

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CALSAWS CONSORTIUM AND THE COUNTY OF _____**

This MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into by and between the CalSAWS Consortium ("Consortium"), a California Joint Powers Authority, and the County of _____ ("County"), a member county ("Member" or collectively with other members of the Consortium, "Members") of the Consortium (collectively, "the Parties").

RECITALS

- I. WHEREAS, the Consortium was previously known as the California Statewide Automated Welfare System Consortium IV ("C-IV Consortium") with thirty-nine (39) county members (collectively, "39 Counties"); and
- II. WHEREAS, Los Angeles County joined the 39 Counties pursuant to the Amended and Restated Joint Exercise of Powers Agreement ("JPA Agreement"), with an effective date of September 1, 2017, pursuant to which the name of the Consortium was changed to the California Automated Consortium Eligibility System Consortium ("CalACES Consortium"); and
- III. WHEREAS, the C-IV Consortium previously entered into an agreement with a primary vendor ("C-IV Agreement") to provide the necessary equipment and services for an automated system ("C-IV System") utilized by the 39 Counties; and
- IV. WHEREAS, Los Angeles County previously entered into an agreement with a primary vendor ("LRS Agreement") to provide the necessary equipment and services for an automated system known as the Leader Replacement System ("LRS"); and
- V. WHEREAS, 18 counties ("WCDS Counties") previously entered into an agreement with a primary vendor ("CalWIN Agreement") to provide the necessary equipment and services for an automated system known as the CalWORKS Information Network and related systems ("CalWIN"); and
- VI. WHEREAS, the Centers for Medicare and Medicaid Services and the Food and Nutrition Services agencies of the United States Department of Agriculture directed California to move to a single statewide automated welfare system ("CalSAWS") by 2023. In moving toward that goal, the WCDS Counties and the CalACES Consortium have joined together to form the CalSAWS Consortium, pursuant to the JPA Agreement; and
- VII. WHEREAS, Los Angeles County will continue to use the LRS, the 39 Counties will continue to use the C-IV System, and the WCDS Counties will continue to use CalWIN until the migration of the Members to CalSAWS is complete; and

- VIII. WHEREAS, the purpose of this MOU is to delineate the areas of understanding and agreement among the Consortium and the Members regarding matters related to the administration and fulfillment of the Consortium's purpose; and
- IX. WHEREAS, this MOU is conditioned on the Consortium entering into the same MOU terms and conditions with all other Members, and supersedes all prior MOUs concerning the same subject matter contained herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

I. **DEFINITIONS**

As used in this MOU, the following words and terms shall have the meanings described below, unless otherwise defined elsewhere in this MOU:

1.1. **"Advance Planning Document" (APD):** A federally required document that is used by states to inform the federal agencies of their intentions related to federally funded programs, and request approval and funding to accomplish their needs and objectives. The term APD refers to a Planning APD, Implementation APD, or to an Advance Planning Document Update.

1.2. **"Central Equipment":** Is that equipment for which the Consortium is authorized by the State of California to assume responsibility for refresh. The Consortium shall have responsibility to refresh (replace or upgrade) all such equipment. All equipment not designated as "Local Equipment" is Central Equipment. The physical location of the equipment is not relevant to the designation "Central."

1.3. **"Consortium – Auditor-Controller Agreement":** Is any agreement, as may be revised from time to time, between the Consortium and one of its Members to fulfill the fiscal and audit function as Auditor-Controller for the Consortium.

1.4. **"Consortium Staff":** Consists of employees of the Consortium, employees of Members contributed to the Consortium, and contractors and agents designated by the Consortium.

1.5. **"Consortium's Secretary":** The Secretary of the Consortium's Board of Directors in charge of all records of the Consortium.

1.6. **"Consortium's Treasurer":** The treasurer of the Consortium shall be as specified in the JPA Agreement. The Consortium's Treasurer is responsible for the depository, disbursements, and accountability of all the accounts, funds, and money and all records relating thereto.

1.7. **"Cost Allocation Plan":** A methodology for distributing costs to benefiting programs in accordance with federal, state, and county sharing ratios.

1.8. "County Personnel": County employees, contractors or agents responsible for task(s) necessary to the Project.

1.9. "County-Purchased Software": Licenses to software applications purchased separately by County and installed upon Local Equipment. County-Purchased Software does not include Original Equipment Manufacturing (OEM) operating system software provided by the Consortium for use in the System(s), as defined below. All County-Purchased Software must be configured to be compatible with Consortium-purchased software and shall be approved by Consortium prior to its installation and use on Local Equipment purchased or provided under this MOU. Maintenance of County-Purchased Software and management of its use in a manner consistent with its licensing is the sole responsibility of County.

1.10. "County Site(s)": The location(s) in the County for the equipment, software, and Project Staff activities designated as necessary to the Project.

1.11. "Data": The Consortium and County records, files, forms, and other information that are currently or will be processed on the System(s).

1.12. "Deliverables": Products, including, but not limited to, equipment and software, provided to the Consortium and the County pursuant to agreements with vendors or otherwise necessary to the Project.

1.13. "Executive Director": The individual chosen by the Consortium with responsibilities for the management of the Project for the Consortium.

1.14. "Impaired Device(s)": Any equipment that is used by a Member on the System(s) and which has become, whether by damage or other reason, incapable of performing its intended purpose.

1.15. "Local Equipment": Is that equipment that (a) was obtained for the System's(s)' use, (b) is located on County Sites, and (c) for which the Consortium is not authorized by the State of California to assume responsibility for refresh, replace or upgrade.

1.16. "Network(s)": The telecommunications lines, equipment, software, and services for transmitting Data and other information as required by the needs of the System(s).

1.17. "Original Equipment Manufacturing" or "OEM": Is that operating system software license that is provided with the workstation and laptop equipment, for which the right to use the license is vested with the owner of the applicable equipment.

1.18. "Primary Project Vendor": The vendor who is working or will be working on the System(s) pursuant to the applicable agreement(s), as approved by the Consortium.

1.19. **"Primary Project Vendor Staff"**: Employees, contractors, and agents of the Primary Project Vendor dedicated to the Project who are working on the System(s).

1.20. **"Project"**: Work related to the design, development, implementation, operation, maintenance of the System(s), and migration of the Members to CalSAWS, and the related activities of the Parties thereto.

1.21. **"Project Staff"**: The Consortium Staff, County Personnel, and vendor staff performing task(s) necessary to the Project.

1.22. **"Quality Assurance and Other Agreements"**: Those agreements between the Consortium and its quality assurance vendor(s) or other Project vendors to provide quality assurance, Project management, planning, support, verification, and validation services for the System(s).

1.23. **"Region"**: County or Counties grouped together for purposes of representation as defined in the Consortium's Bylaws.

1.24. **"Regional Manager(s)"**: The person(s) responsible for the day-to-day oversight of the Project in a particular Region.

1.25. **"Separate Services"**: Services which are related to the System(s), obtained by Counties from the Primary Project Vendor, or other Project vendors.

1.26. **"Software"**: Software and software licenses purchased by the Consortium for the System's(s') use, and software and software licenses procured under Section 4.2 (County Hardware and Software License Purchases). The Consortium retains possession of and title for, and responsibility for refresh of, all Software licensing agreements purchased by the Consortium but may grant use permission to Member in a manner consistent with this MOU.

1.27. **"System(s)"**: Individually or collectively, the complete collection of equipment, Software, other required software, and Networks for the C-IV System, LRS, CalWIN and/or CalSAWS.

1.28. **"Work Plan(s)"**: The plan and delineation of tasks, subtasks, activities and events to be performed, Deliverables to be produced and associated resource requirements with regard to the Project as accepted and agreed upon between the Primary Project Vendor and the Consortium, subject to modification from time to time.

II. COUNTY

2.1. **Dedication of Personnel**. The County, within its sole discretion, agrees to undertake best efforts to provide County Personnel to the Project as required by the Project's needs, applicable Work Plan(s) or as otherwise necessary to fulfill the Consortium's purpose. County Personnel provided to the Project or the Consortium under this provision will be provided subject to the following terms and conditions:

2.1.1. The rendition of the services performed by County Personnel, the standards of performance, the discipline of its employees, and other matters incident to the performance of such services and the control of County Personnel so engaged in these services shall remain with the County. The County and the Consortium shall agree to the scope of services to be performed by each County Personnel.

2.1.2. The County will be responsible for all payroll, personnel, and other administrative functions for its employees assigned to perform services for the Consortium hereunder.

2.1.3. At the start of the Consortium assignment, the County, or the Consortium, with consent from the County, will provide functional supervision of County Personnel assigned, specify their duties, establish working hours, and other matters incidental to the supervision of the County Personnel.

2.1.4. In the event of a dispute between the County and the Consortium as to the extent of the duties and functions to be rendered hereunder, or the minimum level or manner of performance of such service, the Consortium shall be consulted and a mutual determination thereof shall be made by both the County and the Consortium. However, the County, in an unresolved dispute, shall have final and conclusive determination as between the Parties hereto.

2.1.5. For and in consideration of the services to be performed by the County Personnel for the Consortium under this MOU, the Consortium shall pay the County for said services according to the hourly prevailing direct salary and employee benefit costs as determined by the County for the current applicable fiscal year. Annual rate adjustments shall be made pursuant to methods employed according to the policies and procedures established by the County.

2.1.6. The County shall render to the Consortium a summarized monthly invoice which details all services performed under this MOU, and the Consortium shall pay the County within sixty (60) days after date of said invoice.

2.1.7. Payment for said services shall be made by check or money order payable as directed on the monthly invoice, or other method as determined by the County.

2.1.8. If such payment is not delivered to the County office that is described on said invoice within sixty (60) days after the date of the invoice, the invoice will be deemed uncollectible and may be forwarded for appropriate action.

2.1.9. Both Parties hereto in the performance of this Agreement shall act as independent contractors and not as agents, employees, partners, joint venturers, or associates of one another.

2.1.10. The Consortium shall not assume any liability for the direct payment of any salaries, wages, retirement benefits, workers' compensation insurance, or other compensation to any County Personnel performing services hereunder.

2.1.11. County and Consortium agree to be liable for the negligence and willful misconduct of its employees, agents, and contractors as set forth in Section 6.03. (Member's Liability for Negligence of its Employees and Contractors) of the JPA Agreement.

2.1.12. Notwithstanding any provision hereof to the contrary, the County or the Consortium may return County Personnel back to County for any reason upon notice in writing to the other party of not less than sixty (60) days prior thereto, unless the Parties agree otherwise.

2.2. **Access to County Site(s) and Facilities.** County agrees to make available and provide access to County Sites and facilities to Project Staff as necessary for the operation and administration of the System(s) in accordance with the County's administrative and security rules and regulations. County reserves the right to refuse the Consortium Staff or Project Staff member access to County Site(s) or facilities where, in its sole discretion, the County determines that access should be refused or terminated for reasons of public health, welfare, and safety or to avoid disruptions to County operations.

2.3. **Release of Information to Auditor/Controller.** The County acknowledges that the Consortium - Auditor/Controller Agreement sets forth certain procedures for the disclosure of records of the County to the Auditor/Controller and the Executive Director as the Auditor/Controller deems necessary to resolve any funding, invoice, records, accounting or audit-related issues, to the extent allowed by law. Therefore, the County agrees to use commercially reasonable efforts to comply with these procedures and, further, shall cooperate with the Consortium and Auditor/Controller in complying with any changes or modifications of these procedures, as may be necessary from time to time.

III. **CONSORTIUM**

3.1. **Compliance with County Rules.** The Consortium agrees that all Project or other Consortium activities occurring at County Site(s) or facilities will occur in a manner consistent with the County's rules and regulations.

3.2. **Risk of Loss for Deliverables.** Until accepted by County under the procedures established by the Parties pursuant to Section 4.4 (Development of Procedures for Acceptance/Rejection of Deliverables) herein, Consortium agrees that any risk of loss or damage for the Deliverables shall be borne solely by the Consortium.

3.3. **Liability to County.** The Consortium agrees to be liable for any loss, destruction, or damage caused by the Consortium to County operation or property by Consortium. Upon such loss, destruction of, or damage, the County shall notify the Executive Director and shall take all reasonable steps to protect against further loss, destruction, or damage caused by Consortium.

3.4. Minimize Project Impact on County's Operations. The Consortium agrees to ensure that Project activities at County Site(s) and facilities shall be done in a manner that will minimize interference with the normal activities and operations of the Member and shall keep County Site(s) and facilities safe, clean, and orderly at all times.

3.5. Right to Use System(s) Information and Data. The Consortium agrees that the County shall have unlimited rights to use, disclose, duplicate, or publish all System(s) information and Data relating to County that is developed, derived, documented, or furnished by Consortium, upon notification by County to the Executive Director as to the reason for such use of said System(s) information and Data. Such Data shall include all results, technical information, and materials developed for and/or obtained by Consortium and retained to fulfill its purpose, including, but not limited to, all reports, surveys, plans, charts recordings (video and/or sound), pictures, drawings, analysis, source and object code, graphic representations, computer programs and printouts, notes and memoranda, and documents whether finished or unfinished, which result from or are prepared in connection with the Project, but only as it relates to the County or is Data that is meant for distribution to, or for access by, all Members of the Consortium. To the extent that County requires access to System(s) information and Data relating to another Member(s) of the Consortium, County shall seek permission from such Member(s) and shall enter into all appropriate confidentiality and non-disclosure agreements, if required, and comply with all confidentiality and security requirements of such Member(s). The County's use of Consortium information and Data shall not apply, and the County shall have no right, to title and interest in or to any Consortium's vendor's confidential and proprietary information.

3.6. Cooperation with County Risk Management Assessment. The Consortium agrees to cooperate and share its records and information with the County as necessary for the County to conduct an adequate risk of liability assessment(s) and develop an appropriate risk of liability management plan(s) as to Project activities occurring at County Sites and facilities or otherwise in connection with the County's participation in the Consortium.

IV. MUTUAL RESPONSIBILITIES

4.1. Fiscal Responsibilities and Claiming.

4.1.1. The Consortium's Auditor-Controller shall act as the fiscal agent for the Consortium and perform accounts payable functions that relate to vendor billings and overall Project costs, including Separate Services and hardware and/or Software purchased by the County. The Consortium will invoice the County as agreed for the specific costs incurred in accordance herewith. At a minimum, invoicing will be quarterly, except by mutual agreement.

4.1.2. Unless otherwise agreed upon by the Consortium Executive Director or designee, the County will be responsible for the costs of hardware, and/or Software and associated maintenance for new County Sites or the expansion of existing County

Sites, changes in County network models, refresh of existing hardware and/or Software (as deemed necessary by the County), Separate Services requested by the County and other changes the County deems necessary. The County will prepare and submit APDs to the State for approval of these items, except as otherwise agreed upon by the Consortium, as above, subject to oversight by the Office of System Integration (OSI) or applicable State APD department.

4.1.3. The Consortium will allocate the Project budget to each Member and each of the Counties will be required to pay its applicable share of budget, in accordance with Section 4.1.4 hereof and Section 5.02 (Statewide Automated Welfare System Funding Allocations) of the JPA Agreement, at the time and in the manner specified by the Consortium. Such County Project costs will be paid to the Consortium or State as directed by the Consortium. The Consortium will continue to evaluate total Consortium expenditures and budget variances. The annual budget requests and updates will be prepared by the Consortium along with County Personnel.

4.1.4. Administrative Costs (also known as unfunded costs) are costs properly incurred by the Consortium but designated by the State of California as ineligible for reimbursement to the Consortium by the State, including the County's share as determined by the appropriate Cost Allocation Plan to be applied to that cost as approved by the State. On or before April 1 of each year, the Consortium, with the concurrence of the Consortium's Member representatives as defined in Section 2.07 (Quorum; Required Votes; Approvals) of the JPA Agreement, will approve a schedule of Administrative Costs for the upcoming fiscal year (July 1 through June 30). The Consortium will give the County notice of the approved schedule within ten (10) days after such approval.

A. County hereby agrees to contribute to the Consortium its share of Administrative Costs, as determined by the Consortium, in advance pursuant to California Government Code section 6504.

B. County shall also contribute an amount equal to any penalties, fines, finance charges, interest or other costs that may result in the event County's tardy payment(s) result in insufficient funds to pay the Consortium's expenses when due.

4.1.5. If, during the term of this MOU, the County is unable to appropriate sufficient funds, or is otherwise unable to meet its financial obligations under this MOU, and there are no other legal procedures or available funds by or with which such obligations can be met, County shall have the right to terminate this MOU and withdraw its membership from the Consortium effective as of the end of that fiscal year by adoption of a resolution of withdrawal by County's Board of Supervisors, provided that a copy of said resolution has been served on all other Members by May 31 of that fiscal year, as provided for in Section 2.11 (Withdrawal of Member) of the JPA Agreement. Withdrawal under this subsection shall not relieve the County of any financial obligations or liabilities arising prior to the effective date of the withdrawal.

4.1.6. Section 17.1.1 of the "Amended and Restated Agreement for a California Statewide Automated Welfare System" between the Consortium and Accenture LLP provides as follows:

17.1.1 Consortium Member Demand for Indemnification

CONTRACTOR's obligation to indemnify CONSORTIUM Members shall only be exercised through the CONSORTIUM and upon written demand by the CONSORTIUM. Any demand for indemnification by a CONSORTIUM Member shall be tendered to the CONSORTIUM, which shall have the authority to make the demand for indemnification to CONTRACTOR. The obligation on CONSORTIUM Members to submit demands for indemnification to the CONSORTIUM rather than directly to the CONTRACTOR shall not apply to L A COUNTY so long as L A COUNTY remains the sole county utilizing the LRS System in actual production. Once a second county migrates into the LRS System and from that point forward, all indemnification claims must go through the CONSORTIUM.

County claims covered by this provision shall be referred to the Consortium's Executive Director for action in accordance with this provision. The Consortium will be entering into other vendor contracts on behalf of the Member counties and anticipates including comparable language in some or all of those contracts. County claims arising under those other contracts shall also be referred to the Consortium's Executive Director for action in accordance with the requirements set forth in those contracts.

4.2. County Hardware and Software License Purchases.

4.2.1. This section pertains to County hardware and software purchases initiated by the County, that enable the County to acquire Local Equipment and/or Software through the Consortium and to contribute to the cost of Central Equipment needed for County use. Any applicable terms, conditions, and limitations of any agreements that provide for such purchases shall remain applicable.

4.2.2. Unless otherwise agreed by the Executive Director or designee, the County will prepare and submit to the Consortium a change order to request a cost estimate for hardware and/or Software licenses and associated maintenance. This request will identify the number of units of hardware and/or Software licenses anticipated for each County Site. The request will specify any special needs or considerations for the items requested. These special needs may include, but are not limited to, monitor sizes, configurations, ergonomics, specialized software, or color printers. The request will also identify whether the County will install all, some, or none of the items requested and whether the County will provide any ongoing technical support that may be necessary.

4.2.3. Upon receiving a change order request from the County for hardware and/or Software licenses, the Consortium will forward the change order to the Primary Project Vendor for a cost estimate that will be provided in accordance with the procedures in the Consortium agreements with the Primary Project Vendor, including estimates with all appropriate costs for the items specified in the request as well as all other hardware and/or Software licenses and hardware maintenance that is necessary

to ensure compliance with Consortium specifications. Such other hardware may include, but is not limited to, network and Central Equipment, such as switches, routers, and servers. The Consortium Staff will forward the estimate to the appropriate County Staff following receipt of the estimate from the Primary Project Vendor Staff.

4.2.4. Once the applicable APD is approved, the County will be responsible for providing written approval, from the State, of the cost estimate to the Consortium. The Consortium will not take any steps to authorize the procurement of the hardware and/or Software licenses until such written authorization is provided. Any increases in the cost estimate must also be approved in writing by the County.

4.2.5. The Consortium Staff will authorize the purchase of the hardware and/or Software licenses after approval of the cost estimate from the Member. The Project Staff will ensure that the requested items are ordered in a timely manner and in compliance with the approved cost estimate.

4.2.6. All Local Equipment and hardware procured under this MOU will become County property unless otherwise agreed to by the Executive Director or designee and County. All software licenses which are purchased by Consortium for use with the System(s) shall be retained by the Consortium and County will be granted permission to use the software pursuant to such licenses, unless otherwise agreed to by the Executive Director or designee and County. County shall be responsible to Consortium for costs associated with acquisition of Software licenses required for County use which are purchased through the Consortium. The County will track and manage property in accordance with mutually agreed upon inventory and accounting practices and procedures identified in the System Operations and Support Plan ("SOSP"). If County and Consortium are unable to agree upon inventory and accounting practices and procedures, County shall track and manage property in accordance with its inventory and accounting practices and procedures. The Consortium shall provide operational support of all hardware in accordance with Consortium procedures and the County network model, unless otherwise agreed to by the Executive Director or designee and Member.

4.2.7. The County will be responsible for the installation of all electrical and Data cabling to support any necessary additional hardware at the County Site(s) unless otherwise agreed to by the Executive Director or designee. Electrical cabling will be installed in compliance with the County's current practices for such installations. Data cabling will be installed and tested per the standards identified in the SOSP. Data cabling test results will be provided to the Consortium for its review.

4.2.8. The County will be responsible for the costs associated with the ordering and installation of Data circuits between the local County Site(s) and the applicable Data centers, unless otherwise agreed to by the Executive Director or designee. The County will work with Primary Project Vendor Staff to ensure that the Data circuit is of appropriate bandwidth in accordance with Consortium specifications.

4.2.9. Following the receipt, installation, and acceptance of the hardware and/or Software licenses, the County will transfer to the Consortium an amount sufficient to satisfy the Consortium's actual expenditures for the hardware and/or Software licenses based on invoice documentation provided by the Consortium.

4.3. Separate Services.

4.3.1. The County may, at its sole discretion, prepare and submit to the Consortium a change order to request Separate Services to be performed by the Primary Project Vendor or other Project vendors. This request will identify the type(s) of Separate Services sought for each County Site and specify any special needs or considerations for the requested Separate Services. The Consortium, upon receiving a change order request, will forward the change order to the Primary Project Vendor or other Project vendors for a cost estimate, including estimates with all appropriate costs for the services specified in the request. The Consortium will also ensure that such services are appropriately related to the System(s). Any applicable terms, conditions, and limitations of any agreements that provide for such services shall remain applicable.

4.3.2. The County and the Consortium will ensure that such Separate Services are performed in a timely manner and in compliance with the cost estimate provided by the Primary Project Vendor or other Project vendors. The County will communicate with the Consortium regarding the progress of the Separate Services and any issues that may affect the Consortium or the System(s).

4.4. Development of Procedures for Acceptance/Rejection of Deliverables. The Parties agree to develop and implement procedures for the timely acceptance or rejection of Deliverables that may need to be reviewed by Member as necessary for the Project.

4.5. Ownership of Accepted Deliverables. The Parties agree that all rights, titles, and interests to Deliverables accepted by County pursuant to the procedures developed as called for under Section 4.4 (Development of Procedures for Acceptance/Rejection of Deliverables) shall not pass to County except as defined by this MOU or further agreed to in writing.

4.6. Sharing of Business Records. Notwithstanding Section 4.1 (Fiscal Responsibilities and Claiming), to ensure financial accountability of the Consortium and County the Parties agree to cooperate in the disclosure to the other Members of all business records (including, but not limited to, certified copies of records of all accounts, funds, and monies for the Project) except to the extent limited, restricted, or prohibited by law or applicable privilege.

4.7. Access to Books and Records by Regulatory Agencies. The Parties agree to maintain and make available for inspection sufficient records, files, and documentation that are not otherwise limited/restricted/prohibited by law or applicable

privilege, necessary in the case of audit by the State or federal agency, or other regulatory agency.

4.8. Dispute Resolution. The Parties agree that the resolution of any dispute between them related to Consortium business, whatsoever, shall be sought through the following procedures:

4.8.1. The Parties shall use their reasonable best efforts to resolve disputes arising in the normal course of business at the lowest organizational level between the Party's staff with appropriate authority to resolve the disputes. When a dispute arises between the Consortium and the County that cannot be resolved in the normal course of business, the Executive Director and County Director will work in good faith to resolve the dispute. If the Executive Director and the County Director cannot resolve the disputed issue(s) within five (5) business days, the matter shall be escalated to the Board of Directors of the Consortium for resolution.

4.9. No Alteration of JPA Agreement. The Parties agree that entering into this MOU or performing as provided hereunder shall not in any way change the obligations, rights or authority of the Parties as set forth in the JPA Agreement establishing the Consortium between the counties. Should any provision of this MOU conflict with any provision of the JPA Agreement, the provision of the JPA Agreement shall prevail.

4.10. Transfer of Impaired Devices.

4.10.1. Transfer of Impaired Devices.

A. Transfer of Impaired Devices. County conveys, assigns, and transfers to Consortium, and Consortium hereby accepts from County, all rights, titles, and interests of County in and to all of the Impaired Devices on the terms and conditions set forth herein. County is responsible for removing all County-Purchased Software and Data prior to the transfer of an Impaired Device to the Consortium, to the extent possible. County hereby authorizes Consortium to remove any and all County-Purchased Software and Data if County is unable to remove prior to transfer.

B. Liability for Impaired Devices. Consortium shall be responsible for any liabilities or obligations associated with or related to the Impaired Devices that occur after the Impaired Device transfer date.

4.10.2. Transfer Events.

A. County to Consortium. The transfer of each Impaired Device from County to Consortium shall be effective on an ongoing basis, when Consortium and County execute an equipment transfer.

4.10.3. Disclaimers of Representations and Warranties.

A. County. COUNTY IS TRANSFERRING, ASSIGNING, AND CONVEYING THE IMPAIRED DEVICES ON AN "AS IS" BASIS TO CONSORTIUM. COUNTY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE IMPAIRED DEVICES AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE FOR THE IMPAIRED DEVICES, AS WELL AS ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE. COUNTY DOES NOT REPRESENT OR WARRANT THAT THE IMPAIRED DEVICES WILL MEET CONSORTIUM'S REQUIREMENTS, OR THAT THE IMPAIRED DEVICES WILL BE FREE FROM DEFECTS, DEFICIENCIES, PROBLEMS OR ERRORS.

THIS DISCLAIMER IS NOT INTENDED TO VOID ANY WARRANTIES THAT MAY BE AVAILABLE FROM THE MANUFACTURER OR SELLER OF THE IMPAIRED DEVICES, WHICH SHALL PASS TO THE CONSORTIUM AS APPROPRIATE.

B. Manufacturers' Warranties. The disclaimers in Section 4.10.3, above, notwithstanding each party assigns to the other party all of the manufacturer's warranties and indemnities relating to the Impaired Devices transferred pursuant to the provisions set forth herein. Such assignment shall take effect upon the applicable transfer date and is subject to all of the terms and conditions imposed by the manufacturers.

4.10.4. Limitations of Liability and Exclusive Remedies.

A. Limitations and Disclaimers of Liability. In no event shall County, Consortium, the Members comprising Consortium, or their contractors, agents, officers, directors, or employees be liable for any losses, expenses, claims or damages of any kind or nature including, but not limited to, direct, indirect, consequential, special or incidental damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business opportunity, loss of business information, or other pecuniary loss) arising out of the use or inability to use the Impaired Devices, any breach of this property transfer by either party, or any other matter hereunder, even if a party has been advised of the possibility of such damages.

The waiver stated above only relates to matters covered by Section 10.4 (Transfer of Impaired Devices) and extends to any rights such person or entity may have under California Civil Code section 1542 (and other similar statutes and regulations). Section 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

B. Exclusive Remedy of Consortium. Consortium acknowledges that County is providing the Impaired Devices as required under applicable state policy and Consortium agrees that Consortium's sole and exclusive remedy for any inability to use an Impaired Device or any other matter under this property transfer shall be that Consortium shall pursue any remedy that has been transferred or assigned by County from the Impaired Device's manufacturer.

4.10.5. Responsibility for Software Licenses.

A. County. County is responsible for removing all County-Purchased Software prior to the transfer of an Impaired Device to the Consortium, to the extent possible. County hereby appoints Consortium as County's agent for the sole purpose of removing any County-Purchased Software contained on any and all Impaired Devices County transfers to Consortium, if County is unable to remove prior to transfer.

Subject to the provisions of Section 4.2.6 herein, County shall retain all rights and obligations associated with any license to County-Purchased Software contained on any and all Impaired Devices that County transfers to Consortium.

B. Consortium. Consortium shall, acting as agent of the County, remove any and all County-Purchased Software from Impaired Devices that Consortium receives from County, if County is unable to remove prior to transfer. Consortium shall not acquire any rights or obligations associated with any license to County-Purchased Software contained on any and all Impaired Devices that Consortium receives from County.

4.10.6. Expenses. Each party shall pay its own expenses and fees incidental to the preparation and execution of this property transfer and the obtaining of necessary approvals thereof, including fees and expenses of its counsel, accountants, and other experts.

V. TERM/TERMINATION/MODIFICATIONS

5.1 Term. This MOU shall commence on June 28, 2019 ("Effective Date") and shall remain in effect so long as the Member is a member of the Consortium, unless terminated as specified herein.

5.2 Condition Precedent--State and Federal Funding. The Parties agree that their respective obligations under this MOU are contingent upon state and federal financial participation in the Project and the Consortium. In the event that such funds are not forthcoming for any reason, either Party shall notify the other and shall have the right to terminate this MOU.

5.3 Termination of Consortium or County's Consortium Membership. This MOU shall immediately terminate upon the termination of the Consortium's Joint Powers Authority or County's membership in the Consortium's Joint Powers Authority.

5.4 Debts and Liabilities Upon Termination. Should this MOU terminate as provided herein, the debts, liabilities, and/or obligations of the Consortium shall remain those of the Consortium.

5.5 Entire Agreement/Amendments. This MOU constitutes the entire MOU between the Parties hereto with respect to the subject matter hereof and all prior or contemporaneous MOUs or other agreements of any kind or nature relating to the same shall be deemed merged herein. Except as provided herein, any modifications to, or termination of, this MOU must be in writing and signed by the Parties.

VI. MISCELLANEOUS PROVISIONS

6.1 Notices. Written notices provided hereunder shall be sufficiently addressed to the offices listed below and shall be deemed given upon deposit in the U.S. mail, first class, postage prepaid.

SIGNATURES ON FOLLOWING PAGES