

**CALIFORNIA STATEWIDE AUTOMATED WELFARE SYSTEM  
SERVICE ORGANIZATIONAL CONTROL REPORTS SERVICES AGREEMENT**

THIS Contract is entered into in the State of California by and between California Statewide Automated Welfare System, hereinafter called CalSAWS, and

Name	Davis Farr LLP	hereinafter called	VENDOR
Address	2301 Dupont Drive, Suite 200		
	Irvine, CA 92612		
Telephone	(949) 474-2020	Federal ID No. or Social Security No.	47-3535842

**IT IS HEREBY AGREED AS FOLLOWS:**

WHEREAS, the County of San Bernardino Auditor-Controller/Treasurer/Tax Collector’s Office (hereafter called “County”), serves as the Fiscal Agent for CalSAWS; and

WHEREAS, CalSAWS, through the County, conducted a competitive process for a three-year contract for the annual Service Organization Control 1 Type 2 Report (“SOC 1 Type 2 Report”) of the CalSAWS Joint Powers Authority for the fiscal years ending June 30, 2020, June 30, 2021, and June 30, 2022; and

WHEREAS, the CalSAWS/County finds Davis Farr LLP (hereafter called “VENDOR”) qualified to provide the SOC 1 Type 2 Report; and

WHEREAS, CalSAWS desires that such services be provided by VENDOR and VENDOR agrees to perform these services as set forth below, CalSAWS/County and VENDOR (collectively, “Parties”) agree as follows:

**A. LOCATION OF WORK**

The location(s) the work is to be performed, completed and managed is at CalSAWS sites.

CalSAWS North	CalSAWS South
11290 Pyrites Way Rancho Cordova, CA 95670	12440 Imperial Highway Norwalk, CA 90650
620 Roseville Parkway Roseville, CA 95747	

The VENDOR shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from CalSAWS. In addition, VENDOR is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

**B. SERVICES**

VENDOR shall provide SOC 1 Type 2 services for the LRS, C-IV and CalWIN systems for fiscal years ending June 30, 2020, June 30, 2021, and June 30, 2022 in accordance with Statement on Standards for Attestation Engagements No. 18, Reporting on Controls at a Service Organization (SOC 1 Type 2 Report).

**C. DEADLINES**

The audit for fiscal year ending June 30, 2020 must be completed and the report received by CalSAWS and County by December 15, 2020. The audit for fiscal years ending June 30, 2021 and June 30, 2022 must be completed and each report received by CalSAWS and County on or before September 15th immediately following the fiscal year end.

**D. TERM OF CONTRACT**

This contract is effective as of May 29, 2020 and expires September 30, 2022 but may be terminated earlier in accordance with provisions of this contract.

The CalSAWS/County and the VENDOR each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the VENDOR for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice VENDOR shall promptly discontinue services unless the notice directs otherwise. VENDOR shall deliver promptly to CalSAWS/County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**E. FISCAL PROVISIONS**

1. The compensation to the VENDOR for services outlined in Section B (Services), will not exceed \$74,350.00 for the SOC 1 Type 2 report for the fiscal year ending June 30, 2020, will not exceed \$74,350.00 for the fiscal year ending June 30, 2021, will not exceed \$75,830.00 for the fiscal year ending June 30, 2022. The total compensation for the Term of Contract shall not exceed \$224,530.00.

2. The maximum amount of payment under this contract shall not exceed \$224,530.00. The consideration to be paid to VENDOR, as provided herein, shall be in full payment for all VENDOR's services and expenses incurred in the performance hereof, including travel and per diem.
3. VENDOR shall provide CalSAWS/County itemized monthly invoices, in arrears, for services performed under this contract within twenty (20) calendar days of the end of the previous month to the CalSAWS Executive Director for all Charges and other amounts to be paid by CalSAWS/County hereunder.
  - a. All invoices submitted must meet with the approval of the CalSAWS Executive Director or her or his designee prior to payment. Invoices shall include all information reasonably requested by CalSAWS/County, including, without limitation, this contract name and reference number, Federal Tax Identification Number, itemization of each Service provided for which payment is requested, and total amount due. All hourly billable Services will include the date of service, type of Services provided, number of hours required and Charges.
  - b. CalSAWS/County shall have the right to dispute any invoices submitted for payment by VENDOR if CalSAWS/County believes the Charges are inaccurate or incorrect in any way. CalSAWS/County shall use reasonable efforts to provide a Notice to VENDOR within ten (10) business days after receipt of an invoice, specifying the reasons why CalSAWS/County believes the Charges are inaccurate or incorrect, by CalSAWS/County shall not be in breach of the contract if it fails to provide VENDOR with such Notice. In the event of any dispute with regard to a portion of an invoice, the undisputed portion shall be paid as provided herein.
  - c. CalSAWS/County shall pay VENDOR undisputed amounts within sixty (60) calendar days of receipt of invoice or the resolution of any billing dispute, subject to Section E.2 and the exercise of CalSAWS/County's remedies.
4. VENDOR shall accept all payments from CalSAWS/County via electronic funds transfer ("EFT") directly deposited into the VENDOR's designated checking or other bank account. VENDOR shall promptly comply with directions and accurately complete forms provided by CalSAWS/County required to process EFT payments.
5. CalSAWS/County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on VENDOR or on any taxes levied on employee wages. VENDOR shall assume full responsibility for all Federal, State and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to VENDOR and VENDOR'S employees and agents engaged in the performance of this contract. CalSAWS/County

shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to CalSAWS/County pursuant to the contract.

6. Costs for services under the terms of this contract shall be incurred during the contract period except as approved by CalSAWS/County. VENDOR shall not use current year funds to pay prior or future year obligations.
7. Funds made available under this contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this contract. Contractor shall not claim reimbursement or payment from CalSAWS/County for, or apply sums received from CalSAWS/County with respect to that portion of its obligations that have been paid by another source of revenue. VENDOR agrees that it will not use funds received pursuant to this contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of CalSAWS/County.

## **F. GENERAL**

### **1. Agreement Amendments**

VENDOR agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the person(s) authorized to do so on behalf of VENDOR and CalSAWS.

### **2. Agreement Assignability**

Without the prior written consent of CalSAWS, the Agreement is not assignable by VENDOR either in whole or in part.

### **3. Agreement Exclusivity**

This is not an exclusive Agreement. CalSAWS reserves the right to enter into an agreement with other vendors for the same or similar services. CalSAWS does not guarantee or represent that the VENDOR will be permitted to perform any minimum amount of work or receive compensation other than on a per order basis, under the terms of this Agreement.

### **4. Attorney Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from

a third-party legal action against a party hereto and payable under Part B-1 Indemnification.

**5. Background Checks for VENDOR Personnel**

VENDOR shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) have not been convicted of a felony and re not proven substance abusers; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by Customer and not in violation of applicable Law, VENDOR shall conduct a background check on all its personnel providing Services in a manner consistent with federal and California state law to verify compliance with the preceding requirements and shall review the results of the background check of each individual to verify that he individual meets VENDOR's standards for employment. Such background check shall be in the form generally used by VENDOR in its initial hiring of employees or contracting for VENDORS or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. VENDOR personnel who do not meet criteria acceptable to CalSAWS/County, in CalSAWS/County's sole discretion, shall not be assigned to work on CalSAWS/County property, and CalSAWS/County shall have the right, at its sole option, to refuse access to any VENDOR personnel to any CalSAWS/County facility.

**6. Change of Address**

VENDOR shall notify CalSAWS and the County in writing of any change in mailing address within ten (10) business days of the change.

**7. Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**8. Compliance with CalSAWS/County Policy**

In performing the Services and while at any CalSAWS/County facilities, VENDOR personnel (including its subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of CalSAWS/County regarding safety and health and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the CalSAWS/County; and (d) abide by all Laws applicable to the CalSAWS/County facilities and/or the provision of the Services, and all additions and modifications to each of subsections (b),(c), and (d) (collectively, "CalSAWS/County

Policies”). CalSAWS/County Policies, and additions or modifications thereto, may be communicated orally or in writing to VENDOR or VENDOR personnel or may be made available to VENDOR or VENDOR personnel by conspicuous posting at a CalSAWS/County facility, electronic posting, or other means generally used by CalSAWS/County to disseminate such information to its employees or VENDORS. VENDOR shall be responsible for the promulgation and distribution of CalSAWS/County Policies to VENDOR personnel to the extent necessary and appropriate.

CalSAWS/County shall have the right to require VENDOR's employees, agents, representatives and its subcontractors to exhibit identification credentials issued by CalSAWS/County to exercise any right of access under this Contract.

#### **9. Confidentiality**

VENDOR shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. The VENDOR shall not use or disclose any identifying information for any other purpose other than carrying out the VENDOR's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

#### **10. VENDOR Primary Contact**

The VENDOR will designate an individual to serve as the primary point of contact for the Agreement. VENDOR or designee must respond to CalSAWS inquires within two (2) business days. VENDOR shall not change the primary contact without written notification and acceptance of CalSAWS. Notification shall be provided to the CalSAWS Executive Director at 11290 Pyrites Way, Suite 150, Rancho Cordova, CA, 95670. VENDOR will also designate a back-up point of contact in the event the primary contact is not available.

#### **11. CalSAWS and/or County Representative**

The CalSAWS Executive Director or his/her designee shall represent CalSAWS in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by VENDOR. If this contract was initially approved by the CalSAWS Board of Directors, then the Board of Directors must approve all amendments to this Contract.

## **12. Damage to CalSAWS Property, Facilities, Buildings or Grounds**

VENDOR shall repair, or cause to be repaired, at its own cost, all damage to CalSAWS/County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of VENDOR or employees or agents of the VENDOR. Such repairs shall be made immediately after VENDOR becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the VENDOR fails to make timely repairs, CalSAWS may make any necessary repairs. VENDOR, as determined by CalSAWS, for such repairs shall repay all costs incurred by CalSAWS, by cash payment upon demand or CalSAWS may deduct such costs from any amounts due to the VENDOR from CalSAWS.

## **13. Drug and Alcohol-Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this agreement, VENDOR agrees that the VENDOR and the VENDOR's employees, while performing service for CalSAWS/County, on CalSAWS/County property, or while using CalSAWS/County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- c. Shall not sell, offer, or provide alcohol or a drug to another person.

This shall not be applicable to a VENDOR or VENDOR's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

VENDOR shall inform all employees that are performing service for CalSAWS on CalSAWS/County property, or using CalSAWS/County equipment, of County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for CalSAWS/County.

CalSAWS/County may terminate for default or breach of this agreement and any other agreement the VENDOR has with CalSAWS/County, if the VENDOR or VENDOR's employees are determined by CalSAWS/County not to be in compliance with above.

#### **14. Duration of Terms**

This Agreement, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Agreement.

#### **15. Employment Discrimination**

During the term of the Agreement, VENDOR shall not discriminate against any employee or applicant for employment 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, sexual orientation, age, or military and veteran status. VENDOR shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other application Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

#### **16. Environmental Preference**

VENDOR shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this contract.

#### **17. Ethical Behavior**

VENDOR shall make all reasonable efforts to ensure that no CalSAWS/County officer or employee, whose position in CalSAWS/County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this contract or shall have any relationship to the VENDOR or officer or employee of the VENDOR.

VENDOR shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of CalSAWS/County in an attempt to secure favorable treatment regarding this Agreement.

CalSAWS/County, by written notice, may immediately terminate any Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of CalSAWS/County with respect to the

proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once an Agreement has been awarded.

VENDOR shall immediately report any attempt by a CalSAWS/County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from VENDOR. The report shall be made to the supervisor or manager charged with supervision of the employee or to the CalSAWS/County Administrative Office. In the event of a termination under this provision, CalSAWS/County is entitled to pursue any available legal remedies.

## **18. Informal Dispute Resolution**

In the event CalSAWS/County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. Nothing contained in this section shall be deemed to prohibit any party to this contract from initiating legal action to enforce its rights in law or equity arising from, or related to, this contract.

## **19. Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

## **20. Licenses, Permits, and/or Certifications**

VENDOR shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. VENDOR shall maintain these licenses, permits, and/or certifications in effect for the duration of this Agreement. VENDOR will notify CalSAWS/County immediately of loss or suspension of any such licenses, permits, and/or certifications. Failure to maintain required licenses, permits, and/or certifications may result in immediate termination of this Agreement.

## **21. Mutual Covenants**

The parties to this Agreement mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all

consents in a reasonable manner consistent with the standards of “good faith” and “fair dealing”.

## **22. Nondisclosure**

VENDOR shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by CalSAWS/County to VENDOR or an agent of VENDOR or otherwise made available to VENDOR or VENDOR’s agent in connection with this Agreement; or, (2) acquired, obtained, or learned by VENDOR or an agent of VENDOR in the performance of this Agreement. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

## **23. Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

## **24. Release of Information**

No news releases, advertisements, public announcements or photographs arising out of this Agreement or VENDOR’s relationship with CalSAWS may be made or used without prior written approval of CalSAWS/County.

## **25. Representation of CalSAWS/County**

In the performance of the Agreement, VENDOR, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the CalSAWS/County.

## **26. Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party’s right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

## 27. Subcontracting

VENDOR agrees not to enter into any subcontracting agreements for work contemplated under the Agreement without first obtaining written approval from CalSAWS. Any subcontracting shall be subject to the same terms and conditions as VENDOR. VENDOR shall be fully responsible for the performance and payments of any subcontractor's contract.

VENDOR shall obtain CalSAWS' written consent, which CalSAWS may withhold in its sole discretion, before entering into agreements with or otherwise engaging any subcontractors who may supply any part of the deliverables and/or services to CalSAWS/County. At CalSAWS/County's request, VENDOR shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the CalSAWS, resumes of proposed subcontractor personnel. VENDOR shall remain directly responsible to CalSAWS for its subcontractors and shall indemnify CalSAWS for the actions or omissions of its subcontractors under the terms and conditions specified in Section G (Indemnification and Insurance Requirements). All approved subcontractors shall be subject to the provision of this contract applicable to VENDOR Personnel, including removal pursuant to Section F.5.

VENDOR shall be fully responsible for the performance and payments of any subcontracting.

For any subcontractor, VENDOR shall:

- a. Be responsible for subcontractor compliance with the contract and the subcontract terms and conditions; and
- b. Ensure that the subcontractor follows CalSAWS reporting formats and procedures as specified by CalSAWS.
- c. Include in the subcontractor's subcontract substantially similar terms as are provided in Section B (Services).

Upon expiration or termination of this Agreement for any reason, CalSAWS will have the right to enter into direct agreements with any of the subcontractors. VENDOR agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractor's from entering into direct agreements with CalSAWS.

## 28. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this

Agreement is served upon VENDOR or CalSAWS, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. VENDOR and CalSAWS further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by VENDOR for CalSAWS.

#### **29. Time of the Essence**

Time is of the essence in performance of this Agreement and of each of its provisions.

#### **30. Uniform Commercial Code**

Except to the extent the sections of this Agreement are clearly inconsistent, the Uniform Commercial Code shall govern this Agreement. To the extent this Agreement entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the Uniform Commercial Code, except when to do so would result in an absurdity. In the event of any clear inconsistency or contradiction between this Agreement and the Uniform Commercial Code, the terms and conditions of this Agreement shall take precedence and shall prevail unless otherwise provided by law.

#### **31. Venue**

The venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

#### **32. Work Product**

CalSAWS shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this contract shall acknowledge CalSAWS as the funding agency and VENDOR as the creator of the publication. No such materials or properties produced in whole or in

part under this contract shall be subject to private use, copyright or patent right by VENDOR in the United States or in any other country without the express written consent of CalSAWS. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this contract must be filed with CalSAWS prior to publication.

All artwork, proofs and/or negatives in either print or digital format for this product are the property of the CalSAWS. These items must be returned to the CalSAWS within ten (10) days, upon written notification to the VENDOR. In the event of a failure to return the documents, CalSAWS is entitled to pursue any available legal remedies. In addition, the VENDOR will be barred from all future solicitations, for a period of at least six (6) months.

## **G. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **1. Indemnification**

VENDOR agrees to indemnify, defend (with counsel reasonably approved by CalSAWS/County) and hold harmless CalSAWS/County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by CalSAWS/County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The VENDOR indemnification obligation applies to CalSAWS'/County's "active" as well as "passive" negligence but does not apply to CalSAWS'/County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

### **2. Additional Insured**

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming CalSAWS/County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for CalSAWS/County to vicarious liability but shall allow coverage for CalSAWS/County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

### 3. **Waiver of Subrogation Rights**

The VENDOR shall require the carriers of the above-required coverages to waive all rights of subrogation against CalSAWS/County, its officers, employees, agents, volunteers, VENDORS, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the VENDOR and VENDOR's employees or agents from waiving the right of subrogation prior to a loss or claim. The VENDOR hereby waives all rights of subrogation against CalSAWS/County.

### 4. **Policies Primary and Non-Contributory**

All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by CalSAWS/County.

### 5. **Severability of Interests**

The VENDOR agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the VENDOR and San Bernardino County and/or CalSAWS or between San Bernardino County and/or CalSAWS and any other insured or additional insured under the policy.

### 6. **Proof of Coverage**

The VENDOR shall furnish Certificates of Insurance to CalSAWS/County Department administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and VENDOR shall maintain such insurance from the time VENDOR commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the VENDOR shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

### 7. **Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

## **8. Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by CalSAWS/County.

## **9. Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, CalSAWS has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by CalSAWS will be promptly reimbursed by the VENDOR or CalSAWS payments to the VENDOR(s)/Applicant(s) will be reduced to pay for CalSAWS purchased insurance.

## **10. Insurance Review**

Insurance requirements are subject to periodic review by CalSAWS. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interest of CalSAWS. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against CalSAWS, inflation, or any other item reasonably related to CaSAWS' risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. VENDOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of CalSAWS to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of CalSAWS.

## **11. Insurance Specifications**

The VENDOR agrees to provide insurance set forth in accordance with the requirements herein. If the VENDOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the VENDOR agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the VENDOR shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

## **12. Workers' Compensation/Employers Liability**

A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the VENDOR and all risks to such persons under this Contract. If VENDOR has no employees, it may certify or warrant to CalSAWS/County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by San Bernardino County's Director of Risk Management. With respect to VENDORS that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

## **13. Commercial/General Liability Insurance**

The VENDOR shall carry General Liability Insurance covering all operations performed by or on behalf of the VENDOR providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations)
- d. Explosion, collapse and underground hazards.
- e. Personal Injury
- f. Contractual liability
- g. \$2,000,000 general aggregate limit

## **14. Automobile Liability Insurance**

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the VENDOR is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the VENDOR owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

#### 15. **Umbrella Liability Insurance**

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

#### 16. **Professional Services Requirements**

**Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

**Errors and Omissions Liability Insurance** with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Agreement completion.

#### 17. **Cyber Liability Insurance**

VENDOR shall maintain Cyber Liability Coverage. The policy shall include the following:

- a. Security and privacy liability
- b. Network asset
- c. Privacy breach response costs
- d. Privacy regulatory defense and penalties
- e. Cyber extortion and terrorism

## **H. RIGHT TO MONITOR AND AUDIT**

### **1. Right to Monitor**

CalSAWS, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of VENDOR in the delivery of services provided under this Contract. VENDOR shall give full cooperation, in any auditing or monitoring conducted. VENDOR shall cooperate with CalSAWS in the implementation, monitoring and evaluation of this agreement and comply with any and all reporting requirements established by CalSAWS.

In the event CalSAWS determines that VENDOR's performance of its duties or other terms of this contract are deficient in any manner, CalSAWS/County will notify VENDOR of such deficiency in writing or orally, provided written confirmation is given five (5) days thereafter. VENDOR shall remedy any deficiency within forty-eight (48) hours of such notification, or CalSAWS/County at its option, may terminate this contract immediately upon written notice, or remedy deficiency and off-set the cost thereof from any amounts due the VENDOR under this contract or otherwise.

### **2. Availability of Records**

VENDOR shall maintain all records and books pertaining to the delivery of services under this Agreement and demonstrate accountability for agreement performance. All records shall be complete and current and comply with all Agreement requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of Agreement.

All records relating to the VENDOR's personnel, VENDORS, subcontractors, Service/Scope of Work and expenses pertaining to this Agreement shall be kept in generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

### **3. Correction of Performance Deficiencies**

- a. In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this Agreement, the VENDOR shall notify CalSAWS within one (1) working day, in writing and by telephone.

- b. Failure by VENDOR to comply with any of the provisions, covenants, requirements or conditions of this Agreement shall be a material breach of this Agreement.
- c. VENDOR Primary Contact and CalSAWS Representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim within ten days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and CalSAWS Representative are not successful in resolving the dispute, negotiations shall be conducted by the County Executive Office, or designee and the highest-level executive for VENDOR. If these representatives are unable to resolve the dispute within ten days after the representative have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

- 4. In the event of a non-cured breach, CalSAWS may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement.
  - a. Afford VENDOR thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of CalSAWS; and/or
  - b. Withhold funds pending duration of the breach; and/or
  - c. Offset against any monies billed by VENDOR but yet unpaid by CalSAWS; and/or
  - d. Terminate this Agreement immediately and be relieved of the payment of any consideration to VENDOR. In the event of such termination, CalSAWS may proceed with the work in any manner deemed proper by CalSAWS. The cost to CalSAWS shall be deducted from any sum due to the VENDOR under this Agreement and the balance, if any, shall be paid by the VENDOR upon demand.
- 5. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision 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.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunto subscribed by their respective proper officers thereunto duly authorized.

**Davis Farr LLP**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CalSAWS Consortium**

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

By: \_\_\_\_\_  
Michael Sylvester, Consortium Chair

By: \_\_\_\_\_  
Kronick Moskowitz Tiedemann & Girard,  
Consortium Legal Counsel

By: \_\_\_\_\_  
John Boule, Consortium Executive Director