated in this Addendum, Business Associate may:

- a. ***Use and disclose for management and administration.*** Use and disclose PHI for the proper management and administration of the Business Associate provided that such disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- b. ***Provision of Data Aggregation Services.*** Use PHI to provide data aggregation services to the Consortium. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of the Consortium with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Consortium.

B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of the Consortium and as permitted by 42 U.S.C. section 17935(d)(2).

C. Responsibilities of Business Associate

Business Associate agrees:

1. ***Nondisclosure.*** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
2. ***Safeguards.*** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of the Consortium, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide the Consortium with its current and updated policies.
3. ***Security.*** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;
 - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of the Consortium under this Agreement;
 - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and

- d. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with the Consortium.

D. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

E. *Business Associate's Agents and Subcontractors.*

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of the Consortium, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act the HIPAA regulations, and the Final Omnibus Rule, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business associates are directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate also is directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.
2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
 - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by the Consortium; or
 - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

F. *Availability of Information to DHCS and Individuals.* To provide access and information:

1. To provide access as the Consortium may require, and in the time and manner designated by the Consortium (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to the Consortium (or, as directed by the Consortium), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for the Consortium that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for the Consortium health plans; or those records used to make decisions about individuals on behalf of the Consortium. Business Associate shall use the forms and processes developed by the Consortium for this purpose and shall respond to requests for access to records transmitted by the Consortium within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.

2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable the Consortium to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
 3. If Business Associate receives data from the Consortium that was provided to the Consortium by the Social Security Administration, upon request by the Consortium, Business Associate shall provide the Consortium with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.
- G. Amendment of PHI.** To make any amendment(s) to PHI that the Consortium directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by the Consortium.
- H. Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from the Consortium, or created or received by Business Associate on behalf of the Consortium, available to the Consortium or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Consortium or by the Secretary, for purposes of determining the Consortium's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to the Consortium and shall set forth the efforts it made to obtain the information.
- I. Documentation of Disclosures.** To document and make available to the Consortium or (at the direction of the Consortium) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for the Consortium as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for the Consortium after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
- J. Breaches and Security Incidents.** During the term of this Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
1. **Notice to the Consortium.** (1) To notify the Consortium **immediately** upon the discovery of a suspected security incident that involves data provided to the Consortium by the Social Security Administration. This notification will be **by telephone call plus email or fax** upon the discovery of the breach. (2) To notify the Consortium **within 24 hours by email or fax** of the discovery of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate. Notice shall be provided to the Consortium Program Contract Manager, the Consortium Privacy Officer and the Consortium Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves data provided to the Consortium by the Social Security Administration, notice shall be provided by calling the Consortium's Service Desk. Notice shall be given to the Consortium Executive Director, including all information known at the time, via email.

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. If the initial report did not include all of the requested information marked with an asterisk, then within 72 hours of the discovery, Business Associate shall submit an updated form containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Consortium Program Contract Manager, the Consortium Privacy Officer, and the Consortium Information Security Officer:
 3. **Security Incident Report.** To provide a complete report of the investigation to the Consortium Executive Director and the Consortium Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. If all of the required information was not included in either the initial report, or the Investigation Report, then a separate Security Incident Report must be submitted. The report shall be submitted on the approved Security Incident Report form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Consortium requests information in addition to that listed on the designated form, Business Associate shall make reasonable efforts to provide the Consortium with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated form. The Consortium will review and approve or disapprove the determination of whether a breach occurred, is reportable to the appropriate entities, if individual notifications are required, and the corrective action plan.
 4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The Consortium Program Contract Manager, the Consortium Privacy Officer, and the Consortium Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
 5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Consortium in addition to Business Associate, Business Associate shall notify the Consortium, and the Consortium and Business Associate may take appropriate action to prevent duplicate reporting.

The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.

6. The Consortium **Contact Information**. To direct communications to the above referenced the Consortium staff, the Contractor shall initiate contact as indicated herein. The Consortium reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

The Consortium Executive Director	The Consortium Director of Operations	The Consortium Information Security Officer
[To be completed after contract award]	[To be completed after contract award]	[To be completed after contract award]

K. Termination of Agreement. In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by the Consortium of this Addendum, it shall take the following steps:

1. Provide an opportunity for the Consortium to cure the breach or end the violation and terminate the Agreement if the Consortium does not cure the breach or end the violation within the time specified by Business Associate; or
2. Immediately terminate the Agreement if the Consortium has breached a material term of the Addendum and cure is not possible.

L. Due Diligence. Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.

M. Sanctions and/or Penalties. Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

IV. Obligations of the Consortium

The Consortium agrees to:

- A.
- B. Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate’s permitted or required uses and disclosures.
- C. Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that the Consortium has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate’s use or disclosure of PHI.
- D. Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by the Consortium.

V. Audits, Inspection and Enforcement

A. From time to time, the Consortium may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the Consortium Privacy Officer in writing. The fact that the Consortium inspects, or fails to inspect, or has the right to inspect, Business Associate’s facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does the Consortium’s:

1. Failure to detect or

2. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of the Consortium's enforcement rights under this Agreement and this Addendum.
- B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify the Consortium and provide the Consortium with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

VI. Termination

- A. *Term.*** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the contract and shall terminate when all the PHI provided by the Consortium to Business Associate, or created or received by Business Associate on behalf of the Consortium, is destroyed or returned to the Consortium, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. *Termination for Cause.*** In accordance with 45 CFR section 164.504(e)(1)(ii), upon the Consortium's knowledge of a material breach or violation of this Addendum by Business Associate, the Consortium shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Consortium; or
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. *Judicial or Administrative Proceedings.*** Business Associate will notify the Consortium if it is named as a defendant in a criminal proceeding for a violation of HIPAA. The Consortium may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. The Consortium may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- D. *Effect of Termination.*** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from the Consortium (or created or received by Business Associate on behalf of the Consortium) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify the Consortium of the conditions that make the return or destruction infeasible, and the Consortium and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions

- A. *Disclaimer.*** The Consortium makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. *Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the

HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon the Consortium's request, Business Associate agrees to promptly enter into negotiations with the Consortium concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. The Consortium may terminate this Agreement upon thirty (30) days written notice in the event:

1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by the Consortium pursuant to this Section; or
2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that the Consortium in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

- C. *Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to the Consortium at no cost to the Consortium to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Consortium, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. *No Third-Party Beneficiaries.*** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the Consortium or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. *Interpretation.*** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- F. *Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.*** The respective rights and obligations of Business Associate under Section VI.D of this Addendum shall survive the termination or expiration of this Agreement.
- H. *No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Attachment A

Business Associate Data Security Requirements

I. Personnel Controls

- A. *Employee Training.*** All workforce members who assist in the performance of functions or activities on behalf of the Consortium, or access or disclose the Consortium PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- B. *Employee Discipline.*** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. *Confidentiality Statement.*** All persons that will be working with the Consortium PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to the Consortium PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for the Consortium inspection for a period of six (6) years following contract termination.
- D. *Background Check.*** Before a member of the workforce may access the Consortium PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

II. Technical Security Controls

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store the Consortium PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the Consortium Information Security Office.
- B. *Server Security.*** Servers containing unencrypted the Consortium PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. *Minimum Necessary.*** Only the minimum necessary amount of the Consortium PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. *Removable media devices.*** All electronic files that contain the Consortium PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. flash drives, CD/DVD, smartphones, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store the Consortium PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

- F. Patch Management.** All workstations, laptops and other systems that process and/or store the Consortium PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. User IDs and Password Controls.** All users must be issued a unique user name for accessing the Consortium PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- H. Data Destruction.** When no longer needed, all the Consortium PHI or PI must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PHI or PI cannot be retrieved.
- I. System Timeout.** The system providing access to the Consortium PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. Warning Banners.** All systems providing access to the Consortium PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for the Consortium PHI or PI, or which alters the Consortium PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If the Consortium PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. Access Controls.** The system providing access to the Consortium PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- M. Transmission encryption.** All data transmissions of the Consortium PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.

- N. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting the Consortium PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls

- A. **System Security Review.** All systems processing and/or storing the Consortium PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing the Consortium PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing the Consortium PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

IV. Business Continuity / Disaster Recovery Controls

- A. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic the Consortium PHI or PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- B. **Data Backup Plan.** Contractor must have established documented procedures to backup the Consortium PHI to maintain retrievable exact copies of the Consortium PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore the Consortium PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of the Consortium data.

V. Paper Document Controls

- A. **Supervision of Data.** The Consortium PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. The Consortium PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. **Escorting Visitors.** Visitors to areas where the Consortium PHI or PI is contained shall be escorted and the Consortium PHI or PI shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** The Consortium PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. **Removal of Data.** The Consortium PHI or PI must not be removed from the premises of the Contractor except with express written permission of the Consortium.
- E. **Faxing.** Faxes containing the Consortium PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.

F. *Mailing.* Mailings of the Consortium PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of the Consortium PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of the Consortium to use another method is obtained.