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**CaISAWS INFRASTRUCTURE**

**AGREEMENT**

**BETWEEN**

**CaISAWS CONSORTIUM**

**AND**

**CONTRACTOR**

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This Agreement (the “Agreement”) is entered into as of the 1st day of October, 2024 (the “Execution Date”), by and between the California Statewide Automated Welfare System (CalSAWS) Consortium (“ Consortium”), and any successor entity, and Gainwell Technologies LLC (“Contractor”) (collectively, “Parties”).

### **RECITALS**

WHEREAS, the Statewide Automated Welfare System (SAWS) of California is comprised of the case management systems that support the delivery of services to applicants and beneficiaries of public assistance programs, including Medical, California Work Opportunity and Responsibility to Kids/Temporary Assistance for Needy Families (CalWORKS/TANF), CalFresh/Supplemental Nutrition Assistance Program (SNAP), Cash Assistance Program for Immigrants (CAPI), Foster Care, Refugee Cash Assistance (RCA), Kinship Guardian Assistance Program (KinGAP), California Food Assistance Program (CFAP), General Assistance/General Relief (GA/GR), Adoption Assistance, Welfare-to-Work (WTW) employment programs, and other health and human services programs; and

WHEREAS, the Consortium was established for the purpose of overseeing the consolidation of the three (3) predecessor 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 fifty-eight (58) California counties; and

WHEREAS, the development of the CalSAWS System was in response to a requirement established in 2018 by the Centers for Medicare and Medicaid Services (CMS) and the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) to implement a single statewide system by the end of 2023; and

WHEREAS, the CalSAWS System is designed to be a user-friendly, customer-based, on-line, and fully integrated case management system that manages data in the aforementioned public assistance programs for all California Counties that is a cloud-based system utilizing Amazon Web Services (AWS); and

WHEREAS, the CalSAWS Migration Project already has involved a number of procurements undertaken by the Consortium resulting in multiple contracts with different vendors for, among other things the design, development, and implementation (DD&I) of the CalSAWS System, development of a statewide BenefitsCal Application; development of an online CalWORKS (OCAT) Appraisal Tool; establishment of Central Print Services; and overall Project Quality Assurance; and

WHEREAS, the full CalSAWS Migration Project, and the complete migration of all 58 California Counties to the CalSAWS System, occurred on October 31, 2023; and

WHEREAS, the Consortium desires to enter into an Agreement with a qualified vendor for, among other purposes as described in the Contract Documents, providing ongoing Infrastructure Services to support a suite of CalSAWS applications, including troubleshooting, modifying, maintaining, and enhancing the applications so as to optimize those applications to take advantage of cloud innovations, native features and services, as well as Tiers 1 and 2 Service Desk; and

WHEREAS, on July 6, 2022, the Consortium released a Request for Proposal (RFP) to solicit proposals from qualified vendors for ongoing Infrastructure Services, which said RFP is incorporated herein by reference and shall become a part of the Contract Documents; and

WHEREAS, on November 29, 2023, Contractor submitted its response to the RFP, which said response is incorporated herein by reference and shall become a part of the Contract Documents.

NOW 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 agree as follows:

**1. CONTRACT INTERPRETATION.**

In the event there is a conflict between the documents comprising the Agreement, including all exhibits to it, the following order of precedence shall apply:

- 1.1 The terms and conditions in the body of this Agreement, which shall include all exhibits, which are hereby incorporated by reference.
- 1.2 The RFP for ongoing Infrastructure Services; and
- 1.3 Contractor's Proposal submitted in response to the RFP

**2. DEFINITIONS.**

**2.1 Acceptance.**

A Notice from the Consortium to Contractor that an Infrastructure Deliverable or Service has met with applicable Specifications.

**2.2 Agreement.**

This Agreement, the Exhibits attached to it, which are incorporated by this reference, and any other document expressly incorporated by reference pursuant to the terms of this Agreement, including all Documents as defined below. Exhibits incorporated in this Agreement include:

Exhibit A – Statement of Work

Exhibit B – Statement of Requirements

Exhibit C – Pricing

Exhibit D – Contractor Employee Acknowledgement, Confidentiality, and Intellectual Property Assignment Agreement

Exhibit D.1 – Subcontractor Employee Acknowledgement, Confidentiality, and Intellectual Property Assignment Agreement

Exhibit E - HIPAA Business Associate Agreement

### **2.3 Amazon Web Services (AWS).**

AWS provides Maintenance and Operations (M&O) services as defined in the CalSAWS AWS Agreement. AWS provides and maintains the AWS cloud-hosted architecture and performs hosting services for the CalSAWS application.

### **2.4 Application and Architecture Evolution.**

The process by which Contractor will incorporate advances in computing technologies in support of the Consortium's goal to maintain the relevancy of the CalSAWS System and manage increasing System complexity.

### **2.5 Architectural Migration.**

Migration of CalSAWS from the current monolithic architecture to a modular, easy to maintain, technically advanced application. This will involve the evolution of CalSAWS to take advantage of native cloud microservices, new features to enable faster development and deployment cycles, which result in lower costs, including use of server-less architecture.

### **2.6 CalSAWS Consortium (or Consortium).**

The CalSAWS Consortium is a Joint Powers Authority (JPA) that comprises all fifty-eight (58) Counties in the State of California.

### **2.7 CalSAWS Hardware (or Hardware).**

All equipment and other goods related to the CalSAWS System, including, Project Office Hardware, and Enterprise Connecting Hardware. Reference to the CalSAWS Hardware may include one or more components thereof or all CalSAWS Hardware.

### **2.8 CalSAWS Migration.**

The process by which the Counties are transitioned from the current SAWS (LRS, C-IV, and CalWIN) to the CalSAWS System.

### **2.9 CalSAWS Software (or Software).**

(i) All CalSAWS application software, excluding BenefitsCal related Software, and (ii) all Commercially Available Software provided, used, or pertaining to such application software. Reference to CalSAWS Software may include one or more components thereof or all CalSAWS Software.

### **2.10 CalSAWS System (or System).**

The CalSAWS System is the user-friendly, on-line, and fully integrated case management system that is designed to manage data in identified public assistance programs for all fifty-eight (58) Counties in the State of California.

**2.11 Capacity Planning.**

Consortium's process for addressing whether the Consortium Infrastructure is appropriately sized and configured to meet future Consortium and County needs.

**2.12 Change Control Board (CCB).**

The Consortium's Change Control Board is responsible for reviewing and making recommendations on requested changes to baseline Work consistent with the Consortium's Change Control Process.

**2.13 Change Control Process.**

The Consortium's process for reviewing, evaluating, and making decisions on requests for changes to baseline Work.

**2.14 Change Control Request (CCR).**

A documented request raised by either the Consortium or Contractor in accordance with Section 8, in relation to a proposed change to this Agreement, or any Services to be provided thereunder.

**2.15 Change Management.**

The method and manner by which the Contractor will respond to, implement, and manage change within the CalSAWS System processes and procedures.

**2.16 Change Notice.**

The term "Change Notice" shall have the meaning specified in Section 8 of this Agreement.

**2.17 Change Order.**

A written form used by Contractor and the Consortium to modify, delete, or add to the Deliverables or Services, in whole or in part, made in accordance with Section 8 of this Agreement.

**2.18 Charge(s).**

The amount(s) to be paid for the Infrastructure Deliverables and Services authorized under this Agreement, in whole or in part.

**2.19 Confidential Information.**

Subject to applicable federal, State and County laws and regulations, trade secrets and confidential information of the Consortium and Contractor, including, without limitation: all proprietary and confidential information of the Consortium, such as trade secrets, designs, drawings, specifications, computer programs, support materials and other records concerning the Consortium and its finances, citizens, contracts, Services or personnel; the Documentation and the other Specifications; the Infrastructure Deliverables and Services; any information or documentation concerning the

Consortium'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 the Consortium desires to protect against unrestricted disclosure or competitive use; Contractor proprietary Software development methodology (if any); proprietary and confidential information of its Subcontractors; and information designated as confidential by either the Consortium or Contractor.

**2.20 Configuration Management.**

Consortium's process for maintaining the CalSAWS System in an optimal state and ensuring it performs in a manner consistent with all Specifications.

**2.21 Consortium Team.**

The Consortium's personnel responsible for overseeing various applications and Deliverables related to the Project.

**2.22 Contract Sum.**

Any Charge specifically attributable to one or more Infrastructure Deliverables or Services as set forth in Contractor's Proposal and as agreed to by the Parties.

**2.23 Contractor.**

The entity to whom this Infrastructure Agreement is awarded pursuant to the RFP and who, along with the Consortium, constitute the Parties to this Agreement.

**2.24 Core Automation Principles.**

Core Automation Principles are a set of guidelines used to assist the Counties and Consortium when making decisions related to functionality implementation for the CalSAWS System.

**2.25 Cosmetic Deficiency.**

A cosmetic and inconsequential Deficiency as determined solely by the Consortium's reasonable judgment, e.g., a spelling or grammatical error.

**2.26 Counties.**

All of the California Counties that are a part of the Consortium.

**2.27 County.**

Any one County that is a part of the Consortium.

**2.28 Daily Prime Business Hours Availability Times.**

6:00 am to 9:00pm (Pacific Time Zone), Monday through Saturday, except for Consortium holidays and scheduled System downtime.

**2.29 Data.**

The Consortium's records, employee information, files, forms, Personal Identifiable Information (PII) data and other information that may be utilized in providing Services under this Agreement. "Data" also shall refer to all federal, State, County, and/or other data and information, which is (a) stored online, stored off-line, in transit, or computed, and used or accessed by Contractor for providing Services under this Agreement and all backups of such data and information, and/or (b) placed into, used within, or resulting from the use of, the CalSAWS Systems, and all backups of such data and information.

**2.30 Day.**

Unless otherwise specified, Day shall mean calendar day.

**2.31 Deficiency.**

A failure of a Deliverable or Service, or an omission, defect or deficiency in any such Deliverable or Service, which causes it not to conform to the Specifications or incorrect spelling, incorrect grammar, poor quality esthetics, poor quality of documentation, or similar failures in a Deliverable.

**2.32 Deliverable.**

Contractor's work product that is based on applicable Specifications and is 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. The definition of Deliverable also includes that term as further defined in Section 5 and the approved Work Plan.

**2.33 Deliverable Expectation Document (DED).**

A Document that defines the requirements, acceptance criteria, schedule, responsible parties, reviewers and other items associated with each Deliverable that must be approved in advance of work commencing on a Deliverable.

**2.34 Delivery Integration Office.**

The Consortium's Delivery Integration Office will be responsible for establishing a new framework to oversee and manage the governance structure, issues, and potential disputes arising from the integrated, multi-contractor environment in which multiple contractors are responsible for various aspects of the CalSAWS System.

**2.35 Dev/Ops Model.**

A set of practices for automating the processes between Software development and information technology operations teams so they can build, test, and release Software faster and more reliably. The goal is to shorten the SDLC and improve reliability while delivering features, fixes, and updates frequently in close alignment with CalSAWS' objectives. (See NIST SB 1800-16B, 16C, and 16D.)

**2.36 Documentation.**

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

**2.37 Execution Date.**

The date on which this Agreement is fully executed by the Parties.

**2.38 Executive Director.**

The individual at the Consortium with management responsibilities for the CalSAWS System.

**2.39 Extended Term.**

The Extended Term consists of extended Infrastructure Services to be provided as a result of the Consortium's exercise, of up to four (4) one (1) year options commencing at the close of the Initial Term, subject to prior approval of all applicable state and federal agencies.

**2.40 Final Acceptance.**

The Consortium's approval of all Deliverables and Services to be provided as part of this Agreement. Final Acceptance will occur in accordance with the process prescribed in the Consortium's Project Control Document (PCD), which defines the acceptance and rejection processes and the roles of the Consortium and Contractor in that process.

**2.41 Infrastructure Agreement Closeout Plan.**

A Deliverable to be provided by Contractor as described at Section 5.2.19 of this Agreement.

**2.42 Infrastructure as Code (IaC).**

The process of managing and provisioning an organization's IT infrastructure using machine-readable configuration files, rather than employing physical hardware configuration or interactive configuration tools. (See NIST SP 800-172.)

**2.43 Infrastructure as a Service (IaaS)**

The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, and deployed applications; and possibly limited control of select networking components (e.g., host firewalls). (See NIST SP 800-145.)

**2.44 Infrastructure Final Project Closeout Plan.**

A Deliverable to be provided by Contractor as described at Section 5.2.19 of this Agreement.

**2.45 Infrastructure Final Project Closeout Report.**

A Deliverable to be provided by Contractor as described at Section 5.2.20 of this Agreement.

**2.46 Infrastructure Managed Hardware and Software Inventory – Infrastructure Agreement Monthly Update.**

A Deliverable to be provided by Contractor as described at Section 5.2.8 of this Agreement.

**2.47 Infrastructure Monthly Operations Report.**

A Deliverable to be provided by Contractor as described at Section 5.2.13 of this Agreement.

**2.48 Infrastructure Network Design Plan.**

A Deliverable to be provided by Contractor as described at Section 5.2.10 of this Agreement.

**2.49 Infrastructure Services Plan and Operational Working Documents (OWDs).**

A Deliverable to be provided by Contractor as described at Section 5.2.2 of this Agreement.

**2.50 Infrastructure System Security Plan.**

A Deliverable to be provided by Contractor as described at Section 5.2.15 of this Agreement.

**2.51 Infrastructure Technical Asset Configuration Report for the Development Test, Staging, Performance and Production Environments.**

A Deliverable to be provided by Contractor as described at Section 5.2.11 of this Agreement.

**2.52 Infrastructure Technical Design Document.**

A Deliverable to be provided by Contractor as described at Section 5.2.9 of this Agreement.

**2.53 Infrastructure Technology Recovery Plan.**

A Deliverable to be provided by Contractor as described at Section 5.2.14 of this Agreement.

**2.54 Infrastructure Transition-In Master Plan (ITIMP).**

A Deliverable to be provided by Contractor as described at Section 5.2.1 of this Agreement.

**2.55 Infrastructure Transition-In Test and Validation Plan.**

A Deliverable to be provided by Contractor as described at Section 5.2.4 of this Agreement.

**2.56 Infrastructure Transition-In Work Plan.**

A Deliverable to be provided by Contractor as described at Section 5.2.3 of this Agreement.

**2.57 Infrastructure Transition-Out Master Plan.**

A Deliverable to be provided by Contractor as described at Section 5.2.17 of this Agreement.

**2.58 Infrastructure Transition-Out Work Schedule.**

A Deliverable to be provided by Contractor as described at Section 5.2.18 of this Agreement.

**2.59 Infrastructure Work Schedule.**

A Deliverable to be provided by Contractor as described at Section 5.2.6 of this Agreement.

**2.60 Initial (or Base) Term.**

The Initial (or Base) Term consists of an initial four (4)-month Transition-In period followed by six (6) years, for a total of six (6) years and four (4) months.

**2.61 Innovation Initiatives.**

Initiatives proposed and pursued by Contractor, and approved by Consortium, including Innovation Pilots, to develop innovations for the future of the CalSAWS System.

**2.62 Innovation Pilot(s).**

Short-term pilot programs, including feasibility studies or experimental trials, consisting of small-scale, short-term experiments to assist CalSAWS develop innovations for the future of the CalSAWS System.

**2.63 Innovation Services.**

Services provided by Contractor, and approved by Consortium, for purposes of providing innovations for the future of the CalSAWS System.

**2.64 Key Personnel.**

The positions of Contractor Staff identified as Key Personnel, including but not limited to, Infrastructure Project Manager, Infrastructure Project Management Office (PMO) Lead, Infrastructure Delivery Integration Manager, Infrastructure Transition Manager, Infrastructure Operations Manager, Infrastructure Security Manager, Infrastructure Operations Service Desk Lead, and Infrastructure AWS Manager.

**2.65 Liquidated Damages.**

Liquidated Damages refer to those payments due from Contractor to Consortium, either in the form of cash payment or a credit against payments due Contractor from Consortium under this Agreement, which is assessed by the Consortium against Contractor in accordance with Section 13 of this Agreement or the SLAs, which are specifically incorporated into this Agreement by reference.

**2.66 Notice.**

A written document given by a party to the other in accordance with Section 19.28.

**2.67 Off Prime Business Hours.**

9:01 pm to 5:59 am (Pacific Time Zone), Monday through Saturday, and Consortium holidays and scheduled System downtime.

**2.68 Operational Working Document(s) (OWDs).**

The (Infrastructure) Operational Working Documents (OWDs) contain the operational procedures for the services and activities defined in the Infrastructure Services Plan.

**2.69 Penetration Test Report.**

A Deliverable to be provided by Contractor as described at Section 5.2.16 of this Agreement.

**2.70 Price Proposal.**

The Price Proposal submitted by Contractor in response to the RFP.

**2.71 Production.**

The environment in which the CalSAWS System operates for use by the Counties.

**2.72 Project.**

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

**2.73 Project Control Document (PCD).**

The PCD sets forth the required processes and procedures for the Infrastructure Work to be performed pursuant to this Agreement. The Consortium's Project Control Document was a document prepared by the predecessor Maintenance and Operations (M&O) contractor as one of the Deliverables required of that contractor under its agreement with the Consortium. The PCD, along with the Statement of Work, Master Work Plan, and Operational Working Document(s) operate in conjunction to coordinate the Work of all CalSAWS vendors and contractors, including the Infrastructure Work to be performed pursuant to this Project. The PCD is a Deliverable Contractor is required to provide as described in Section 5.2.1.

**2.74 Project Manager.**

The individual chosen by Contractor with management responsibilities for the Project.

**2.75 Project Hours.**

Project work hours are Monday, 12:00 pm through Friday, 12:00 pm (Pacific Time Zone).

**2.76 Project Report(s).**

Documents provided by Contractor to the Consortium regarding Project activities, events, progress, issues, risks, Deliverable Expectation Document(s), Deliverables, and Services provided.

**2.77 Proof of Concept.**

Evidence, typically derived from a pilot project, which demonstrates that a design, concept, or proposal is feasible and compatible with the CalSAWS System.

**2.78 Proposal.**

Contractor's response to the RFP, which is expressly incorporated into this Agreement by reference.

**2.79 Request for Proposal (RFP).**

The Maintenance and Operations Request for Proposal dated July 26, 2022 (RFP 01-2022). The RFP is expressly incorporated into this Agreement by reference.

**2.80 Schedule.**

The dates described in the Work Plan for deadlines for performance of Services, delivery and review of Deliverables, and other Project events and activities.

**2.81 Security Management.**

The operation and management of all controls (e.g., administrative, physical, and technical) that ensure the confidentiality, integrity, protection, and availability of the

CalSAWS System, data transmitted to or through the CalSAWS System, and data available to the CalSAWS System.

**2.82 Services.**

Work performed by Contractor, or any of its Subcontractors, in which the Work provided does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials, or supplies.

**2.83 Service Desk(s) Business Hours.**

Business hours for Tier 1, Tier 2, and Tier 3 Service Desks are 7:00 a.m. to 6:00 p.m. (Pacific Time Zone), Monday through Saturday, except for Consortium holidays and scheduled System downtime.

**2.84 Service Level Agreement(s) (SLAs).**

The SLAs specifically define Tasks to be performed by the Contractor, establish timelines and standards by which those Tasks are to be performed, and provide for Liquidated Damages for failure to meet deadlines and/or specifications. The SLAs are specifically incorporated into this Agreement by reference.

**2.85 Software as a Service (SaaS).**

The capability provided to the consumer is to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through either a thin client interface, such as a web browser (e.g., web-based email), or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings. (See NIST SP 800-145.)

**2.86 Specifications.**

The Documentation; all applicable County, State and federal policies, laws, codes, regulations and guidelines; the RFP; the Proposal; DEDs; Acceptance Criteria; subsequent Deliverables which have received Acceptance; and other specifications and requirements as described in the Statement of Requirements, Exhibit B to this Agreement, if any; the Project Control Document (PCD); Infrastructure Services Plan and Operational Work Documents (OWD). The Specifications are, by this reference, incorporated into this Agreement, as though completely set forth herein.

**2.87 Staff.**

Contractor's employees, Subcontractors, independent contractors, and agents who will provide the Services and develop the Deliverables on behalf of Contractor.

**2.88 Start Date.**

The date on which Contractor commences work under this Agreement.

**2.89 State.**

The State of California.

**2.90 Statement of Work.**

The Statement of Work and subsequent Statements of Work that 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.

**2.91 Subcontractor.**

A person, partnership, or entity not in the employment of, owned by, or under common ownership with Contractor that is performing Services or assisting in the performance of Deliverables required by this Agreement under a separate agreement with or on behalf of Contractor. The term "Subcontractor" shall not include persons, partnerships, or entities that solely are providing Contractor (a) commercial off-the-shelf software applications; (b) hardware, (c) invoicing or accounting services, or (d) services associated with providing facility space.

**2.92 System Change Requests (SCRs).**

The documentation used by the CalSAWS Project to track all changes to the System. The CalSAWS SCR process is utilized when any new or updated system functionality is needed or recommended.

**2.93 Task.**

One of the areas of Work to be performed under this Agreement, including those areas of Work identified as a Task in an Exhibit.

**2.94 Technology Configuration Management.**

A systems engineering process for establishing and maintaining consistency of the CalSAWS performance, function, requirements, design, and operations throughout applicable lifecycles.

**2.95 Technology Infrastructure Refresh Plan.**

A Deliverable to be provided by Contractor as described at Section 5.2.7 of this Agreement.

**2.96 Technology Recovery Plan.**

A documented, structured approach describing how CalSAWS can quickly resume all activities following an unplanned incident or outage.

**2.97 Technology Replacement Management.**

The process for replacing and updating Hardware and Software to ensure that the CalSAWS System is operating with current, up-to-date technology.

**2.98 Tier 1 Service Desk.**

The Tier 1 Service Desk provides Tier 1 technical support services responsible for basic User issues, including but not limited to, gathering information and determining the issue presented by analyzing the symptoms and figuring out the underlying problem. Business hours for Tier1 Service Desk are 7:00 a.m. – 6:00 p.m. (Pacific Standard Time), Mondays through Saturday, except for Consortium holidays and scheduled System downtime.

**2.99 Tier 2 Service Desk.**

The Tier 2 Service Desk handles issues elevated from the Tier 1 Service Desk that generally involve configuration issues, troubleshooting, Software installations, and Hardware repair. Business hours for Tier2 Service Desk are 7:00 a.m. – 6:00 p.m. (Pacific Standard Time), Mondays through Saturday, except for Consortium holidays and scheduled System downtime.

**2.100 Tier 3 Central Contact Center.**

The Tier 3 Central Contract Center will provide redundant paths and systems within the CalSAWS System that allow Staff and Users to continue to access the System without taking it offline.

**2.101 Tier 3 Service Desk.**

The Tier 3 Service Desk is the highest level of support and is responsible for handling the most difficult or advanced problems. Business hours for Tier 3 Service Desk are 7:00 a.m. – 6:00 p.m. (Pacific Standard Time), Mondays through Saturday, except for Consortium holidays and scheduled System downtime.

**2.102 Total Maximum Contract Sum.**

The total amount stated in the Proposal for all Deliverables and Services to be provided pursuant to this Agreement.

**2.103 Transition-In.**

The four (4)-month period and process occurring at the beginning of the Initial Term by which the transition from the current Maintenance and Operations (M&O) contractor to Contractor occurs. The Transition-In process will be documented in a Transition-In Master Plan that includes, but is not limited to, Transition-In Planning and Reporting, Transition-In Service and Function Migration Plan, Transition-In Readiness Reviews, Transition-In Test and Validation, and Transition-In Organizational Change Management Plan.

**2.104 Transition-Out.**

Transition-Out involves identifying and implementing all the activities required to roll off the Project by transitioning out and turning over all control and responsibility for Infrastructure support and Consortium-owned resources, documentation, and knowledge to a successor Contractor or the Consortium. The Transition-Out process includes, but

is not limited to, development of a Transition-Out Master Plan, development of a Transition-Out Work Plan, Transition-Out Training and Knowledge Transfer, and Project Closeout.

**2.105 User.**

Any person or entity authorized to gain access to, or in any way use, the CalSAWS System. Users include persons and entities that gain access to the CalSAWS System via the Consortium Members' network models.

**2.106 User Center Design (UCD).**

A methodology or approach that engages the ultimate Users of the System more extensively during the design, development, and test phases with the goal of improving the overall user experience.

**2.107 Work.**

Any and all Tasks, subTasks, Deliverables, goods, and services provided or to be provided by or on behalf of Contractor pursuant to this Agreement.

**3. INDEPENDENT CONTRACTOR STATUS.**

**3.1** This Agreement is by and between the Consortium and Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the Consortium and Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

**3.2** Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all compensation and benefits. The Consortium shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor.

**4. CONTRACT TERM.**

**4.1 Base Term.**

The Base Term for Infrastructure Services includes a four (4)-month Transition-In period plus six (6) years, for a total of six (6) years and four (4) months.

**4.2 Extended Term.**

The term of this Agreement may be extended for up to four (4) additional years in one (1)-year increments (Extended Term) following the expiration of the Base Term at the discretion of the Consortium, with prior approval of all applicable state and federal agencies. Consortium will inform Contractor of its intent to exercise the Extended Term no later than sixty (60) days prior to the end of the Base Term.

#### **4.3 Commencement of Work.**

Contractor's Work under this Agreement is scheduled to commence October 1, 2024, which is when the initial four (4-month Transition-In period is set to begin.

### **5. SCOPE OF CONTRACT WORK AND DELIVERABLES**

#### **5.1 General.**

**5.1.1** Contractor shall provide the Consortium with the Infrastructure Deliverables and Services as described in the RFP, Contractor's Proposal submitted in response to that RFP, and this Agreement, and in accordance with the Infrastructure Service Plan and Specifications. Contractor shall utilize the RFP, its Proposal, the Infrastructure Service Plan and Operational Working Documents, the Infrastructure Deliverables and Services for which the Consortium previously granted Acceptance, Change Orders agreed to by the Consortium and the Contractor, as well as Contractor's expert knowledge as the basis for delivering subsequent Infrastructure Deliverables and Services. Contractor will ensure that the Infrastructure Deliverables and Services, and Documents and materials provided or presented to, or developed for, the Consortium are consistent with 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 will retain backup copies in writing and on electronic media of all Infrastructure Deliverables until termination of this Agreement and shall provide the Consortium on its request with a copy thereof until that time.

**5.1.2** Contractor shall, in accordance with the Statement of Work and Statement of Requirements document(s) attached as Exhibits A and B to this Agreement, provide Infrastructure goods and Services, which includes monitoring, upgrading and maintaining the CalSAWS Information Technology Infrastructure in the CalSAWS Amazon Web Services (AWS) cloud. The Infrastructure scope also includes network management, Consortium and Managed-County software and hardware support, Tiers 1 and 2 Service Desk and the acquisition, configuration and installation of required hardware and software. The goals to be achieved by the Infrastructure Project are as follows:

##### **5.1.2.1 Integrated Delivery of Deliverables and Services.**

Infrastructure Deliverables and Services are to be delivered in an integrated, multi-contractor environment. Toward this end, the Consortium has established a framework to oversee and manage the governance structure and processes for the integrated, multi-contractor environment. This framework will incorporate system engineering/system integration principles and best practices. The Consortium has formed the Delivery Integration Office (DIO) in support of the framework. (See Section 17.1.)

- (1) Contractor will jointly lead the process (along with the M&E Contractor) and actively engage with the Consortium and other CalSAWS contractors, to achieve overall coordination and effective integration between and across contractors. Toward this

end, Contractor will participate in the Delivery Integration Team, which will have the responsibilities described below.

(2) Contractor will review all current CalSAWS vendor agreements, along with the Statements of Work for each, and identify any possible Service gaps, conflicts or overlaps. Contractor, along with the M&E Contractor, will jointly develop recommendations to resolve any such Service gaps, conflicts or overlaps and present to the DIO for consideration and action.

(3) Following review by the DIO of recommendations for updates to Service Plans, and for reorganization where needed to further reflect the integrated nature of the Services Plans, Contractor will participate, along with other members of the Delivery Integration Team, in the development and implementation of new governance processes that promote the full integration of the contractor teams.

(4) Contractor will work with the DIO to assist in the creation and maintenance of a consolidated CalSAWS Master Work Plan.

(5) As part of the Delivery Integration Team, for design, build, test and implementation processes that involve multiple contractors, Contractor will participate in, and assist in the coordination of, discussions regarding the timing of required steps for each contractor and the Consortium.

(6) As part of the Delivery Integration Team, Contractor will assist in coordinating with the Release Management Team regarding entry and exit criteria that must be satisfied by each Contractor involved in the change process.

**5.1.2.2 Enhanced Communications.** Contractor will be required to establish, maintain and apply shared centralized communication protocols for enhanced communication to the Counties and state sponsors. As part of these protocols, Contractor will improve the current frequency and types of notifications associated with outages or unplanned CalSAWS System downtime. Such improvements will include, but not necessarily be limited to, (i) apprising County directors of any negative impacts to County business processes resulting from the CalSAWS System issue, whether it occurs in a training environment, the production environment, or a router fails in a PoP County; (ii) providing regular status updates so Counties are aware of how an issue is progressing towards resolution as well as the approximate timeframe to resolve; and (iii) providing a timely communication that a problem is repaired and County operations are fully restored, along with any specific instructions required on the part of the County or County office. Contractor will be required to develop a detailed communication plan, which will be further defined in Contractor's PCD Deliverable.

**5.1.2.3 Application/Architecture Evolution.** Contractor will be required to maintain the current CalSAWS System, while simultaneously evolving System architecture to achieve technically viable steady state. To achieve this, Contractor will migrate the CalSAWS System from its current monolithic architecture to a modular, easy to maintain, technically advanced application. This will involve taking advantage of native cloud microservices and features to enable faster development and deployment cycles, to achieve lower cost of ownership. Part of this evolution includes moving to a serverless architecture. In addition, Contractor will be required to move the CalSAWS System to a Dev/Ops Model and extending and automating deployments using IaC and corresponding templates to improve security, reduce human error, and to monitor and enforce Infrastructure compliance. The supporting batch processing design and architecture must also evolve in a way that improves efficiency and leverages event streaming best practices; the Consortium seeks significant improvements in this area. Finally, Contractor will achieve cost-effective operations on behalf of the Consortium.

**5.1.2.4 Security.** Contractor will be expected to focus and provide improvements on the security of the CalSAWS System. Contractor will employ AWS design principles that strengthen operational security, applies security at all layers, and automates security best practices. Contractor will achieve improved rigor regarding the technical infrastructure and operations with an emphasis on implementing world class security processes and standards. Contractor will automate a continuous integration/continuous delivery (CI/CD) pipeline that accesses code, logic and application inputs to detect CalSAWS Software vulnerabilities and threats. Additionally, the Contractor will automate continuous testing to incorporate OWASP vulnerabilities, static code vulnerabilities, and tools to correct the application prior to deployment. In addition to the above, Contractor will:

- (1) Enhance the overall security posture by implementing proactive security controls and logging with real time automated alerts and self-remediation.
- (2) Improve the current security logging by adding filters and automation for protecting the CalSAWS System boundaries and automatic alerting of any suspicious activity.
- (3) Apply the Defense in Depth (DiD) approach to layer security mechanisms and controls to protect the confidentiality, integrity availability of the CalSAWS system, networks and data within.
- (4) Use architecture security design principles that implement authentication and authorization control and reduce the blast radius.

- (5) Monitor and audit everything on a 24x7 basis and automate for security rule violations that support self-remediation processes.
- (6) Execute continuous improvement and continuous auditing across all security operational activities.
- (7) Provide a forward-looking security road map, with recommended areas for improvement mapped to security functional domains.
- (8) Continually seek to minimize data and privacy risk for all systems and operational areas.

**5.1.2.5 Innovation.** Contractors will be expected to apply a structured approach for continually improving the Infrastructure and the CalSAWS System applications and supporting processes through innovative technologies and methods. Contractor will utilize the Consortium's current "Shark Tank" process and will fund innovation POCs emanating from that process.

**5.1.2.6 Transition-In/Transition-Out.** During both Transition-In and Transition-Out periods, Contractor will be expected to focus on issues of timeliness, risk management and mitigation, leadership, and collaboration.

## **5.2 Infrastructure Deliverables and Services.**

The Contractor will perform Deliverable Management activities in accordance with the Consortium's PCD. The process defines the use of a Deliverable Expectation Document (DED) when creating new Deliverables and submission, review, and approval process for new or updates to existing Deliverables. The PCD also defines the acceptance and rejection processes and the roles of the Consortium and Contractor.

### **5.2.1 Infrastructure Transition-In Master Plan (ITIMP), which will include**

#### **5.2.1.1 An Approach Section, which will include:**

- (1) A description of the overall transition approach and process to be used to transition and assume responsibility for all services, functions all components identified in the Agreement.
- (2) Planned transition activities and Tasks that includes the planning, implementing, executing, tracking, and reporting of the overall transition effort as well as for each transition component.
- (3) Definition roles and responsibilities for completing transition Tasks and activities including the Infrastructure Contractor, the CalSAWS M&E contractor, the Consortium, the California Department of Technology, the Counties, and other CalSAWS contractors as applicable.

(4) A description of how the Contractor will collaborate with the incumbent Contractor(s), which will include (i) a plan for and carry out transition activities as well as what the Contractor requires of the incumbent contractor(s) regarding knowledge transfer, data/information, and support for mitigating risk; (ii) procedures the Contractor will use to work with the incumbent contractor to transfer control of all CalSAWS environments as identified in the incumbent Contractor's Closeout Plan; and (iii) Procedures the Contractor will use to work with the incumbent contractor to transfer all hardware and software license maintenance agreements as identified in the incumbent contractor's Closeout Plan.

(5) How Readiness Reviews will be planned and coordinated with the Consortium and in coordination with the incumbent contractor's Transition-Out Plan, to demonstrate readiness, provide evidence and confirmation that the Contractor is prepared to accept responsibility, and obtain Consortium approval to do so with an effective date.

(6) Entry and exit criteria for the beginning and completion of transition phases, including use of Readiness Checklists, criteria, and metrics.

(7) A plan of the timing, audience, media, and message for communication events.

(8) The identification and approach for the Quality Assurance that will be used to ensure that Transition-In activities are being accomplished.

(9) Identification of risks and issues tied to the transition and planned mitigation measures/issues resolution.

(10) Definition of contingency plans to troubleshoot high risk transition activities.

(11) A Transition-In Milestone Schedule Summary from the Transition-In Work Plan, including Identification of cutover activities and the target cutover dates.

**5.2.1.2 Production Operations Services and Functions**, which will include:

(1) Definition of how each Service or Work, being performed by the incumbent Contractor, will be operationalized and cutover to the Contractor.

(2) Identification of the activities and Tasks that must be accomplished to allow for a successful transition of operational control of a Service or Work, such as preparatory actions being

taken to establish and prepare facilities, obtain service Contracts, establish capabilities, prepare for testing/validation, and those actions taken subsequent to successful testing/validation, needed to implement cutover.

(3) Identification of what technical assistance the Contractor will require from the incumbent Contractor (e.g., number of hours, position expertise).

#### 5.2.1.3 **Security Services and Functions**

(1) Definition of how each Service or Work, being performed by the incumbent contractor, will be operationalized and cutover to the Contractor.

(2) Identification of the activities and Tasks that must be accomplished to allow for a successful transition of operational control of a Service or Work, such as preparatory actions being taken to establish and prepare facilities, obtain service contracts, establish capabilities, prepare for testing/validation, and those actions taken subsequent to successful testing/validation, needed to implement cutover.

(3) Identification of what technical assistance the Contractor will require from the incumbent contractor (e.g., number of hours, position expertise).

#### 5.2.1.4 **Technology Recovery Services and Functions**, which will include:

(1) Definition of how each Service or Work, being performed by the incumbent contractor, will be operationalized and cutover to the Contractor.

(2) Identification of the activities and Tasks that must be accomplished to allow for a successful transition of operational control of a Service or Work, such as preparatory actions being taken to establish and prepare facilities, obtain service contracts, establish capabilities, prepare for testing/validation, and those actions taken subsequent to successful testing/validation, needed to implement cutover.

(3) Identification of what technical assistance the Contractor will require from the incumbent contractor (e.g., number of hours, position expertise).

#### 5.2.1.5 **Transition-In Training and Knowledge Transfer**, which will include:

(1) Identification of training and knowledge transfer expectations during planning, and for the transition period.

(2) The knowledge transfer activities that Contractor Staff will require from the incumbent contractor in order to prepare for the assumption services.

(3) Training that the Contractor conducts internally to prepare their Staff to implement activities, processes, and procedures needed to provide support for a given service or function identified in the Contractor's Infrastructure TIMP.

(4) Training of Consortium staff regarding the Contractor's transition approach, processes, activities, and tools for managing the transition effort and reporting status.

(5) Training of Consortium staff regarding changes to services/functions and to service delivery means.

(6) Knowledge transfer and internal training exercises that will be conducted to equip and verify the Contractor's Staff can implement the activities, processes, and procedures needed to provide support for each given service or function identified in the Contractor's Infrastructure TIMP.

(7) How training and knowledge transfer activities will occur (e.g., materials, courses, Question & Answer (Q&A) session preparation, dates, times, participants) to familiarize the Consortium staff with all of the Contractor's operations, processes and tools.

## **5.2.2 Infrastructure Services Plan and Operational Working Documents (OWDs).**

The Infrastructure Services Plan will serve as the master plan for the services being delivered under the Agreement, and will include:

### **5.2.2.1 Project Management Support.**

**5.2.2.2 Technical Infrastructure Support**, which will include (i) Project Support Plan; (ii) Hardware and Software Support Plan; (iii) Asset Management Plan; (iv) Documentation Maintenance Plan.

### **5.2.2.3 Innovation and Application/Architecture Evolution Support Approach.**

**5.2.2.4 Production Operations**, which will include (i) Network Operations Plan; (ii) CalSAWS System Operations Plan; (iii) Service Desk Plan; (iv) Configuration Management Plan; (v) Capacity Management Plan; (vi) Technical Management Plan; (vii) Performance Monitoring and Alerting Plan.

**5.2.3 Infrastructure Transition-In Work Schedule**, which will be developed in MS Project and will include:

5.2.3.1 All Transition-In activities and Tasks which are expected to be completed by Contractor, Consortium, Counties, and incumbent contractor staff in order to meet the estimated Transition-In schedule required by the Infrastructure TIMP to allow for successful cutover.

5.2.3.2 Start and completion dates for all Tasks.

5.2.3.3 Predecessor and successor dependencies for Tasks without Subtasks, and predecessor and successor dependencies for Subtasks.

5.2.3.4 Resource assignments for Tasks without Subtasks, and resource assignments for Subtasks. Resource assignments will include appropriate Contractor, Consortium, County, and incumbent contractor resource assignments and estimated hours.

5.2.3.5 Estimated hours and durations for Tasks without Subtasks and estimated hours and durations for Subtasks.

**5.2.4 Infrastructure Transition-In Test and Validation Plan** will contain a separate section for each Service and function area and, in addition, will include:

5.2.4.1 The approach to plan, develop and implement area-specific Transition Test and Validation Plans which guides the Contractor, the Consortium, and the incumbent contractor of what transition component (functions or services) requires testing or validation on completing specific test activities.

5.2.4.2 Description of how to determine what transition components require formal testing versus validation.

5.2.4.3 Identification and documentation of the approach and methods to be used to validate such as checklists or demonstrations.

5.2.4.4 A test and validation work plan to schedule, monitor, and report the progress of all test and validation activities.

### **5.2.5 Infrastructure Project Control Document (PCD)**

The Infrastructure Project Control Document will align with and support the CalSAWS Enterprise Project Control Document and will include: (i) an Introduction that sets forth document terms and definitions; (ii) the document purpose that describes its scope, triggers for change, and methods for executing change; (iii) roles and responsibilities; (iv) Key Staff; (v) a Project Work Plan setting forth roles and responsibilities, the schedule for management process, the schedule for analysis and reporting; and cost estimating methodology; (vi) Project Management Plans (PMP Appendices) setting forth a communications management plan, a contract management plan, a deficiency management plan, a quality management plan, a risk and issue management plan, and a staff management plan; (vii) Project Action Items and Decision Management Tracking; (viii) Project Status Reporting; and (ix) Operational Working Documents.

### **5.2.6 Infrastructure Work Schedule.**

The Infrastructure Work Schedule will be developed and updated in MS Project and will includes Tasks, SubTasks, planned durations, budgets, resources assignments, and schedule reports in accordance with the CalSAWS Work Plan Content Guidelines. Work Plan updates will include posting actual hours worked by Contractor Staff.

### **5.2.7 Technology Infrastructure Refresh Plan.**

The CalSAWS Technology Infrastructure Refresh Plan will include:

5.2.7.1 Determination of Hardware and Software requirements/specifications/support for the CalSAWS System.

5.2.7.2 Analysis of Hardware and Software technologies available in the market with the needs for the CalSAWS System.

5.2.7.3 Cost and capacity forecasts for the current and upcoming budget years.

### **5.2.8 Infrastructure Managed Hardware and Software Inventory – Infrastructure Agreement Monthly Update.**

The CalSAWS Managed Hardware and Software Inventory – Infrastructure Agreement Monthly Update will be developed using the forms established by the Consortium for CalSAWS Managed Hardware Inventory and CalSAWS Managed Software Inventory.

### **5.2.9 Infrastructure Technical Design Document.**

The Deliverable format and content will be based on the existing document, incorporating changes as approved by the Consortium.

### **5.2.10 Infrastructure Network Design Plan.**

The Deliverable format and content will be based on the existing document, incorporating changes as approved by the Consortium.

### **5.2.11 Infrastructure Technical Asset Configuration Report for the Development Test, Staging, Performance and Production Environments.**

The Deliverable format and content will be based on the existing document, incorporating changes as approved by the Consortium.

### **5.2.12 Infrastructure Approach to Automation, Artificial Intelligence, and Machine Learning.**

The Approach to Automation, Artificial Intelligence, and Machine Learning will include:

5.2.12.1 Approach to building an automation, artificial intelligence, and machine learning infrastructure considering data storage, specifically the ability to scale shortage as the volume of data grows.

5.2.12.2 Establishing the proper storage capacity and reliability.

5.2.12.3 Approach to networking infrastructure with high bandwidth, high-efficiency and low-latency.

5.2.12.4 Sufficient computing capabilities and resources and optimized hardware.

5.2.12.5 Anticipating network demands or security threats and reacting in real time.

### **5.2.13 Infrastructure Monthly Operations Report.**

The Infrastructure Monthly Operations Report will be developed using the CalSAWS Monthly Operations Report Sample.

### **5.2.14 Infrastructure Technology Recovery Plan, which will include:**

5.2.14.1 Roles and responsibilities of the Contractor, Consortium, Counties, and other CalSAWS contractors as applicable, for technology recovery services applicable to the Contractor's scope of services.

5.2.14.2 **Recovery Strategy** – A description of the portions of the plan that will be implemented based on type and various levels of incident severity, for example, minor interruption of service, total service failure or loss of facility.

5.2.14.3 **Backup** – Backup and retention schedules and procedures.

5.2.14.4 **Technology Recovery Procedures** – Operational procedures that will allow recovery to be achieved in a timely and orderly way.

5.2.14.5 **AWS Cloud Services** – A description of AWS hosting services that will be provided during recovery.

5.2.14.6 **Testing** – A description of the semi-annual technology recovery test(s) planning and execution methodology.

5.2.14.7 **Contact List(s).**

5.2.14.8 **An Infrastructure Technology Recovery Plan, which will include (i) Test Overview and Scope; (ii) Roles and responsibilities of the Contractor, Consortium, and other CalSAWS contractors as applicable; (iii) Test Objectives; (iv) Test Requirements; (v) Test Activities and Schedule; (vi) Test Reporting Metrics to be collected.**

5.2.14.9 **An Infrastructure Technology Recovery Test Report**, which will include (i) Summary of Test; (ii) An assessment and recommendations for improvements to existing technology recovery documentation; (iii) A report on performance against SLAs and recovery timeframes.

### 5.2.15 Infrastructure System Security Plan.

The Infrastructure System Security Plan will be completed by providing responses to each of the NIST 800-53 controls contained in the CalSAWS System Security Plan template (from the NIST 800-53 moderate baseline).

### 5.2.16 Penetration Test Report.

The Penetration Test Report provides a detailed and comprehensive analysis of the CalSAWS System's vulnerabilities and will detail how to mitigate those and will include:

5.2.16.1 **Sign Off and Report Details**, which will include (i) Document Management; (ii) Security Assessment Information; (iii) Scope Summary.

(ii) 5.2.16.2 **Primer**, which will include (i) Penetration Test Overview; Risk Summary; (iii) Risk Scoring.

5.2.16.3 **Scope**, which will include (i) Assumptions & Liabilities; (ii) Accounts/Credentials; (iii) Standard Test Cases.

5.2.16.4 **Security Posture Analysis**, which will include (i) Areas of Risk; (ii) Threat Posture Statistics.

5.2.16.5 **Detailed Findings and Remediation Guidance**, which will include (i) High Risk Findings and Vulnerabilities; (ii) Medium Risk Findings and Vulnerabilities; (iii) Low Risk Findings and Vulnerabilities; (iv) Informational Findings.

5.2.16.6 **User Story** (if applicable).

5.2.16.7 **Testing Methodology**.

5.2.16.8 **DREAD Scoring Criteria**.

5.2.16.9 **CVSS Scoring Criteria**.

5.2.16.10 **Standard Test Cases**.

### 5.2.17 Infrastructure Transition-Out Master Plan, which will include:

5.2.17.1 A detailed Infrastructure Transition-Out Work Plan reflecting all Tasks and Deliverables to be completed.

5.2.17.2 A narrative describing each Task and Deliverable.

5.2.17.3 Contractor, Consortium staff, and successor contractor roles and responsibilities.

5.2.17.4 Narrative describing how the Contractor will plan, organize, communicate, implement, monitor, and report the status of all Transition-Out activities.

5.2.17.5 Provisions for supporting transition and cutover of services and functions to a successor contractor or the Consortium.

5.2.17.6 **A Transition-Out Knowledge Transfer and Training Plan** detailing the approaches and methodologies the Contractor will employ to transfer knowledge to Consortium staff and/or a prospective successor contractor, which will include:

- (1) A schedule of planned knowledge transfer sessions and demonstrations.
- (2) The number of Staff to be included in knowledge transfer sessions per topic area.
- (3) Knowledge transfer topics with knowledge transfer objective descriptions and summaries for each topic.
- (4) Length and location of each knowledge transfer session.

5.2.17.7 A narrative of applicable lessons learned from the Transition-In activities.

5.2.17.8 **A Transition-Out Documentation and Deliverables Assessment**, which will include:

- (1) The results of a complete and comprehensive review and evaluation of all Infrastructure documentation to identify documentation that requires updates or revisions, including the following: (i) All Contractor Deliverables; (ii) All policies and procedures related to the provision of Services under this Agreement; (iii) A current detailed asset inventory, including start and end dates of all warranties, software licenses, service contracts, and current location information including site, rack, server, and network connection point. This includes any other documentation that would facilitate successor contractors' understanding of overall standards, network bandwidth needs, hardware capacity, software needs, and network topology to maintain and operate the current CalSAWS System.
- (2) The archiving, central storing, and file location listing of all documentation included in the inventory and assessment.

**5.2.18 Infrastructure Transition-Out Work Schedule** will be developed in MS Project and will include:

5.2.18.1 All Transition-Out activities and Tasks which are expected to be completed by Contractor, Consortium, County, and incumbent contractor staff in order to meet the estimated Transition-In schedule required by the Infrastructure TIMP to allow for successful cutover to the Agreement.

5.2.18.2 Start and completion dates for all Tasks.

5.2.18.3 Predecessor and successor dependencies for Tasks without Subtasks, and predecessor and successor dependencies for Subtasks.

5.2.18.4 Resource assignments for Tasks without Subtasks, and resource assignments for Subtasks. Resource assignments will include appropriate Contractor, Consortium, County, and incumbent contractor resource assignments and estimated hours.

5.2.18.5 Estimated hours and durations for Tasks without Subtasks and estimated hours and durations for Subtasks.

**5.2.19 Infrastructure Agreement Close Out Plan** will include:

5.2.19.1 The overall strategy for closing out the Agreement.

5.2.19.2 The overall strategy and approach to complete other schedule-related Tasks (related to closeout) identified in any of the other Work Plans developed by the Contractor under this Agreement.

5.2.19.3 A list of Deficiency items from the Consortium's Deficiency & Issue tracking systems that will be updated by the Contractor as condition for completion for Agreement closeout.

5.2.19.4 A list of outstanding action items or Tasks from meeting minutes or other management tracking systems.

5.2.19.5 A list of outstanding actions for the Consortium to resolve in order for the Contractor to complete the Agreement closeout.

5.2.19.6 A list of all outstanding Tasks and work required per the approved Infrastructure Work Plan.

5.2.19.7 A timeline (schedule) for completing Agreement closeout activities.

5.2.19.8 Any other items deemed relevant to the clarification of expectations for Contractor closeout.

**5.2.20 Infrastructure Final Project Close Out Report** will include:

5.2.20.1 **Executive Summary:** Scope, Schedule, Budget: Plan vs. Actuals

5.2.20.2      **Summaries by SOW Task Area:** Management, Technical Infrastructure Support, Innovations and Modernization Support, Production Operations, Business Continuity/Disaster Recovery, and Security.

5.2.20.3      **Key Best Practices and Lessons Learned.**

5.2.20.4      **Administrative Closure.**

5.2.20.5      **Agreement Closure.**

### **5.3      Optional Imaging Services.**

In the event the Consortium elects to purchase Optional Imaging Services, the Contractor will maintain and enhance the Imaging application as defined by approved SCR(s), in cooperation and coordination with the Consortium and other CalSAWS contractors as applicable.

**5.3.1    Imaging Solution Approach.** The Imaging Solution Approach will include:

#### 5.3.1.1 Solution Overview:

- (1)      Provide infrastructure architecture guidance and specifications for all environments required for developing, testing, deploying and operating the proposed solution.
- (2)      Map application architecture deployment models to hardware and software infrastructure specifications including memory and central processing unit specifications.
- (3)      Include specifications for software, hardware, network, and middleware.
- (4)      Describe As-is architecture as it relates to the infrastructure and application components to be transitioned.
- (5)      Identify and describe the application of potential new future architecture components required to address the new solution.
- (6)      Describe the high-level transition approach supporting the migration of the current architecture to the proposed/new infrastructure.
- (7)      Identify and describe the current business processes to be transitioned. Identify and describe the current system infrastructure.
- (8)      Present a high-level approach to transition current business processes and architecture to the new solution architecture. Describe and define the scope of major phases for a

phased implementation and transition approach. Specify how current business processes will be migrated to the solution's business processes and infrastructure.

#### 5.3.1.2 Architecture Attributes.

- (1) Identify all software and hardware technologies that are to be used in the solution.
- (2) Specify any existing common services to be used by the solution and any new common services that will be developed for the solution.
- (3) Specify any CalSAWS reusable common components to be reused as part of the solution.
- (4) Specify architecture attributes and guidance to support use of components that can be easily ported to other host hardware, operating systems and software tools.
- (5) Describe architecture attributes to address database and data storage, including network capacity.
- (6) Describe the architecture performance attributes, such as the expected responsiveness of critical system functions.
- (7) Specify the architecture attributes necessary to meet system availability and reliability, such as specific hours the system must be available to users. Include the architecture attributes necessary to meet system reliability, such as system redundancy and recovery from failure timeframes.
- (8) Describe the architecture attributes necessary to accommodate forecasted growth in terms of system function transactions and volumes.
- (9) Describe the architecture attributes proposed to meet operational and administrative purposes, such as reporting.
- (10) Specify the attributes necessary for business continuity and disaster recovery.
- (11) Provide data architecture attributes necessary to support electronic records management.

#### 5.3.1.3 Security Solution Overview

- (1) Provide a high-level solution overview and description of the security architecture. Identify and describe how the security architecture aligns with the CalSAWS security requirements.

#### 5.3.1.4 Phasing Strategy

- (1) Identify the activities and tasks that must be accomplished to allow for a successful transition of operational control of a service or function, needed to implement a successful cutover.
- (2) Define the roles and responsibilities for completing the defined activities and tasks.
- (3) Include an approach to messaging communications to users.

#### **5.4 Deliverable Acceptance.**

**5.4.1** Contractor shall deliver all Deliverables pursuant to this Agreement to the Consortium Executive Director or his/her designee. Each Deliverable will be delivered to the Consortium Executive Director or his/her designee in an electronic media format approved by the Consortium. Contractor will be responsible for timely submission of each Deliverable pursuant to the Infrastructure Service Plan.

**5.4.2** In accordance with the review periods delineated in the Infrastructure Service Plan, or within ten (10) working days if no review period is delineated, the Consortium will review each Deliverable to identify any deficiencies and determine whether the Deliverable conforms to its Acceptance Criteria. The Consortium will document its review findings in a standard Deliverable Comments Log and will recommend changes to Contractor.

**5.4.3** If a Deficiency (other than a Cosmetic Deficiency) is found in a Deliverable, Consortium shall promptly give Contractor Notice of its non-acceptance within ten (10) working days or such other period as the parties may agree in writing, with such Notice delineating Deficiencies used as the grounds for the Consortium's decision. Contractor shall promptly and in accordance with the Infrastructure Service Plan, correct Deficiencies (including Cosmetic Deficiencies) described in any Notice(s) of non-acceptance from the Consortium. After Contractor has corrected such Deficiencies (including in Contractor's discretion and to the extent feasible Cosmetic Deficiencies), the Consortium shall verify whether the 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 Deliverable, and the Consortium determines such Deliverable is free from Deficiencies (other than Cosmetic Deficiencies), the Consortium shall provide Contractor with its Acceptance of that Deliverable within ten (10) working days or such other period as the parties may agree in writing. The correction of Deficiencies is governed by Section 11.3 (Correction of Deficiencies) and Section 11.4 (Warranty Work Response) of this Agreement.

**5.4.4** If a Deficiency (other than a Cosmetic Deficiency) is found in a Deliverable, or a Deficiency persists following the Consortium's review and recommended revisions to that Deliverable, or if Contractor fails to deliver a Deliverable or revised version thereof with sufficient time for the Consortium to

review, evaluate and comment on the Deliverable, the Consortium may, at its option: (a) continue reviewing the Deliverable and require Contractor to continue until Deficiencies (other than Cosmetic Deficiencies) are corrected or eliminated or (b) request Contractor to provide, at its expense, a replacement Deliverable for further review. If following the Consortium's exercise of its option under (a) or (b) above, the Deficiency persists and the Contractor has failed to cure it in a timely fashion, the Consortium may exercise its right to terminate this Agreement as described in Sections 18.1 and 18.2. The Consortium's options under this Section 5.3 shall remain in effect until Acceptance of all of the Deliverables.

**5.4.5** The Consortium shall provide its Acceptance when it determines that each Deliverable conforms to its applicable Specifications, including Acceptance Criteria defined in the applicable DED and has no Deficiencies (other than Cosmetic Deficiencies). The Consortium may, at its option, provide Acceptance of any Deliverable notwithstanding identified Deficiencies; provided however that Contractor shall correct all such remaining and permitted Deficiencies in accordance with this Section.

**5.4.6** Contractor shall correct all Cosmetic Deficiencies which remain at Acceptance of the Deliverable and all other Deficiencies permitted by the Consortium to exist at Acceptance of the Deliverable, if any, as soon as reasonably practicable and, in all cases, within thirty (30) days of its Acceptance.

**5.4.7** Contractor shall continuously protect all Deliverables and backups therefor from damage, destruction or loss caused by the acts or omissions of Contractor and its Staff. During the period Deliverables are in transit and in possession of Contractor, its carriers or the 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 the Consortium.

## **5.5 Representations Regarding Deliverables.**

By submitting a Deliverable, Contractor represents that, to the best of its knowledge, it has met the Specifications in this Agreement, including applicable DEDs and Acceptance Criteria and all Exhibits thereto. By giving its Acceptance of a Deliverable, the Consortium represents only that it has reviewed the 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. The Consortium's Acceptance of a Deliverable does not discharge any of Contractor's responsibilities for comprehensiveness, effectiveness or conformance of the Deliverables and Services, as a whole, to the Specifications, relating to Contractor's obligations under Section 11 of this Agreement.

## **5.6 Contractor Report to Consortium Board of Directors.**

Contractor shall provide the Consortium's Board of Directors with a summary report upon the following circumstances: (a) any and all significant or serious Deficiencies, or (b) any circumstances which, if not remedied, will likely have a significant or serious negative impact on the CalSAWS Systems, the design, development or implementation of changes to the CalSAWS System, or the Contractor's Deliverables or Services, including without limitation the cost or time for completion. The required report shall be provided to the Consortium's Board of

Directors within forty eight (48) hours of the event or circumstances necessitating the report as described in (a) and (b) above, or such longer period of time as may be approved by the Consortium Executive Director or his/her designee.

## **6. PROJECT MANAGEMENT.**

### **6.1 General.**

Contractor is responsible for providing Staff necessary to fulfill the requirements for all Deliverables and Services as required by this Agreement. Contractor is responsible for employing an approach to Staff management that facilitates a productive working relationship with Consortium staff, County staff, other Consortium contractor staff, and State staff/Project Sponsors. The Contractor's Staff will proactively coordinate and work collaboratively with the Consortium. Contractor shall ensure all Staff understand both initial and ongoing roles and responsibilities, and how the Infrastructure support team and assignments relate to the overall CalSAWS System and operations.

### **6.2 Contractor Project Manager.**

**6.2.1** Contractor shall identify a Project Manager who shall be responsible for Contractor's performance of all its Deliverables and Services provided pursuant to this Agreement and assuring Contractor's compliance with this Agreement. Contractor's Project Manager shall be available to meet and confer with the Consortium's Executive Director on a regular basis and otherwise when and as reasonably requested by the Consortium's Executive Director. Such meetings shall be conducted at a time and place convenient to the Consortium's Executive Director.

**6.2.2** Contractor agrees that the Project Manager shall be fully qualified to perform the Tasks required of this 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 on behalf of Contractor. The Project Manager shall devote his or her full-time efforts to the Project. The Project Manager or other substitute management personnel for Contractor shall be on-site or otherwise reasonably available to provide immediate responses to the Consortium full time during the term of this Agreement.

**6.2.3** If Contractor's Project Manager is removed or replaced, or ceases employment with Contractor, Contractor shall promptly (and in all cases within forty-eight (48) hours) of Contractor first learning of the change in the Project Manager's employment status, provide Notice to the Consortium, and submit at least two (2) resumes of other qualified candidates within seven (7) days of removal or replacement of the Project Manager. Contractor must obtain approval of the replacement Project Manager from the 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.

### **6.3 Contractor Project Staff.**

#### **6.3.1 Key Personnel Positions.**

In addition to the Project Manager described in Section 6.2 above, the identified Key Personnel positions for the Project are as follows: Infrastructure Project Management Office (PMO) Lead, Infrastructure Delivery Integration Manager, Infrastructure Transition Manager, Infrastructure Operations Manager, Infrastructure Security Manager, Infrastructure Operations Service Desk Lead, and AWS Manager. The qualifications of each of these Key Personnel positions is set forth in Section 5.3.2.2.1 of the RFP, which is expressly incorporated into this subsection by reference.

#### **6.3.2 Contractor Organizational Chart.**

Contractor's organization chart for the Contractor's Project team and the names of mutually agreed Key Personnel must be provided to the Consortium's Executive Director. Any such Key Personnel shall be subject to the Consortium Executive Director's approval. In the event of the disability, illness, grave personal circumstances, or separation from employment of an individual in a Key Personnel position, that individual may be replaced but the replacement person must still be approved by the Consortium's Executive Director in writing. Except in the circumstances identified, Key Personnel shall not be modified or removed except upon the express written approval of the Consortium's Executive Director.

#### **6.3.3 Contractor Staff Matrix.**

Contractor agrees to make available to the Consortium a matrix of all Staff working on the Project under this Agreement along with their experience, and to maintain that matrix for changes as they occur. This matrix shall include all full or part-time Staff names, working titles, a brief description of each position, and the average monthly hours worked or to be worked. Contractor shall also provide to the Consortium résumés and two (2) references for all Key Staff prior to commencing work pursuant to this Agreement.

#### **6.3.4 Consortium's Right to Approve/Disapprove Contractor Staff.**

During the term of this Agreement, the 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 the Consortium, to the extent permitted by law. Consortium approval of Contractor Staff or proposed changes in Contractor Staff will not be unreasonably withheld.

#### **6.3.5 Replacement of Contractor Staff**

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

Contractor's Staff. Contractor shall ensure that any transition to new Staff will not affect the quality or timeliness of work performed pursuant to this Agreement.

### **6.3.6 Restrictions on Reassignment of Key Personnel**

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 Infrastructure Services Plan or otherwise leaving Contractor's employment; or by mutual agreement of the Parties. The Consortium shall not arbitrarily or capriciously withhold agreement to such removal, reassignment, 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. The Consortium shall also not arbitrarily or capriciously withhold agreement to reasonable absences from the Project by Key Personnel or Staff for training, corporate meetings, or personal emergencies. In the event Contractor finds it necessary to replace Key Personnel due to one of the circumstances described in this Agreement, Contractor shall present to Consortium two (2) alternative replacements to the Consortium for its approval. Consortium shall have the sole right and discretion to select the replacement Key Personnel from the two proposed replacement presented to it by Contractor.

### **6.3.7 Claims by Contractor's Staff**

Any claim made by any person arising out of employment or alleged employment with Contractor (including, but not limited to, claims of discrimination, harassment, or retaliation against Contractor, its officers, or its agents) are the sole responsibility of Contractor and are not the responsibility of the Consortium or State. Contractor will indemnify and hold the Consortium and State, as well as their officer, employees, and agents, harmless from any and all such claims asserted against the Consortium or State. Any person who alleges a claim arising out of employment or alleged employment with Contractor will not be entitled to any compensation, rights, or benefits from the Consortium.

### **6.3.8 DEI Commitment.**

Consortium requires Contractor to demonstrate a commitment to diversity in hiring with respect to Staff performing Services on the Project through utilization of the federal Equal Employment Opportunity Commission's (EEOC) guidelines for creating and maintaining a MD-715 Model EEO Program or through utilization of an equivalent EEO Program.

## **6.4 Subcontractors.**

**6.4.1** Contractor may, with prior written permission from the Consortium enter into subcontracts with third parties for the performance of any part of Contractor's duties and obligations under this Agreement. Any such approval may be rescinded by the Consortium in its reasonable discretion if the Subcontractor's

performance is materially deficient or noncompliant or if any conduct by Subcontractors utilized by Contractor violates any provision of this Agreement and such violation is not cured after written notice as set forth in Sections 11.4. Contractor is responsible and liable for the proper performance of, and the quality of any work performed by, any and all of its Subcontractors. In addition, Contractor's use of any Subcontractor shall not affect the full and complete applicability and enforceability of any and all warranties provided by Contractor pursuant to this Agreement. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the Consortium for any breach in the performance of Contractor's duties. All subcontracts will be made in writing and copies provided to the Consortium. The 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. Consortium is committed to diversity, equity, and inclusion in contracting and Contractor is strongly encouraged to subcontract with Minority and Women Business Enterprises ("MWBEs") and Disabled Veteran Business Enterprises ("DVBEs"). For each subcontract Contractor submits to the Consortium for approval, if the proposed Subcontractor is not a MWBE or DVBE, Contractor must provide a description of its efforts to solicit MWBEs or DVBEs to provide the Deliverables, or perform the Services, covered by the proposed subcontract.

## **6.5 Accounting Requirements.**

**6.5.1** Contractor shall establish and maintain an accounting system with procedures and practices in substantial accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Deliverables and Services and all Charges and other costs and expenditures payable by Consortium under this Agreement, and the Charges properly applicable to the Agreement shall be readily ascertainable therefrom.

**6.5.2** Records and procedures pertaining to the calculation and invoicing of Charges for the Project are subject to the Consortium's and State review. Such procedures, and records relating to the calculation and invoicing of Charges shall be made available to support a Consortium, Counties, State, or federal audit at any time during the term of this Agreement and for five (5) years thereafter during the applicable records retention period.

## **6.6 Records Retention and Access Requirements.**

**6.6.1** Subject to confidentiality privileges provided by law, Contractor shall agree to the conditions of all applicable federal and State regulations, which are incorporated in this Agreement by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records pertaining to this Agreement. In addition, Contractor shall comply with all record retention requirements and access to such records for the Consortium, State, and federal government officials as required by applicable law.

**6.6.2** Contractor shall prepare, maintain and preserve all writings, documents, records, and other tangible compilations of data, regardless of the media in which they are maintained, that were prepared or compiled by Contractor and its

Subcontractors in performing the Services under this Agreement for a minimum of five (5) years from the termination or completion of this Agreement, or until such records and their supporting documentation are released due to closure of a Consortium, State, or federal audit in process at the expiration of such five (5) year period, whichever is longer.

**6.6.3** Records involving matters in litigation related to this Agreement shall be kept for three (3) years following the termination of litigation, including all appeals.

**6.6.4** Contractor shall work with any 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 the Consortium subject to the provisions of Section 6.7 (Inspections). At no time will the Consortium have the right to any information relating to Contractor's profits in providing Services; records or minutes of Contractor's internal management meetings unrelated to the Project; records relating to Contractor's employees protected by law from disclosure; Confidential Information relating to Contractor's suppliers or customers; or legally privileged information.

**6.6.5** Contractor agrees that its financial records shall contain itemized records of all Charges payable by Consortium related to its performance under this Agreement and be available for inspection by the Consortium within ten (10) working days of the request by the Consortium, County, State, or federal agencies. Unless otherwise required by law, nothing in this Section 6.6.5 shall require Contractor to disclose information regarding the Contractor's internal costs and overhead.

## **6.7 Inspections.**

The Deliverables and 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 the Consortium, Counties, State, and federal agencies, who shall, at all reasonable times, have the right to enter Contractor's business facilities, business premises or such other business locales where duties under the Agreement are being provided to inspect, monitor, or otherwise evaluate the Deliverables and Services, subject to Contractor's reasonable security requirements and upon reasonable advance written notice to Contractor. Contractor and all Subcontractors must provide reasonable access to all facilities and assistance to the 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. Without in any way limiting the generality of the foregoing, Contractor shall agree that federal, State, County and Consortium representatives shall have access to and the right to examine, audit, inspect and copy all records, documents, billings and other items described in this Section, including without limitation those of any Subcontractor, during the term of this Agreement and during the five (5) year period thereafter. During the term of this Agreement, the access to these items will be provided in Sacramento County, California at reasonable times as requested by the Consortium. Inspections and audits will be limited to environments used in the performance of Services under this Agreement, provided that

inspections and audits of any leveraged environment will be conducted in a manner not to interfere with services provided to other customers.

#### **6.8 Staff Background 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, including Subcontractor Staff, proposed on the Project to the extent permitted by law. In addition, Contractor shall conduct reference checks on Contractor Staff proposed to be used on the Project, including all Subcontractors and their personnel, and the 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. All criminal background and reference checks will be conducted in manner consistent with federal and California state law.

#### **6.9 Supplemental Contracts.**

**6.9.1** Contractor acknowledges that the Consortium has entered into one or more agreements to develop a cloud-hosted statewide automated welfare system and that this Agreement is entered into, in part, to develop and implement Infrastructure Services that are compatible with this statewide system. Contractor further acknowledges that the Consortium may undertake and award more supplemental contracts for work related to this Agreement, or any portion thereof. Contractor shall fully cooperate with all other contractors and vendors (including but not limited to equipment suppliers and third party licensors) and the Consortium in all cases in which work undertaken pursuant to this Agreement overlap or intersect with the work done by other contractors or vendors. 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 the Consortium, or any other contractors or vendors performing work under agreements other than this Agreement or for any delays which may be caused by the Consortium, or any such contractors or vendors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such other contractors or vendors 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 take reasonable steps to mitigate the effect of such delays caused by the Consortium, or such other contractors or vendors.

**6.9.2** Contractor shall continue to perform its obligations that are not affected by the work of other contractors or vendors and shall mitigate any impact on Contractor from such delays caused by the Consortium's other Contractors or vendors.

### **7. PAYMENTS; INVOICING AND RELATED FINANCIAL TERMS.**

#### **7.1 Total Maximum Contract Sum**

##### **7.1.1 General.**

All of the pricing and sums set forth in this Section 7 apply to the Scope of Contract Work and Deliverables and Services described in Section 5.

The Total Maximum Contract Sum for all Infrastructure Deliverables and Services including Section 7.1.2 Optional Years Pricing and 7.1.3 Change Order Maximum shall not exceed Nine Hundred Eighty Two Million Three Hundred Eighty Four Thousand Three Hundred Thirteen Dollars (\$982,384,313). This Total Maximum Contract Sum is inclusive of all of the following:

The Contract Sum for Infrastructure Services Summary by SFY (Schedule 1) shall not exceed Five Hundred Fifty Six Million Six Hundred Seventy Six Thousand Eight Hundred Seventeen Dollars (\$556,676,817).

The Contract Sum for Infrastructure Deliverables (Schedule 2) shall not exceed Twelve Million Four Hundred Thirty Three Thousand One Hundred Thirty Nine Dollars (\$12,433,139).

The Contract Sum for Infrastructure Hardware and Hardware Maintenance and Software and Software Maintenance (Schedule 4 and Schedule 5) shall not exceed Two Hundred Twenty One Million One Hundred Six Thousand Four Hundred Thirty Two Dollars (\$221,106,432).

The Contract Sum for Infrastructure Telecom (Schedule 6) shall not exceed Eighteen Million Nine Hundred Ninety Three Thousand Nine Hundred Twenty One Dollars (\$18,993,921).

The Contract Sum for Ongoing Infrastructure Services: August 2024 through January 2031 (Schedule 7 and Schedule 7A) shall not exceed Two Hundred Twenty Two Million Eight Hundred Twenty One Thousand Three Hundred Five Dollars (\$222,821,305).

The Contract Sum for Imaging Services (Schedule 15) shall not exceed Seventy Five Million Eight Hundred Ninety Eight Thousand One Hundred Twenty Two Dollars (\$75,898,122).

The Contract Sum for Infrastructure Other Items (Schedule 17) shall not exceed Five Million Four Hundred Twenty Three Thousand Eight Hundred Ninety Eight Dollars (\$5,423,898).

### **7.1.2 Optional Years Pricing.**

Should the Consortium elect to extend the Infrastructure Services being provided by Contractor pursuant to Section 4.2, the Contract Sum for such extended Infrastructure Services shall not exceed Three Hundred Seventy Five Million Seven Hundred Seven Thousand Four Hundred Ninety Seven Dollars (\$375,707,497).

### **7.1.3 Change Order Maximum.**

The amount charged by Contractor for approved Change Orders and County Purchase during the Contract Term shall not exceed Fifty Million Dollars (\$50,000,000).

### **7.1.4 Infrastructure Services Hourly Rate Card**

Contractor's charges for Infrastructure Services shall be consistent with its Base Infrastructure Hourly Rate Card (Schedule 13).

**7.1.5 Infrastructure Services Change Order Rate Card.**

Contractor's charges for Services performed pursuant to an approved Change Order shall be consistent with its Infrastructure Change Order Hourly Rate Card (Schedule 14).

**7.2 No Increases.**

Contractor shall not increase the Contract Sums or the Total Maximum Contract Sum 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 8 (Change Orders).

**7.3 Costs Excluded from Total Maximum Contract Sum.**

**7.3.1 Taxes.**

The Consortium is exempt from federal excise taxes, and no payment shall be made for any personal property taxes or income taxes levied on Contractor or on any taxes levied on employee wages. The Consortium will only pay for any State or local sales or use taxes, if any, on the Services or Deliverables provided to the Consortium in accordance with this Agreement.

**7.3.2 Transportation and Insurance Costs.**

The costs associated with transportation, delivery, and insurance for each Deliverable and Service provided pursuant to this Agreement shall be paid for by Contractor.

**7.3.3 Contractor Expenses.**

Contractor will be solely responsible for Contractor's travel and other out-of-pocket expenses incurred in connection with providing the Deliverables and Services required by this Agreement. Contractor will be responsible for payment of all expenses related to salaries, benefits, employment taxes, and insurance for its Staff.

**7.4 Invoices.**

**7.4.1 Invoices for Deliverables and Services.**

Contractor shall submit detailed, correct invoices in accordance with the Consortium's standard invoicing requirements to the Consortium Executive Director for all amounts to be paid by the Consortium pursuant to this Agreement for all Deliverables and Services. Contractor shall submit invoices for all charges for Infrastructure Deliverables, which received Acceptance in the previous month and all Infrastructure Services provided in the prior month in accordance with the terms of the Agreement. All invoices submitted must meet with the approval of

the Consortium Executive Director or designee prior to payment. Invoices shall include all information reasonably requested in writing by the Consortium, including, without limitation, this Agreement name and reference number, Federal Tax Identification Number, itemization of each Deliverable or Service provided for which payment is requested, the number of hours expended for each Deliverable or Service included in the invoice and the average hourly rate charged for each discrete item of Work, and the total amount due. The average hourly rate is documented in Exhibit C. Discrete items of Work may be excluded from using the average hourly rate and alternately use the Exhibit C, Hourly Rate Card by mutual agreement of the Consortium and Contractor. The Parties acknowledge that discrete items of Work may also cause the average hourly rate to no longer represent the actual average, in which case the Parties will work in good faith to mutually adjust the average hourly rate. The Consortium shall have the right to dispute any invoices submitted for payment by Contractor.

#### **7.4.2 Invoices for Hardware, Software, and Telecom Services.**

Contractor shall submit detailed, correct invoices in accordance with the Consortium's standard invoicing requirements to the Consortium Executive Director for all amounts to be paid by the Consortium pursuant to this Agreement for Hardware, Software, and telecom services. Contractor shall submit invoices for all charges for Hardware, Software, and telecom services incurred by the Contractor in the previous month at the pricing levels agreed to by the Consortium and Contractor. Contractor's invoices shall include as backup all invoices from third-party vendors from whom Hardware, Software, and telecom services have been obtained but Contractor may redact or remove pricing information from such third-party invoices. Invoices for Hardware, Software, and telecom services may only be submitted following the Consortium's Acceptance of such Hardware, Software, and telecom services. Invoices for Hardware, Software, and telecom services must otherwise meet all requirements for invoices as described in section 7.4.1 above, except as expressly provided otherwise in this section.

#### **7.4.3 Change Order Invoicing.**

As addressed in Section 8 of this Agreement, Change Orders are utilized to change any portion of Deliverables or Services. Whenever a Change Order is proposed through a state policy letter, a request from a County, an enhancement request submitted by the Collaboration Model group, the Consortium, or the Contractor, and the Parties have agreed that work will proceed on a proposed Change Order, invoicing for the work done on the approved Change Order will be billed using Exhibit C, CO Hourly Rate Card, for the setup and/or implementation work. Any ongoing operations work will be billed using the base operations average hourly rate for the work done by Contractor in accordance with Section 7.4.1.

#### **7.5 Payments.**

Except as otherwise provided in this Agreement, and subject to the Consortium's receipt of correct invoices, exercise of its remedies, and Contractor's performance of its obligations hereunder, the Consortium shall pay Contractor the amounts invoiced as set forth in

subsections 7.4.1 and 7.4.2 above. Consortium shall pay for each Deliverable, which has received Acceptance and for Services for the time expended in each month multiplied by the labor rate described in the Infrastructure Price Proposal for Infrastructure Services provided to the Consortium. The Charges for Deliverables and Services must conform to the current approved budget for the Project for each applicable state fiscal year. Consortium shall pay for all Hardware, Software and telecom services at amounts agreed upon by the Consortium and Contractor. Consortium will seek to pay all invoices within thirty (30) days of presentation. Consortium will hold back ten percent (10%) of each monthly invoice during the Transition-In period, and for an additional twelve (12) months following the Transition-In period. This ten percent (10%) holdback will be released after the twelve (12) months following the Transition-In period upon condition that all Transition-In Deliverables have been accepted by the Consortium.

## **7.6 Funding.**

### **7.6.1 Lack of Funding; Conditions Subsequent.**

The Parties acknowledge and agree that the Infrastructure 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 any County Board of Supervisors, the State Legislature, or the federal government, or is not allocated or allotted to the 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 the Consortium to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.

### **7.6.2 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 the 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 the Consortium to make payments will be delayed or be reduced accordingly. If such funding is reduced, the Consortium, in its sole discretion, but following consultation with Contractor, shall determine which aspects of the Project shall proceed and which Services shall be performed, with Contractor's costs related to such Services and Deliverables determined in accordance with those in the Price Proposal. In this situation, the Consortium shall pay Contractor for Services and Deliverables provided prior to Consortium providing Notice of the loss of funding. Any obligation on the part of the Consortium to pay Contractor will not extend beyond the end of the Consortium's then current funding period.

### **7.6.3 No Damages.**

The 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, the 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. Notwithstanding the above, Consortium agrees to pay all invoices for goods, Services, and Deliverables that have been accepted by the Consortium as of the date of the termination, or that subsequently are accepted by the Consortium thereafter.

**7.7 Overpayments to Contractor.**

Contractor shall promptly, but in all cases within thirty (30) days, pay to the Consortium the full amount of any erroneous payment or overpayment upon notice of an erroneous payment or overpayment to which Contractor is not entitled.

**7.8 Advance Payments Prohibited.**

No advance payment shall be made for Deliverables or 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 pursuant to Section 7.4.

**7.9 Credits.**

Any credits due the Consortium under this Agreement may be applied against Contractor invoices with appropriate information attached, upon giving of prior notice required herein, if any, by the Consortium to Contractor.

**7.10 No Additional Consideration.**

Except as expressly provided in this Agreement, Contractor shall not be entitled to nor receive from the Consortium any additional consideration, compensation, salary, wages, or any other type of remuneration for Deliverables or Services provided under this Agreement beyond the specific types of remunerations specified in this Agreement.

**8. CHANGE ORDERS.**

**8.1 General.**

The Consortium reserves the right to change any portion of the Deliverables or Services required under this Agreement and any other provisions of this Agreement. All such changes shall be accomplished only as provided in this Section 8.

**8.2 Issuance of Change Orders.**

The Consortium may, at any time by a written Change Order, make changes to the Project that are within the scope of the Agreement. Such changes may include, without limitation, revisions or additions to Infrastructure Deliverables or Services. All Change Orders shall be subject to requirements and limitations in applicable federal, State and County law.

**8.3 Contractor Proposal.**

Contractor shall respond in writing to a Change Order request within ten (10) days of receipt or as otherwise agreed to by the Parties, advising the Consortium of any cost and schedule impacts. The Consortium will not pay for Contractor's efforts in responding to a Change Order request. When the Change Order involves a cost impact, Contractor shall advise

the Consortium in writing of the claimed cost impact, including a breakdown of the number of Staff hours and/or additional requirements by level of personnel needed to effect this change.

### **8.3.1 Details.**

The Consortium will provide Contractor with Change Orders containing a detailed statement of the purpose, objective, or goals to be undertaken by Contractor pursuant to the Change Order. In its response to the Change Order, Contractor shall provide details regarding the job classifications and approximate skill levels of the personnel necessary to effectuate the work detailed in the Change Order, an identification of all Deliverables and Services to be provided by Contractor pursuant to the Change Order, a time schedule for the completion of the work detailed in the Change Order, 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.

### **8.4 Agreement on Change Order.**

The Project Manager and Consortium 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 Consortium Executive Director shall submit the written Change Orders for review and evaluation by the Consortium Board of Directors, except that the Consortium Executive Director shall have the authority to approve written Change Orders that do not result in an increase in the Total Maximum Contract Sum for all Deliverables and Services provided pursuant to this Agreement. Upon the express written approval of the Consortium Board of Directors pursuant or the Consortium Executive Director as applicable, the Change Order will be incorporated into, and become a part of, this Agreement 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.

### **8.5 Disagreement on Change Order.**

If the Parties are unable to reach an agreement in writing within fifteen (15) days of Contractor's response to a Change Order pursuant to Section 8.4, the Executive Director, if and to the extent authorized by the Consortium Board of Directors, may, acting reasonably, make a determination of the impact on the Total Maximum Contract Sum and the schedule for the Infrastructure Project at which point Contractor shall proceed with the work according to such adjustments as determined by the Executive Director, subject to Contractor's right to appeal the Consortium Executive Director's determination of the price and/or Schedule pursuant to Section 17 (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.

### **8.6 Termination and/or Use of Third Party.**

If Contractor fails or refuses to perform the work prescribed in a Change Order, or if Contractor has appealed the Consortium's determination that Contractor must proceed with performing the work prescribed in the Change Order, and the Parties have been unable to

resolve the dispute in accordance with the procedures in Section 17 the Consortium shall have the right to immediately terminate this Agreement for such a refusal, which shall be deemed a termination based on Contractor's default. In addition, the Consortium may engage the services of a third party to perform the Change Order if Contractor fails or refuses to perform the work prescribed by a Change Order, or if the Parties are unable to agree on the terms of a Change Order.

#### **8.7 Orders for Services for Consortium Members.**

Consortium shall also have the right to order and purchase Work that is in connection with the CalSAWS System and which will be used by Consortium Members, by executing and delivering an order form that is agreed to in writing by Contractor and Consortium and executed by the applicable Consortium Member. In the event of a conflict or inconsistency between the terms and conditions of an order and this Agreement, the terms and conditions of this Agreement shall control to the extent of the conflict or inconsistency.

### **9. CONSORTIUM PROPERTY.**

#### **9.1 Ownership.**

Title to all property furnished by the Consortium shall remain with the Consortium. Title to all property purchased by Contractor, and for which Contractor has been reimbursed by the Consortium under this Agreement, shall pass to and vest in the Consortium upon Acceptance of the applicable Deliverable in which the property is included.

#### **9.2 Use of Property.**

Any property furnished to Contractor shall, unless otherwise provided in this Agreement, or approved in writing by the Consortium's Executive Director, be used only for the performance of Contractor's obligations under and subject to the terms of this Agreement.

##### **9.2.1 Location of Work.**

Contractor will maintain a significant on-site presence at CalSAWS' business locations during the Transition-In periods. Until the transition is complete and accepted, the Key Personnel for the Contractor will work on-site seventy five percent (75%) of the work week. Other Staff will work on-site as necessary to fulfill their responsibilities and complete their assigned project Tasks.

During the Transition-In period, the Consortium will work collaboratively with Contractor to determine a staffing model that establishes the appropriate level of continuing on-site presence required for all Key Personnel and other Staff. Once the Transition-In Tasks are complete and accepted, Contractor will fulfill its ongoing obligations in accordance with the approved staffing model.

During the Transition-In period, the Consortium will provide the necessary accommodations and network access for up to ten (10) Infrastructure Contractor Staff in the greater Sacramento area. Contractor Staff will have access to shared conference rooms to meet with Consortium staff and other vendor staff as required at the Consortium locations. Meetings may occur in the greater Sacramento area, and greater

Los Angeles areas. Occasional meetings in the Counties are expected during the contract term. The specific project sites currently include the following but may change.

- **CalSAWS North:**  
620 Roseville Parkway  
Roseville, California 95747
- **CalSAWS South:**  
12440 Imperial Highway  
3rd Floor  
Norwalk, California 90650

The Consortium will provide to Contractor limited office equipment including networked copy machines/printers and dedicated printers at each of these locations.

During the Transition-In period, the Consortium staff will participate in the same manner, with a larger on-site presence. The staffing models developed by the Contractor will also document ongoing Consortium staff participation, both on-site and remotely.

### **9.2.2 Contractor Furnished Equipment**

Contractor must provide hardware, software, video equipment, and other office equipment for the northern and southern project sites as identified above, or as later may be changed, to accommodate CalSAWS work performed by, the M&E contractor, the Consortium and other contractors such as QA, IV&V and BenefitsCal contractor staff. This hardware, software and equipment will be utilized to access the CalSAWS Project repositories and other Project communication methods such as SharePoint. Contractor shall retain all ownership rights to this equipment.

### **9.3 Damage to Property.**

Contractor shall continuously protect and be responsible for any loss, destruction, or damage to any real or tangible property which results from, or is caused by, Contractor's negligent or intentional acts or omissions or from the negligent or intentional failure on the part of Contractor to maintain and administer that property. Notwithstanding anything to the contrary herein, Contractor shall be liable to the Consortium for any damages resulting from damage to property, which damages result from or are caused by Contractor's negligent or intentional acts or omissions. Contractor shall ensure that the property is returned to the 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 Consortium site, and shall do so without requesting contribution or assistance from the Consortium.

### **9.4 Notice of Damage.**

Upon the loss of, destruction of, or damage to any property owned by the Consortium, Contractor shall notify the Consortium's Executive Director and shall take all steps necessary to protect that property from further damage.

## **9.5 Surrender of Property.**

Contractor shall surrender to the Consortium all property owned by the Consortium upon the earliest of completion, termination, or cancellation of this Agreement.

## **10. OWNERSHIP OF HARDWARE, SOFTWARE, AND OTHER PROPERTY**

Except for Consortium and Contractor property and equipment the ownership of which is addressed in Section 9 above, the following provisions relating to intellectual property and equipment provided pursuant to this Agreement shall apply as between Consortium and Contractor.

### **10.1 CalSAWS Ownership of Pre-existing Hardware and Software.**

The Parties acknowledge that certain CalSAWS System, or predecessor Systems, Hardware or Software that may be utilized in providing Deliverables or Services under this Agreement may be owned by other contractors or by Consortium. Consortium will continue to own any Consortium-supplied Hardware or Software utilized by Contractor in providing Deliverables and Services pursuant to this Agreement. Contractor shall not obtain or assert any right, title, or interest in any Hardware or Software owned by any other contractor or by Consortium.

### **10.2 CalSAWS Ownership of Deliverables.**

Consortium shall have full ownership of all Deliverables (of whatever nature) developed or contributed to by Contractor, in connection with the Project, excluding, however, any preexisting intellectual property contributed by Contractor or a third party and constituting Contractor Technology as defined at Section 10.4 below. Contractor shall take all actions necessary to transfer ownership of the Project Deliverables to the Consortium. All Deliverables, in whole and in part, shall be deemed works made for hire of the Consortium for all purposes of copyright law, and all right, title and interest in and to copyright rights therein shall belong solely to the Consortium. To the extent that any Deliverable does not qualify as a work for hire under applicable law, and to the extent that the 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 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 the Consortium. Contractor shall, at the expense of the Consortium, assist the Consortium or its nominees to obtain and register copyrights, trademarks, or patents for all Deliverables in the United States and any other countries. In the event a court of competent jurisdiction finds such an assignment to be unenforceable, Contractor agrees to provide Consortium with a non-exclusive license providing Consortium with all rights, title, and interest the assignment otherwise would have provided. 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 the Consortium all the right, title and interest in and to the Project Deliverables. Contractor also agrees not to assert any moral rights under applicable law with regard to the Deliverables.

### **10.3 Additional Consortium Ownership Rights.**

Consortium shall own all right, title and interest in, and to, its Confidential Information, including without limitation the Specifications, the 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. These rights are in addition to the ownership rights specified in Section 10.2.

### **10.4 Contractor Ownership Rights.**

Notwithstanding any other provision of this Agreement, Contractor shall own all right, title and interest in and to its own Confidential Information and Contractor Technology (as defined below). Notwithstanding Consortium's ownership rights as described in this Section 10, 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 business that are used in the course of providing the Deliverables and Services under this Agreement and that do not include the Consortium's Confidential Information or the Project Deliverables, in whole or in part, and (b) Contractor and its suppliers, including Subcontractors, retain ownership of any and all of its intellectual property rights (i) that Contractor can demonstrate by documentary evidence existed prior to the execution of this Agreement; (ii) is created outside of the scope of this Agreement, including but not limited to, methods, processes and procedures, algorithms, concepts, designs, reports, programs and templates, and all modifications and derivatives thereof and newly created generic consulting tools and methodologies not specified as Deliverables in this Agreement; or (iii) all modifications, enhancements, and derivative works of the intellectual property rights set forth in (i) and (ii) above (collectively, "Contractor Technology"). The Consortium may use any such Contractor Technology contained in a Deliverable in connection with its use of the Deliverables. The term Contractor Technology includes third-party intellectual property licensed and used by Contractor in the performance of the Services.

### **10.5 State and Federal Government.**

All appropriate State and federal agencies including, without limitation, the California Health and Human Services Agency and federal government agencies providing federal financial participation shall have a royalty-free, perpetual, worldwide, transferable, fully paid, nonexclusive and irrevocable license to reproduce, modify, distribute, 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.

### **10.6 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 Infrastructure Deliverables.

## **11. WARRANTIES, REPRESENTATIONS, AND CERTIFICATIONS.**

### **11.1 Project Deliverables Warranty.**

Contractor represents, warrants, covenants, and agrees that all Deliverables will be provided, and shall meet all requirements, as set forth in this Agreement, including the

Specifications and the Infrastructure Services Plan, Infrastructure Work Plan and OWDs. All Deliverables shall be complete, meet Specifications, adhere to the applicable DED, be provided timely as defined in the Work Plan, internally consistent, consistent with other related Deliverables, uniform in appearance, prepared by qualified personnel in accordance with standards, methods and Acceptance criteria as defined in the applicable DED, and be free of Deficiencies. The warranty period shall be for the full term of this Agreement, including any Extended Term. All warranty work shall be at no additional cost to the Consortium during the term of this Agreement. Third Party Software and Hardware is subject to the warranty terms of the third-party provider thereof. In addition, Contractor warrants that all Third Party Software and Hardware that it provides under this Agreement for providing Infrastructure Services and Deliverables will be compatible with the CalSAWS System and fit for its intended use as contained in the Project Specifications. Contractor will correct Deficiencies caused by Third Party Software or Hardware in accordance with subparagraphs 11.3 (Correction of Deficiencies) and 11.4 (Warranty Work Response).

### **11.2 Project Services Warranty.**

Contractor represents and warrants that Contractor shall perform the Services as described in this Agreement and in accordance with the Infrastructure Services Plan, Infrastructure Work Plan, OWDs, and applicable Specifications. Time is of the essence in connection with Contractor's performance of the Services according to the Consortium-approved Schedule. Contractor shall give due priority to the performance of the Services commensurate with the urgency of the task. Contractor shall perform all Services required pursuant to this Agreement in a professional manner, with high quality, knowledge and experience in business and systems integrations. All Services warranty work shall be at no additional cost to the Consortium during the term of this Agreement.

### **11.3 Correction of Deficiencies.**

Contractor represents, warrants, covenants, and agrees that throughout the warranty period set forth in Subparagraphs 11.1 and 11.2, at no additional cost to Consortium, Contractor shall correct any and all Deficiencies in the Deliverables or Services, as determined by the Consortium Executive Director or Contractor. All corrective actions shall be performed with Contractor's best efforts, diligence, and speed toward correction as soon as possible and in any event in accordance within the applicable time period specified in Subparagraph 11.4 (Warranty Work Response).

### **11.4 Warranty Work Response.**

Contractor shall correct any Deficiency identified as a response to its warranty obligations in accordance with this Section 11.4.

#### **11.4.1 Infrastructure Deliverables.**

Contractor shall correct any Deficiency in the Infrastructure Deliverables as follows:

11.4.1.1 For any Non-cosmetic Deficiency, determined to be high priority in accordance with this Section 11.4, Contractor shall immediately commence corrective action and either correct or implement an appropriate workaround for such Non-cosmetic Deficiency within twelve

(12) hours of providing notice to, or receipt of, Notice from the Consortium in accordance with the approved Deliverable Project Control Document ("PCD"). A "high priority" Deficiency shall generally mean a Non-Cosmetic Deficiency that prevents core business processes from functioning properly or causes errors in the processing of cases. If a workaround is implemented, then Contractor shall permanently correct such Deficiency within thirty (30) days of the date on which notice was first provided for a high priority Deficiency.

11.4.1.2 For any Non-cosmetic Deficiency, determined to be "normal priority" in accordance with this Subparagraph 11.4, Contractor shall either correct or implement an appropriate workaround for such Non-cosmetic Deficiency within a time period determined by the Consortium Executive Director, but in no event shall such time period be more than three (3) business days from Notice to, or receipt of Notice from, the Consortium in accordance with the approved Deliverable Project Control Document ("PCD"). A "normal priority" Deficiency shall generally mean any Non-Cosmetic Deficiency not deemed a "high priority" Deficiency, as determined by the Consortium Executive Director. If a workaround is implemented, then Contractor shall permanently correct such Deficiency within sixty (60) days of the date on which notice was first provided for a normal priority Deficiency.

11.4.1.3 For any Cosmetic Deficiency, Contractor shall correct such Cosmetic Deficiency within a time period determined by the Consortium Executive Director, but in no event shall such time period be more than twenty (20) working Days of providing notice to, or receipt of notice from, the Consortium in accordance with the approved Deliverable Project Control Document ("PCD").

#### **11.4.2 Infrastructure Services.**

Contractor shall correct any Deficiency in Infrastructure Services provided under this Agreement in accordance with the applicable Corrective Action Plan or as otherwise approved by Consortium Executive Director.

#### **11.4.3 Contractor-Identified Deficiencies.**

For any Non-Cosmetic Deficiency identified by Contractor, Contractor shall notify Consortium by electronic mail within two (2) hours of such identification or such longer time as agreed by the Parties and Contractor shall correct such Deficiency in accordance within the time periods specified in Section 11.4.1 or 11.4.2. In the event that Contractor fails to correct a Deficiency within the required time period, Contractor shall provide the Consortium with a written report, including a detailed explanation of the status of such Deficiency and corrective actions taken as well as detailed plans for correction of such Deficiency to include a schedule for correction of such Deficiency; provided that notwithstanding any such schedule, the Consortium Executive Director may determine within his reasonable discretion that a modified schedule or modified priorities are necessary for correction of such Deficiency, and Contractor shall comply with such modified schedule and priorities for correction.

## **11.5 Additional Warranties.**

Contractor represents, warrants, covenants, and agrees that throughout the term of this Agreement:

**11.5.1** Contractor shall comply with the descriptions and representations (including, Deliverable documentation, performance capabilities, accuracy, completeness, characteristics, Specifications, configurations, standards, functions, and requirements applicable to professional software design and industry standards) set forth in the Statement of Work and Statement of Requirements documents for the Infrastructure Project.

**11.5.2** All Work, Deliverables, goods, and Services shall be completed in accordance with the Statement of Work, Statement of Requirements, and any Change Orders or Addenda to this Agreement.

**11.5.3** All documentation developed under this Agreement shall be complete, accurate, and uniform in appearance in terms of font size, table structures, page layouts, table and figure references, section numbering and the like.

**11.5.4** Contractor shall not cause any unplanned interruption of the operations of, or accessibility to, the CalSAWS System through any Software, device, method, or means, including the use of any "virus," "lockup," "time bomb," "key lock," "worm," "spyware", program, or disabling code, which has the potential or capability of compromising the security of information contained in the System, including Program Data, or of causing any unplanned interruption of the operations of, or accessibility of, the System to the Consortium or any user, or which could alter, destroy, or inhibit the use of the System, or the data contained therein, or which could block access to or prevent the use of the System or component thereof by the Consortium or any User (collectively and individually referred to herein as "Disabling Device"). Contractor has not placed and shall not purposely place, nor is it aware of, any disabling device on components of the CalSAWS System.

## **11.6 Additional Representations.**

### **11.6.1 Power and Authority.**

Contractor represents and warrants that it has the full power and authority to grant to the 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.

### **11.6.2 No Conflicts of Interest.**

Contractor represents and warrants that it has no interest and shall not acquire in the future any direct or indirect interest without prior notification to the Consortium that would conflict in any manner or degree with the performance of the work under this Agreement.

### **11.6.3 Additional Intellectual Property Representations.**

Contractor represents and warrants that:

11.6.3.1 Except to the extent that any Deliverables are provided to Consortium pursuant to a license, Contractor represents and warrants that its Deliverables shall be free of liens or encumbrances included by Contractor.

11.6.3.2 Contractor shall pass through to Consortium to the fullest extent permitted by law or by agreement any applicable warranty or indemnity offered by any manufacturer of any Deliverable, including any third party Hardware or Software or any other third party product or service sold or licensed to Consortium.

11.6.3.3 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 to be granted by Contractor to the Consortium hereunder.

11.6.3.4 The Deliverables will not knowingly 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.

11.6.3.5 The Consortium shall peacefully and quietly have, hold, possess, and enjoy each Deliverable without suit or interruption.

### **11.6.4 Legal and Regulatory Compliance.**

Contractor represents and warrants that, in its performance in connection with the Services and Deliverables to be provided pursuant to this Agreement, it shall comply with all applicable federal, State, and County laws, regulations, codes, standards and ordinances. In the event that Contractor, in its performance in connection with any Services performed, or any Deliverables provided, is 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 Services and Deliverables into compliance. In addition, Contractor shall be responsible for and shall indemnify the State, the Counties, the Consortium, and their officers, directors, employees, and agents against any fines, penalties, sanctions, or disallowances which are imposed on the Consortium or its member Counties, which arise from any Contractor noncompliance with the federal, State, or County laws, regulations, codes, policies and guidelines resulting from Contractor's or its Subcontractors' performance of their obligations.

### **11.6.5 Contractor's Good Standing.**

Contractor represents and warrants that:

11.6.5.1 Contractor is a corporation, partnership, or other business entity, 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.

11.6.5.2 Contractor has the full power and authority to grant to the 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.

11.6.5.3 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.

11.6.5.4 Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and to provide all Deliverables required by 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 or provision of the Deliverables.

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

#### **11.6.6 Ability to Perform.**

Contractor represents and warrants that:

11.6.6.1 Contractor has the financial stability to carry out at least six (6) months of Services during any period of this Agreement without reimbursement for the Services or expenses.

11.6.6.2 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.

#### **11.7 Breach of Warranty Obligations.**

In the event that Contractor fails to timely perform its obligations set forth in this Section after receiving Notice from the Consortium of Contractor's failure to meet such obligations, the Consortium shall have the right to withhold payment to Contractor subject to the provisions of Section 14.1. In addition, and if Contractor continues to fail to perform such obligations within forty-five (45) days of Contractor's receipt of notice from the Consortium, the Consortium shall have the right to perform or procure the performance of such obligations, including any required correction, repair, replacement, or other work which Contractor has failed to perform. In such event, the Consortium shall be entitled to seek the remedy of cover as set forth in Section 14.3, including the difference between its direct actual and reasonable cost of outside labor and

materials, including its burdened (including salary, employee benefits, and reimbursement policies) rates for Consortium provided labor and the Contractor charges for performance of such obligations. Following adjudication by a court of competent jurisdiction regarding sums owed to Consortium, Consortium may demand cash payment from Contractor and/or may deduct all sums owing from any amounts due to Contractor under this Agreement.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PARTIES MAKE NO OTHER REPRESENTATIONS OR WARRANTIES, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY EXCLUDES ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.

## **12. INDEMNIFICATION.**

### **12.1 General.**

Contractor shall indemnify, defend, and hold harmless the Consortium, and its elected and appointed officers, employees, agents, Consortium Members (hereafter in this Section 12 "Consortium Indemnities") and the State and its officers, employees, and agents from and against any and all claims, liabilities, damages, costs, and expenses, including defense costs and reasonable legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to claims and lawsuits by third parties, for any damages of any nature whatsoever for bodily injury, death, personal injury (including purely economic damage), or real or tangible personal property damage arising from Contractor's, Contractor's agents', employees' or Subcontractors' alleged or actual negligent acts, errors, or omissions or willful misconduct in the performance of Services or provision of products pursuant to this Agreement, including to the extent applicable workers' compensation suits, liability, or expense, provided that Consortium Indemnitees provide Contractor with prompt notice of any such claim of which the Consortium Executive Director has actual knowledge and provides reasonable cooperation in Contractor's defense and any related settlement negotiations. Without in any way limiting the generality of the preceding statement, Consortium's indemnity rights under this Agreement shall expressly include any and all third-party claims arising from, connected with, or related to Contractor's use of Hardware or Software that Contractor has provided for the Project and resulting from Contractor's breach of Contractor's obligations under this Agreement. Contractor shall have no indemnification obligation or liability for claims solely arising from the acts and omissions of the Consortium or Consortium's third-party contractors, vendors or suppliers. Any legal defense pursuant to Contractor's indemnification obligations under this Section 12 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by the Consortium, except that the Consortium will not have such approval right if Contractor's interests are adverse to the Consortium's. Notwithstanding the preceding sentence, Consortium Indemnitees and the State shall have the right to participate in any such defense at their sole cost and expense, except that in the event Contractor fails to provide a full and adequate defense, Consortium Indemnitees or the State shall be entitled to retain their own counsel and receive reimbursement from Contractor for all such costs and expenses incurred by Consortium Indemnitees or the State in doing so. Contractor shall not have the right to enter into any settlement, agreement to any injunction or other equitable relief, or make any admission, on behalf of Consortium Indemnitees or the State without Consortium Indemnitee's or State's prior approval. Contractor's obligation to indemnify the Consortium or the Counties under this Agreement shall only be exercised through the Consortium and upon written demand by the Consortium. Any demand for indemnification by the Counties, or their respective officers,

employee, or agents, shall be tendered to the Consortium, which shall have the authority to demand indemnification by and from Contractor.

## **12.2 Intellectual Property Indemnification.**

Without in any way infringing upon the generality of the Consortium's indemnification rights under Section 12.1, Contractor shall, at its expense, defend, indemnify, and hold harmless Consortium Indemnitees and the State and its officers, employees, 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 the Consortium Indemnitees or the State and its officers, employees, and agents by third parties, which is based on a claim that Consortium Indemnitees' or the State and its officers, employees, and agents use of or rights to the Infrastructure Deliverables or Services, 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 the Consortium, or where the Consortium or any third party modifies, adds to, or combines the Infrastructure Deliverables or Services with any other data or (b) the Consortium fails to obtain intellectual property rights necessary to permit Contractor to perform any of the Services required by this Agreement. In case the Infrastructure 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 the Consortium the right to continue using the Deliverables; (b) modify the Deliverables to comply with the Specifications and not to violate any intellectual property rights; or (c) terminate the use of any infringing Deliverables upon receipt of Notice from the Consortium and refund all sums paid for such Deliverables, as applicable.

## **13. LIQUIDATED DAMAGES.**

### **13.1 Delays or Failures.**

The 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 the Consortium which may be uncertain and would be impractical or difficult to ascertain. Accordingly, the Parties agree that Consortium may assess, and if assessed, Contractor promises to pay the 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.

### **13.2 Key Personnel.**

In the event that Contractor fails to provide all Key Personnel as required by Section 6.3.1, or to replace Key Personnel pursuant to the requirements of Section 6.3.6, the Consortium will provide Contractor with two (2) weeks, or such other time as the Parties may agree in writing, in which to provide such Key Personnel, after which, at its option, Consortium may reduce Contractor's monthly charges by One Thousand Dollars (\$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 Consortium's Executive Director's written approval of a replacement for or the diversion of such

Key Personnel member(s), which approval will not unreasonably be withheld. In addition, in the event (a) Contractor fails to meet any of the requirements in the Service Level Agreements (SLAs), which are incorporated by reference into this Agreement, and as referenced in Section 13.3, (b) such failure is due to the non-performance of any Key Personnel, (c) the Consortium has notified Contractor that its failure to meet the requirements of any SLA is due to the non-performance of any Key Personnel; and (d) Contractor nonetheless chooses to retain the non-performing Key Personnel in his/her/their position on the Project, then the Liquidated Damages specified in Section 13.3 shall double.

**13.3 Service Level Agreements (SLAs).**

Consortium has established various SLAs, which are incorporated into this Agreement by reference. The SLAs set forth various Performance Requirements required of Contractor. The SLAs also establish the Performance Measures by which the successful accomplishment of the Performance Requirements are measured. Finally, the SLAs also set forth Liquidated Damages for not achieving the Performance Measures associated with certain Performance Requirements in the SLAs. The Performance Requirements required of Contractor pursuant to the SLA, along with the Liquidated Damages to be assessed for failing to meet the Performance Measures associated with those Performance Requirement to which Liquidated Damages are attached, are as follows:

<b>Performance Requirement</b>	<b>Liquidated Damages</b>
1. Daily Prime Business Hours Availability	\$20,000 per day
2. Monthly Prime Business Hours Availability, Non-Production Environments	\$20,000 per day
3. Monthly Off Prime Business Hours Availability	\$1,000 per day
4. Local Repair Services	\$10,000 monthly
5. Daily Prime Business Hours Availability of CalSAWS Training Environments	\$20,000 per day
6. Monthly Deficiency Notification Response Time	\$1,000 per month
7. Monthly Service Desk Diagnosis Time Tiers 1 and 2.	\$10,000 per month
	\$1,000 per day

8. Daily Prime Business Hours Standard Report	
9. Disaster Recovery Time Response	\$10,000 per incident
10. Failure to Complete Access Control Audits	\$10,000
11. Security Information and Event Management System Update	\$30,000 per day
12. Scheduled Asset Inventory Audits	\$10,000
13. Completion of Root Cause Analysis	\$10,000 per incident
14. Privileged Access Audit	\$10,000
15. Security Vulnerability Scans	\$20,000 monthly
16. Security Incident Notification	\$30,000 per incident
17. Security Incident Reporting	\$10,000 per incident per hour
18. Security Incident Negligence	\$30,000 per hour
19. Imaging Monthly Uptime Percentage (Applicable only if Consortium elects Optional Imaging Services)	\$20,000 per day
20. Imaging Business Continuity (Applicable only if Consortium elects Optional Imaging Services)	\$20,000 per incident
21. Imaging Document View (Applicable only if Consortium elects Optional Imaging Services)	\$10,000 per incident

22. Database Transaction (Applicable only if Consortium elects Optional Imaging Services)	\$10,000 per incident
23. Optical Character Recognition Processing (Applicable only if Consortium elects Optional Imaging Services)	\$20,000 per day

**13.4 Available Remedies.**

The assessment of Liquidated Damages shall not constitute a waiver or release of any other remedy the Consortium may have under this Agreement for Contractor’s breach of this Agreement, including without limitation, the Consortium’s right to withhold payment to Contractor for defective or untimely Deliverables or Services, including the Consortium’s right to terminate this Agreement, and the Consortium shall be entitled in its discretion to recover actual damages caused by Contractor’s failure to perform its obligations under this Agreement. Notwithstanding the foregoing, any damages to which the Consortium is entitled to recover under this Agreement shall be proportionately reduced by the Liquidated Damages payable to, or previously paid to, the Consortium.

**13.5 Payments.**

Amounts due the Consortium as Liquidated Damages may be deducted by the Consortium from any amounts owing to Contractor under this Agreement. In the event Liquidated Damages are assessed during a month in which no money is owed by the Consortium to the Contractor, the Liquidated Damages will be billed separately to the Contractor.

**14. ADDITIONAL LIABILITIES AND WARRANTIES.**

**14.1 Withholding Payments.**

Consortium will notify Contractor of any Deficiency on Contractor’s part to perform its obligations under this Agreement. If, after receiving such Notice, Contractor fails to cure its non-performance the time periods specified in Section 11.4, including its subparts, Consortium shall have the right to withhold payments to Contractor, in whole or in part, until such failure to perform is cured in all materials respects; provided that the Consortium shall not withhold payment for Deliverables and Services that have been Accepted by the Consortium.

**14.2 Reductions in Payments Due.**

Amounts due the Consortium by Contractor, including but not limited to Liquidated Damages or other damages, or claims for damages as have been adjudicated in Consortium’s favor by a court of competent jurisdiction, may be deducted or set-off by the Consortium from any money payable to Contractor pursuant to this Agreement.

### **14.3 Cover.**

In the event 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 the Consortium or by another resource without unduly interfering with continued performance by Contractor, the Consortium may provide or procure the Deliverables or Services reasonably necessary to cure the default, in which event Contractor shall reimburse the Consortium an amount equal to the difference between Contractor's charges for such Deliverables or Services and the reasonable cost of the Deliverables or Services. In addition, Contractor must cooperate with these resources in allowing access to the Infrastructure Deliverables.

### **14.4 Suspension Due to Breach.**

In the event the Consortium determines that a breach of this Agreement has occurred on the part of Contractor, and the situation is deemed by the Consortium to merit corrective action, the following sequential suspension procedure will be implemented:

**14.4.1** The Consortium shall send a Notice to Contractor in writing to Contractor's Notice address of a perceived compliance breach describing the Consortium's concerns.

**14.4.2** Contractor shall respond to the Consortium's concerns in writing describing proposed corrective actions and proposing completion dates for bringing the Contractor's performance under this Agreement into compliance. Such response will be sent within ten (10) days of the date of receipt of the Consortium's Notice described in Section 14.4.1.

**14.4.3** The Consortium shall notify Contractor in writing within ten (10) days as to the Consortium's final disposition of its concerns.

**14.4.4** Upon receipt of notice of final disposition by Contractor, the Consortium reserves the right to suspend all, or part of, the Agreement for a period no greater than thirty (30) calendar days, 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 the Consortium to terminate in accordance with Sections 18.1 or 18.2.

### **14.5 Suspension for Convenience.**

The Consortium shall have the right at any time during the Project to suspend Contractor's, or any of its Subcontractor's, Work on any Deliverables, Services, or any part thereof, fully or partially, for its own convenience for a period not to exceed thirty (30) days within any six (6) month period. Within thirty (30) days after issuance of such a stop work order, the 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. Contractor shall receive notice of the reasons for such an order. The Schedule shall be delayed on a day-for-day basis if the Consortium has issued a stop work order to Contractor and such stop work order is causing delays in completing Deliverables or Services in accordance with the Schedule. To the extent that stop work orders are issued under this Section, thirty (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 amounts owing Contractor and/or Schedule shall be made pursuant to Section 8 (Change Orders), if appropriate, based on the Consortium 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 for additional costs incurred as a result of any stop work orders issued under this Section.

**14.6 Limitation on Liability – CONSORTIUM.**

EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, IN NO EVENT SHALL THE 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 THE CONSORTIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, THE CONSORTIUM'S MAXIMUM AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL CHARGES TO BE PAID BY IT TO CONTRACTOR UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION CHANGE ORDER PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED.

**14.7 Limitation on Liability – CONTRACTOR.**

EXCEPT FOR INDEMNIFICATION OBLIGATIONS, (i) CONTRACTOR'S LIABILITY TO THE CONSORTIUM UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL CHARGES PAID AND TO BE PAID BY THE CONSORTIUM TO CONTRACTOR UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION, CHANGE ORDER PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED, AND (ii) CONTRACTOR SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF THE CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR PURPOSES HEREOF, THE SPECIFIED PAYMENT REMEDIES SET FORTH IN SECTIONS 11.7, 14.3, AND 19.24 OF THIS AGREEMENT AND DAMAGES ARISING FROM BREACH OF SECTION 15, CONFIDENTIAL DATA, SHALL NOT BE DEEMED CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES BUT RATHER SHALL BE SUBJECT TO SUBCLAUSE 14.7(i).

**15. CONFIDENTIAL DATA; SECURITY.**

**15.1 Confidentiality of Consortium and Third Party Information.**

Contractor shall maintain the confidentiality of all confidential records and information, including information relating to the Infrastructure Project, billings, Consortium records, and third party applicant/participant records and information (Program Data) in compliance with all applicable: (i) federal and State laws, rules, and regulations, including California Civil Code Section 1798.82 and California Welfare and Institutions Code Section 10850; (ii) all local County ordinances; and (iii) Consortium written guidelines, directives, policies and procedures relating to confidentiality and information security of all Program Data (including any breach of the security of the CalSAWS System, such as any unauthorized acquisition of Program Data that

compromises the security, confidentiality, or integrity of personal information); or (iv) written direction from the Consortium regarding the protection of specific non Program Data. To the extent that such Consortium policies and procedures change, the Consortium will make reasonable efforts to promptly notify Contractor of updated information and Contractor shall thereafter comply with such information. All records and information pertaining to persons applying for or receiving assistance and/or Services are confidential and are, and shall remain, owned by the individual County from which the information emanated, and no information related to any individual case or cases shall be in any way disclosed to anyone except to designated Consortium employees, California Department of Social Services (CDSS) staff or Counties' employees without the prior written authorization from the Consortium Executive Director or designee. Contractor shall inform all of its officers, employees, and agents providing Services under this Agreement of the confidentiality provisions of this Agreement. Contractor shall provide to the Consortium an executed Contractor Employee Acknowledgment, Confidentiality, and Intellectual Property Agreement (Exhibit D) for each of its employees performing work under this Agreement. Further, Contractor shall provide to the Consortium an executed Subcontractor Employee Acknowledgment, Confidentiality, and Intellectual Property Assignment Agreement (Exhibit D.1) for each employee of each Subcontractor performing any work under a Consortium approved subcontract in accordance with Section 6.9. Contractor shall comply with, implement, adhere to and align with, track, and report on all applicable State, federal, and CalSAWS standards, regulations, guidelines and requirements in place as of the date of the Contractor's Proposal, and thereafter shall update its compliance obligations to adhere to any changes in applicable State, federal and CalSAWS standards, regulations, guidelines, and requirements. These include, but are not limited to, Social Security Administration (Technical System Security Requirements), NIST, ADA, and California SIMM / SAM requirements.

## **15.2 HIPAA Compliance.**

In addition to its obligations under 15.1 above, Contractor agrees to be bound by the requirements stated in Exhibit – HIPAA Business Associate Agreement. This includes safeguards for data and information systems as well as prohibitions against disclosure.

## **15.3 Audit.**

The Consortium reserves the right to monitor, audit or investigate Contractor's use of the Consortium's and/or third parties' Confidential Information collected, used, or acquired by Contractor under this Agreement.

## **15.4 Return.**

Subject to record retention laws and requirements of this Agreement, Contractor shall promptly destroy or return to the Consortium all Confidential Information, including copies thereof, except for one copy that may be retained for regulatory or audit purposes, upon either demand by the Consortium or upon the expiration or termination of this Agreement.

## **15.5 Remedies.**

**15.5.1** Contractor shall immediately report to the Consortium any and all unauthorized disclosures or uses of the Consortium's Confidential Information, or any third-party Confidential Information of which Contractor or its Staff become aware or have knowledge. Contractor acknowledges that any publication or

disclosure of the Consortium's Confidential Information, or any third-party Confidential Information to others may cause immediate and irreparable harm to the Consortium or third parties. If Contractor should publish or disclose such Confidential Information to others without authorization, the Consortium shall immediately be entitled to seek injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Consortium's right to seek injunctive relief under this section 15.5.1 shall in no way limit Consortium's right to recover any and all damages, direct or consequential, costs, and attorneys' fees arising from, related to, or connected with the disclosure of its or third-party Confidential Information.

**15.5.2** The Consortium will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information of which the Consortium becomes aware or has knowledge.

### **15.6 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.

### **15.7 Compliance with California Public Records Act.**

Contractor acknowledges that this Agreement may be a public record under California 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 Consortium will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view Contractor's Confidential Information, the 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 Consortium may release the identified requested information on the date specified without penalty or liability. The Consortium reserves the right to also seek reimbursement for all costs and expenses incurred by it for its refusal to produce Contractor's Confidential Information.

### **15.8 Subpoena.**

In the event that a subpoena or other legal process in any way concerning the Consortium's Confidential Information, or any third-party Confidential Information is served upon Contractor, then, to the extent permissible under applicable law or not otherwise prohibited by court order, Contractor agrees to notify the Consortium within twenty-four (24) hours following receipt of such subpoena or other legal process and to cooperate with the Consortium or any of its County members in any lawful effort 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 Consortium or any of its member Counties, then the Consortium or any of its member Counties, as applicable, agree to notify

Contractor within twenty-four (24) hours following receipt of such subpoena or other legal process and to cooperate with Contractor in any lawful effort to contest the legal validity of such subpoena or other legal process.

**15.9 Security of CalSAWS System and Other Confidential Information**

**15.9.1 Adherence to CalSAWS User Security and Acceptable Use Policy.**

CalSAWS assets and information within the Contractor’s control and use must be used in a secure, approved, ethical, and lawful manner and in accordance with the terms and conditions of CalSAWS User Security and Acceptable Use Policy. At all times, Contractor must adhere to this Policy and ensure that its Staff, as well as its Subcontractors and their Staff, adhere to this Policy.

**15.9.2 Security Training.**

Contractor’s agents and employees, as well as all Subcontractor agents and employees will be required to undergo training regarding CalSAWS Security issues, protocols, and processes to be conducted by Consortium at a time and place, and at a level of frequency, to be established by Consortium.

**15.9.3 Execution of CDSS/DHCS MediCal Privacy and Security Agreements (PSAs)**

The Consortium is party to MediCal Privacy and Security Agreements with the California Department of Social Services (CDSS) and the California Department of Health Care Services (DHCS), which impose obligations on the Consortium to ensure the privacy and security of Social Security Administration (SSA) information, MediCal Eligibility Data Systems (MEDS) information, Income and Eligibility Verification System (IEVS) information, and MediCal Personally Identifiable Information (MediCal PII). As part of these PSAs, Consortium is required to enter into agreements with all Contractors, Subcontractors, and their employees and agents, who have access to the information identified in this subparagraph that imposes on Contractors, Subcontractors, and their agents and employees, the same obligations to ensure the privacy and security of this information as required of Consortium. Accordingly, and as part of entering into this Agreement, Contractor will be required to enter into PSAs with Consortium and must require any of its Subcontractors to similarly enter into such PSAs.

**15.10 Survival.**

The provisions of this Section 15 shall remain in effect following the termination or expiration of this Agreement.

**16. INSURANCE.**

**16.1 Liability and Auto Insurance.**

Contractor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed or eligible to conduct business in the State of California and approved by the Counties. Contractor shall

include the Counties, its boards, agencies, contractors, officers, employees, agents and volunteers, and the State, both individually and collectively, as additional named insureds on Contractor's commercial general liability and auto liability policies. Such insurance shall apply as primary insurance for these additional insureds specific to Contractor's activities hereunder. Contractor shall include the Counties, its boards, agencies, contractors, officers, employees, agents and volunteers, and the State, its officers, employees, and agents, both individually and collectively, as additional named insureds on Contractor's commercial general liability and auto liability policies. If Contractor fails to buy and maintain the insurance coverage described in this Section 16, the Consortium may terminate this Agreement under Section 18.1 (Termination for Material Breach). The minimum acceptable limits shall be as indicated below and Contractor shall be solely responsible for covering any deductibles provided in those policies.

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

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

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

**16.1.4 Crime Coverage Insurance** covering the risks of theft of money, securities, or other property committed to Contractor's Staff, including Subcontractor's Staff, while performing work pursuant to this Agreement;

**16.1.5 Professional Liability or Errors and Omissions** with coverage of not less than \$2 million per claim/\$5 million general aggregate; and

**16.1.6 Umbrella Policy** providing excess limits over the primary policies in an amount not less than \$3 million per occurrence and in the aggregate.

## **16.2 Workers' Compensation Coverage.**

Prior to providing Services under this Agreement, Contractor shall, in full compliance with California state law, provide or purchase, at its sole cost and expense, statutory California's workers' compensation coverage for its employees as required and employers' liability in the amount of \$1 million per bodily injury by accident and \$1 million per bodily injury by disease. This policy shall remain in full force and effect during the term of the Agreement. Should Contractor fail to secure worker's compensation insurance coverage or fail to pay premiums on behalf of its employees, the Consortium may terminate this Agreement under Section 16.1 (Termination for Material Breach), or alternatively, and solely at the discretion of the Consortium, deduct the amount of premiums owing for a policy of worker's compensation insurance coverage from the amounts payable to Contractor under this Agreement and transmit the same to the responsible State agency.

### **16.3 Subcontractors.**

Contractor shall include all Subcontractors as insured under all required insurance policies or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractors shall maintain insurance at a level commensurate with the extent of the scope of work they are performing on the Project. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

### **16.4 Cancellation.**

Contractor's insurance policies shall not be canceled or non-renewed 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 thirty (30) business days' written Notice has been given to the Consortium Executive Director, and Contractor has replacement insurance policy(ies) in place that satisfy the requirements set forth in this Section 16. Contractor's insurance policies shall not be reduced in scope without the Consortium's prior written consent.

### **16.5 Insurance Documents.**

Contractor shall furnish to the Consortium copies of certificates of all required insurance no later than ten (10) days following the Agreement Effective Date, and copies of renewal certificates of all required insurance upon renewal. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section 16. Failure to maintain insurance as required by this Section 16 shall be grounds for immediate termination or suspension of this Agreement under Section 16.1 (Termination for Material Breach). The Consortium reserves the right to review Contractor's compliance with these insurance requirements to ensure that there is appropriate coverage that is in accordance with this Agreement.

### **16.6 Increased Coverage.**

Contractor will notify the Consortium promptly if any aggregate insurance limit is exceeded. In such event, Contractor must purchase additional coverage to meet these requirements.

### **16.7 Cross Liability.**

All insurance provided by Contractor that affords additional insured status shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the Consortium or its member Counties specific to the Consortium's additional insured status and Contractor's activities hereunder and shall include a severability of interests (cross liability) or separation of insured provision.

## **17. DISPUTE RESOLUTION.**

### **17.1 Disputes Between Contractor and Other Contractors in Multi-Contractor Environment.**

**17.1.1** The Consortium currently operates the CalSAWS System in a multi-contractor environment. As such, Contractor will be required to interact and work

cooperatively with other contractors on various aspects of the CalSAWS System, including ongoing application and infrastructure development, testing, deployment and maintenance.

**17.1.2** The Consortium has established the Delivery Integration Office (DIO) to oversee and manage the governance structure and processes in an integrated multi-contractor environment. The Delivery Integration Office incorporates system engineering/system integration principles and best practices to achieve the following:

17.1.2.1 Facilitate, support and monitor the effectiveness of the multi-contractor environment.

17.1.2.2 Participate in the creation and execution of plans and processes to govern multiple contractors working collectively in the CalSAWS environment.

17.1.2.3 Coordinate the timing and entry/exit criteria associated with design, build, test and delivery across contractors when multiple parties are required to implement a change or add a capability.

17.1.2.4 Monitor and clarify lines of delineation between contractors.

17.1.2.5 Monitor effectiveness of contractor interactions.

17.1.2.6 Serve as the first entity to resolve disputes between or among contractors.

**17.1.3** In any case in which an issue or dispute arises between Contractor and other contractors providing goods or Services on the CalSAWS System, Contractor shall promptly bring the dispute to the attention of the DIO. Upon being notified of a potential issue or dispute between Contractor and other contractors working on the CalSAWS System, the DIO will meet with appropriate Staff from both Parties in an effort to resolve the issue or dispute.

**17.1.4** If the DIO is unable to resolve an issue or dispute between Contractor and other contractors working on the CalSAWS System within three (3) days of the issue or dispute being brought to its attention, the DIO will elevate the issue to the Consortium Executive Director, who may initially designate a deputy or deputies to attempt to resolve the issue. If the dispute is submitted to the Consortium Executive Director's designee(s) and the designee(s) is (are) unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute, then the matter will be submitted back to the Consortium Executive Director who will make the final decision regarding resolution of the issue or dispute. The Consortium Executive Director will make his/her final decision regarding resolution of the issue or dispute within (10) days of its (re)submission to him/her.

## **17.2 Disputes Between Contractor and Consortium.**

**17.2.1** Contractor and the Consortium agree to act immediately to mutually resolve any disputes that may arise with respect to this Agreement. The Parties agree that time is of the essence in the resolution of disputes.

**17.2.2** Contractor and the Consortium agree that, the existence and details of a dispute notwithstanding, both Parties shall continue without delay their performance hereunder, except for any performance which the Parties mutually determine should be delayed.

**17.2.3** In the event of any dispute between the Parties with respect to this Agreement, Contractor and the Consortium shall submit the matter to the Contractor's Project Manager and Consortium Executive Director, who may initially designate deputies to attempt to resolve the issue. If the dispute is submitted to the Project Manager's and Executive Director's designees and those individuals are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute, then the matter shall be submitted back to the Project Manager and Executive Director to resolve. The Project Manager and Executive Director shall have ten (10) days to attempt to resolve the dispute.

**17.2.4** In the event that at these levels, there is not a resolution of the dispute acceptable to both Parties, then each party may assert its other rights and remedies provided under this Agreement and/or its rights and remedies as provided by law or at equity.

**17.3** All disputes utilizing the dispute resolution procedures described in Sections 17.1 and 17.2 shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The Parties shall act in good faith to resolve all disputes. At all levels described in this Section, the efforts to resolve a dispute shall be undertaken by conference between the Parties' respective representatives, either by face-to-face meeting or by telephone.

**17.4** Notwithstanding any other provision of this Agreement, each party's right, to the extent applicable, to seek injunctive relief as specified in this Agreement shall not be subject to this dispute resolution procedure. Consortium's right to terminate this Agreement pursuant to Section 18.5 (Termination for Convenience) shall not be subject to this dispute resolution procedure. Contractor may contest, in good faith, any such termination in accordance with its rights and remedies provided under this Agreement and/or its rights and remedies as provided by law or at equity.

## **18. TERMINATION.**

### **18.1 Termination for Material Breach.**

In addition to the termination rights described elsewhere in this Agreement, the Consortium may terminate this Agreement with prior Notice to Contractor if Contractor materially

breaches this Agreement, provided the Consortium has given Contractor Notice of such breach and Contractor failed to cure such breach within thirty (30) days after receipt of such Notice.

### **18.2 Termination for Rejection of Infrastructure Deliverables.**

If Contractor delivers a Infrastructure Deliverable containing Deficiencies or fails to timely deliver a Deliverable, and subsequently fails to cure the Deficiency as required by Section 11, the Consortium shall have the right to terminate this Agreement in accordance with Section 18.1, without penalty or liability to it, with such a termination being deemed a termination due to Contractor's default. If the Consortium terminates this Agreement under this Section, Consortium shall have the right to seek recovery of all actual damages, including all payments made to Contractor for the rejected Deliverable and related Services rendered in connection with the deficient Deliverable, subject to equitable adjustment for any portion of the Deliverable or Services used or retained by the Consortium or from which the Consortium derives value. Contractor shall be liable for all inbound and outbound preparation and shipping costs for any Deliverable returned pursuant to this provision.

### **18.3 Termination for Consortium's Nonpayment.**

If the Consortium fails to pay Contractor undisputed, material charges within ninety (90) days of receipt of Notice from Contractor of the failure to make such payments when due, Contractor may, by giving Notice to the Consortium Executive Director, terminate this Agreement as of a date specified in the Notice of termination. Contractor shall have the right to terminate the Agreement for the Consortium's material breach of the Agreement, if Consortium fails to cure the breach within thirty (30) days of receipt of Notice from the Contractor.

### **18.4 Termination Remedies.**

In the event of termination of this Agreement by the Consortium under Sections 18.1 or 18.2, in addition to its other remedies, the Consortium shall have the right to procure Infrastructure Deliverables and/or Services that are the subject of this Agreement on the open market and to seek recovery from Contractor for damages, including but not limited to, (a) the cost difference between the original Agreement price for the Deliverables and/or Services and the replacement costs for such Deliverables and/or Services acquired from another contractor; and (b) if applicable, all administrative costs directly related to the replacement of this Agreement for the remaining term, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs. The Consortium shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor is found to owe the Consortium for Contractor's default and that have been awarded to Consortium by a court of competent jurisdiction.

### **18.5 Termination for Convenience.**

**18.5.1** In addition to its other rights to terminate as stated in this Section 18, the Consortium may terminate this Agreement in whole or in part for its convenience upon sixty (60) days prior Notice to Contractor when it is determined by the Consortium to be in its best interests. In addition, invocation of Section 18.6 (Termination for Withdrawal of Authority) or Section 18.7 (Termination for Non-Allocation of Funds) shall be deemed a termination for convenience but will not require such sixty (60) days' Notice. During the above-described sixty (60) day period, Contractor shall wind down and cease work on Deliverables or Services

pursuant to this Agreement as quickly and efficiently as possible, without performing unnecessary activities and by minimizing negative effects on the Consortium from such winding down and cessation of work under this Agreement. If this Agreement is so terminated, the Consortium shall be liable only for payment as provided below for Deliverables and Services rendered prior to the effective date of termination.

**18.5.2** In case of such termination for convenience, the Consortium shall pay to Contractor the agreed upon amounts, if separately stated, for Deliverables for which Acceptance has been given by the Consortium, amounts for Services performed on Deliverables which are in development but which have not received Acceptance, and amounts for 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 Deliverables. The amounts for such Services shall not exceed their reasonable value and shall not exceed the amount for the Deliverables with which they are associated or, if not associated with a Deliverable, the price for the Services in the Contractor's Price Proposal or Change Order, whichever is applicable. Any such amounts shall be verified in documentation submitted by Contractor to the Consortium upon its request for it. Failure to agree on the amounts set forth in the documentation provided shall constitute a dispute between the Parties. In no event shall the Consortium pay to Contractor an amount greater than Contractor would have been entitled to if this Agreement had not been terminated.

#### **18.6 Termination for Withdrawal of Authority.**

In the event that the authority of the 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, the Consortium may terminate this Agreement under Section 18.5 (Termination for Convenience).

#### **18.7 Termination for Non-Allocation of Funds.**

If funds are not allocated to continue this Agreement in any future period, the Consortium will not be obligated to pay any further charges for Deliverables and/or Services and shall have the right to terminate this Agreement. The Consortium agrees to notify Contractor of such non-allocation at the earliest possible time. No penalty shall accrue to the Consortium in the event this Section is exercised.

#### **18.8 Termination for Conflict of Interest.**

**18.8.1** The 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.

**18.8.2** In the event this Agreement is terminated pursuant to Section 18.8.1 either party shall be entitled to pursue the same remedies as it could pursue in the event of a breach of this Agreement.

## **18.9 Termination Procedures.**

**18.9.1** Upon termination of this Agreement, the Consortium, in addition to any other rights provided in this Agreement, may require Contractor to deliver to the Consortium any Consortium property, including Deliverables, produced or acquired for the performance of such part of this Agreement up to the date of termination, subject to Contractor's right to receive payment for any such Deliverables delivered to, and retained by the Consortium.

**18.9.2** Upon termination of this Agreement due to Contractor's breach of any of its obligations owing pursuant to this Agreement, the Consortium may withhold from any amounts due Contractor for Deliverables or Services such sum as the Consortium's Executive Director determines to be reasonably necessary to protect the Consortium from potential loss or liability.

**18.9.3** After receipt of a Notice of termination, and except as otherwise directed by the Consortium in writing, Contractor shall:

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

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

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

18.9.3.4 Complete performance of such part of this Agreement as shall not have been terminated by the Consortium;

18.9.3.5 Take such action as may be necessary, or as the Consortium Executive Director may direct, for the protection and preservation of the property related to this Agreement which is in the possession of Contractor and in which the Consortium has an interest; and

18.9.3.6 Transfer title to the Consortium and deliver in the manner, at the times, and to the extent directed by the Consortium's Executive Director, any property which is required to be furnished to the Consortium and which has been accepted or requested by it.

**18.9.4** Contractor shall pay within thirty (30) days, or within such other time as fixed by a court of competent jurisdiction, the damages due the Consortium as the result of any final adjudication, award, or settlement agreement.

**18.9.5** Upon the expiration or termination of this Agreement, Contractor shall assist the 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.

**18.9.6** Contractor shall provide to the Consortium all information requested by the Consortium that is necessary to facilitate a subsequent bidding process without additional costs or fees, except for Contractor's proprietary information, including but not limited to, the cost basis for Charges under this Agreement, employee salary information, and Contractor Technology.

**18.9.7** Contractor shall provide to the Consortium, without additional cost to it, and at least thirty (30) days prior to the expiration or termination of this Agreement, all files, data, and records necessary to effect the least disruptive and costly transition as possible under the circumstances.

## **19. GENERAL TERMS AND CONDITIONS.**

### **19.1 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 further cost to the Consortium or any of its employees

### **19.2 Antitrust Violations.**

Contractor and the Consortium recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by the Consortium. Therefore, Contractor hereby assigns to the 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 Consortium resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the charges under this Agreement.

### **19.3 Assignment.**

Except as to a party that purchases all, or substantially all, of Contractor's assets, 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 Consortium's Executive Director. In the event of an assignment resulting from the purchase and sale of all, or substantially all, of Contractor's assets, Contractor will promptly notify Consortium of such an assignment. In such a case, the Consortium reserves the right to terminate this Agreement for convenience pursuant to section 18.5. The Consortium may assign this Agreement to any governmental entity and may delegate their duties to such entity 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. Notwithstanding any other provision of this Agreement, Contractor and Consortium do not intend, in any way, that any person or entity shall acquire any rights as a third-party beneficiary of this Agreement, except that this provision shall not be construed to: (i) limit Contractor's indemnification obligations hereunder; (ii) limit any right explicitly granted to a third party by the terms of this Agreement, including without limitation Section 10.5 of this Agreement; or (iii) limit any obligations that are granted to a third party by operation of law.

**19.4 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.

**19.5 Binding Effect.**

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

**19.6 Business Registration.**

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

**19.7 Claims.**

Contractor must submit claims against the Consortium within the earlier of one (1) year of the date upon which Contractor knew of the existence of the claim or one (1) 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 Consortium's Executive Director or his or her designee by Contractor in the form and with the certification prescribed by the Consortium's 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. Notwithstanding the foregoing or anything to the contrary in this Agreement, and only to the extent not prohibited by applicable federal or state law, in the event Consortium brings a legal action against Contractor, Contractor's right to assert counterclaims against the Consortium shall not be deemed waived or barred by this Section 19.7.

**19.8 Compliance With Civil Rights Laws.**

**19.8.1** 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.

**19.8.2** 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 16.1 (Termination for Material Breach), and Contractor may be declared ineligible for further contracts with the 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.

**19.8.3** 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 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.

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

## **19.9 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.

## **19.10 Darfur Contracting Act Certification.**

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.

**19.11 Cooperation of Parties.**

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

**19.12 Copeland Anti-Kickback Act.**

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

**19.13 Covenant Against Contingent Fees.**

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

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

**19.14 Debarment and Suspension.**

**19.14.1** 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, as well as by 29 CFR Part 98, Appendix A, 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 (3) 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.

**19.15 Domestic Partners.**

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

**19.16 Drug Free Workplace Certification.**

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

19.16.1.1 The unlawful manufacture, distribution dispensation, possession or use of a controlled substance is prohibited in the workplace.

19.16.1.2 Violators may be terminated or requested to seek counseling from an approved rehabilitation service.

19.16.1.3 Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.

19.16.1.4 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.

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

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

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

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

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

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

19.16.2.4

- (1) Will receive a copy of the Contractor's drug free policy statement; and
- (2) Will agree to abide by the terms of the Contractor's statement as a term of condition of employment on the Agreement.
- (3) Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future agreements by the Counties if the Counties determine that any of the following has occurred:
- (4) Contractor has made false certification; or
- (5) Violates the certification by failing to carry out the requirements as noted above.

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

19.16.3.1 The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace;

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

19.16.3.3 Contractor and Subcontractor employees must notify Contractor or Subcontractor, respectively, of any conviction of a criminal drug statue no later than five (5) days after such conviction; and

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

**19.17 Entire Agreement; Acknowledgment of Understanding.**

The 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 Counties and Contractor agree that the Agreement (including the Exhibits and documents incorporated into the Agreement by reference) are the complete and exclusive statement of the Agreement between the Parties relating to the subject matter of the Agreement and supersede all letters of intent or prior contracts or prior representations, oral or written, between the Parties relating to the subject matter of the Agreement.

**19.18 Environmental Protection Standards.**

**19.18.1 General.**

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

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

19.18.2.1 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.

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

19.18.2.3 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.

19.18.2.4 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.

19.18.2.5 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].

19.18.2.6 The Consortium may extend this prohibition to other facilities owned or operated by Contractor.

### **19.18.3 The Clean Water Act.**

19.18.3.1 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.

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

19.18.3.3 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 one hundred eighty (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.

(3) The President exempts 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.

(4) 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.

(5) 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)).

#### **19.19 Fair Labor Standards Act.**

Contractor shall comply with all applicable provisions of the federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless the Consortium, the State, the Counties, and their officers, employees and agents from any and all liability resulting from third-party claims, 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 State or Counties may be found jointly or solely liable.

#### **19.20 Force Majeure.**

Neither Contractor nor the 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 Counties), except to the extent such third party entities experience an event beyond its reasonable control and without the fault or negligence of such entity. In the event Contractor is delayed in its performance under this Agreement through any act or omission of Consortium or its vendors, Consortium and Contractor shall meet and confer in good faith to negotiate reasonable schedule and price adjustments.

**19.21 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.

**19.22 Headings.**

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

**19.23 Licensing.**

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 Consortium.

**19.24 Litigation.**

**19.24.1 Notice of Litigation.**

Contractor shall promptly notify the 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 Consortium's 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.

**19.24.2 Costs.**

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

**19.25 Lobbying Restrictions.**

**19.25.1 Federal Restrictions.**

Contractor shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations and shall be responsible for ensuring that all Subcontractors or sub-grantees of funds provided under this Agreement also fully comply with all such certifications and disclosure requirements.

**19.25.2 State and County Restrictions.**

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

**19.25.3 Certification Regarding Lobbying.**

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

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

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

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

19.25.4.3 Contractor shall require that the language of this certification in Section 16.26.3.4 be included in the award documents for all sub-awards at all (including but not limited to sub-grants, contracts under grants and cooperative agreements, and Subcontractor

subcontracts) and that all Subcontractors shall certify and disclose accordingly.

**19.26 Modifications and Amendments**

**19.26.1** No modification, amendment, alteration, addition or waiver of any Section or condition of this Agreement shall be effective or binding unless it is in writing and signed by an authorized representative of Contractor and the Consortium Executive Director or designee if there is not an increase or decrease to the Total Maximum Contract Sum. If there is an increase or decrease to the Maximum Amount, then the Consortium Executive Director or designee must obtain approval from the Consortium Board of Directors before any such increase or decrease is effective. In no event will Contractor be required to perform Services above the Total Maximum Contract Sum if approval has not been received.

**19.26.2** Only the Consortium Executive Director or authorized designee 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 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 Consortium Executive Director or designee if there is not an increase or decrease to the Total Maximum Contract Sum. If there is an increase or decrease to the Total Maximum Contract Sum, then the Consortium Executive Director or designee must obtain approval from the Consortium's Board of Directors before any such increase or decrease is effective.

**19.26.3** Contractor shall notify the 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.

**19.27 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.

**19.28 Notices.**

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, by a recognized courier

service, or deposited with the United States Postal Service as first class mail, postage prepaid, to the Parties at the following addresses:

Consortium:

CalSAWS  
Julia Erdkamp  
Executive Director  
620 Roseville Parkway  
Roseville, California 95747  
erdkampj@calsaws.org

Contractor:

Gainwell Technologies LLC  
Dawn Wilder  
Account General Manager  
620 Roseville Parkway  
Roseville, California 95747  
dawn.wilder@gainwelltechnologies.com

Notices shall be effective upon receipt or four (4) business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

**19.29 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.

**19.30 Publicity.**

The award of this Agreement to Contractor is not in any way an endorsement of Contractor or Contractor's Services by the Consortium and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the Consortium Executive Director in advance all advertising, sales promotion, and other publicity matters relating to this Agreement in which the Consortium name is mentioned or language is used by which, in the Consortium's judgment, its involvement may 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 Consortium. Contractor shall not in any way contract on behalf of or in the name of the 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 Consortium.

**19.31 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.

### **19.32 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.

### **19.33 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.

### **19.34 Sovereign Immunity.**

The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by the Consortium member Counties or the State of any immunities from suit or from liability that the Consortium member Counties or the State may have by operation of law.

### **19.35 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).

### **19.36 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, those terms specified in this Agreement as surviving the termination of it, shall remain in full force and effect as expressly stated in the applicable sections.

### **19.37 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.

### **19.38 Counterparts.**

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by the

Parties, for all purposes. In witness thereof, this Agreement is effective as of the Agreement Effective Date.

## **20. REMOTE (OFFSHORE) WORK; SECURITY ACCESS AND TECHNOLOGY REQUIREMENTS.**

### **20.1 Introduction.**

This Section 20 sets forth, the security, access and technology requirements for the performance of Work under the Agreement as conducted by Contractor or its Subcontractors outside the United States (referred to in this Section as “Remote Work” or “Offshore Work”). By this Section 20, Consortium agrees and acknowledges that the Work expressly designated may be performed offshore at Contractor’s offshore or remote facilities. All Work will be conducted in accordance with all data privacy and security requirements included in the Agreement, including but not limited to, the requirement that all Work performed remotely or offshore must take place within a secure bay dedicated to the Work (“Secure Bay”).

### **20.2 Definitions.**

Terms not otherwise specifically defined in this Section 20 shall have the same meaning as used elsewhere in this Agreement.

**20.2.1 Personally Identifiable Information (“PII”).** PII is information that can be used alone or with other information to identify, contact, or locate a single person, or to identify them in context. It includes: (1) A first and last name; (2) A home or other physical address, including street name and name of a city or town; (3) An e-mail address; (4) A telephone number; (5) A social security number; and (6) any other identifier that permits the physical or online contacting of a specific individual. PII also includes information defined as Personal Information in California Civil Code section 1798.3 and section 1798.29(g)-(h).

**20.2.2 Protected Health Information (“PHI”):** PHI is, as defined by 45 CFR 160.103, information transmitted or maintained by a covered entity or its business associates in any form or medium. It includes an individual’s past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.

**20.2.3 Production Data:** The term “Production Data” includes all data falling within the definition of “Program Data,” which is defined as all federal, state, county, and/or other data and information: (i) which is (a) stored online, stored off-line, or computed, and used or accessed by CONTRACTOR for providing services under this Base Agreement and all backups of such data and information, and/or (b) placed into, used within,

or resulting from the use of, the CalSAWS Software and all backups of such data and information and (ii) which is not System Data. The term "Production Data" also includes any data containing PII or PHI and also includes any and all case data.

### **20.3 Additional Terms.**

In addition to all of the obligations applicable to Contractor under the Agreement, Contractor will provide the following additional controls with respect to all Remote or Offshore Work. The details regarding these additional controls will be set forth in the PCD Deliverable, which is incorporated herein by reference.

#### **20.3.1 Secure Bay Requirements.**

Contractor will perform all Work within a Secured Bay environment, which will adhere to the following requirements:

20.3.1.1 The Secure Bay will be a physically segregated space that is clearly demarked from other common areas by walls and doors capable of supporting both magnetic and key locks.

20.3.1.2 Access to the Secure Bay must be controlled and audited via electronic badge system. Individuals may not share badges.

20.3.1.3 Only Contractor's staff required for performing Work for Consortium, and other supporting activities (IT Admin., etc.) will be allowed to access the Secure Bay.

20.3.1.4 Security guards must be posted at all entrances of each facility that houses a Secure Bay.

20.3.1.5 Contractor will not authorize copying of any data from the Windows Virtual Desktop Instances (VDIs) to a local computer via copy/paste, screen capture, camera picture, or otherwise under any circumstance.

20.3.1.6 All devices such as mobile phones, USB storage devices, other external storage devices, and any other media recording devices will be prohibited. Any exceptions must be explicitly approved by the Consortium Executive Director.

20.3.1.7 All computers in the Secure Bay must be locked down to not allow the use of any external ports and devices including, but not limited to, USB ports, serial ports, and CD/DVD Drives, except when required to deliver the Work (e.g., monitor, keyboard, mouse, network connectivity).

20.3.1.8 The use of paper, pens, pencils and printed material may be allowed in the Secure Bay, however, no Consortium documents or printed materials may be taken out of the Secure Bay by Contractor staff under any circumstance. Paper must be shredded before discarding. Print capabilities will be restricted to supervisors or other senior management.

### **20.3.2 Virus Protection.**

20.3.2.1 Contractor's workstations in the Secure Bay will have Symantec Antivirus, IDS Proventia, and PointSec Encryption or substantially similar protections.

20.3.2.2 Contractor will update, operate, and maintain such virus protection and malware prevention software.

### **20.3.3 Workstations.**

20.3.3.1 Contractor personnel will use the standard Consortium workstation image build with access to Consortium's environment.

20.3.3.2 Contractor will limit administrative rights to workstations.

20.3.3.3 The workstation environment will meet agreed-upon security requirements (e.g. desktop encryption; updated anti-virus definitions; patch management processes).

20.3.3.4 Contractor will centrally manage operating software patching of workstations. Security patches released by Microsoft will be pushed to workstations and monitored.

### **20.3.4 Security.**

20.3.4.1 Contractor personnel located in the Secure Bay will (i) undergo annual information security compliance training, HIPAA awareness sessions, and Consortium data protection training in order to protect (i) Production Data as defined in Section 20.2.3 above and (ii) Program Data and System Data as defined in this Agreement, from unauthorized use, disclosure or access; and (ii) document attendance at, or completion of, same.

20.3.4.2 Consortium supplied access such as security certificates will be periodically reconciled and inventoried.

### **20.3.5 Reporting and Access.**

20.3.5.1 Contractor's information security unit will enforce and monitor the Secure Bay and report upon its compliance with the controls to the project team.

20.3.5.2 Contractor will provide reasonable access to its remote/offshore facilities and equipment, and make its books and other records pertaining to the Work, available to Consortium to inspect, evaluate, and audit books and other records pertaining to any aspect of the Work being performed in Contractor's remote/offshore facilities.

20.3.5.3 Contractor shall provide the Consortium with rights of access to materials, facilities and persons that the Consortium may reasonably request in order to monitor on an on-going basis Contractor's compliance with the requirements described and referenced in this Section 20.

#### **20.4 Permissible Work in Remote/Offshore Facilities.**

**20.4.1** Subject to the limitations set forth either in this Section 20, or any limitations otherwise imposed in any other Section of the Agreement, Contractor is authorized to perform up to forty percent (40%) of the Work required of Contractor under this Agreement within the Secure Bays at any of the Contractor's offshore or remote locations.

**20.4.2** Contractor must first mask or otherwise obfuscate any Data that is accessible from the Secure Bays at any of Contractor's remote/offshore locations.

**20.4.3** Contractor must comply with, implement, adhere to, and align with all applicable State, Federal, and Consortium standards, regulations, guidelines and requirements in place as of the Effective Date of this Agreement and as may be updated, revised, or amended thereafter. These include, but are not limited to, Social Security Administration (Technical System Security Requirements), NIST, ADA, and California SIMM/SAM) requirements.

**20.4.4** The Parties may, at any time, mutually agree in writing to expand the (a) scope of Work performed or (b) data accessed offshore in Contractor's remote/offshore locations.

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

Dated: 9/27/2024 \_\_\_\_\_

Signed by:  
*Mark Knickrehm*

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Mark Knickrehm,  
Gainwell Technologies CEO

Dated: 9/27/2024 \_\_\_\_\_

DocuSigned by:  
*Michael Sylvester*

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Michael Sylvester, CalSAWS Chair

Dated: 9/27/2024 \_\_\_\_\_

DocuSigned by:  
*Q Mitchell*

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Kronick Moskovitz  
Tiedemann & Girard,  
CalSAWS Legal Counsel

Dated: 9/27/2024 \_\_\_\_\_

Signed by:  
*Julia Erdkamp*

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Julia Erdkamp, CalSAWS Executive Director