



ANITA M. BOCK
Director

County of Los Angeles
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

425 Shatto Place, Los Angeles, California 90020
(213) 351-5602

May 21, 2002

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**REQUEST TO APPROVE AN AGREEMENT WITH IBM GLOBAL SERVICES TO
PROVIDE ENHANCEMENTS TO THE CHILD WELFARE SERVICES/CASE
MANAGEMENT SYSTEM (CWS/CMS) FOR LOS ANGELES COUNTY'S DEPARTMENT
OF CHILDREN AND FAMILY SERVICES (DCFS)**

(ALL SUPERVISORIAL DISTRICTS) (3 VOTES)

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ()
DISAPPROVE ()**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Chair to sign the attached (Attachment D) sole source renewal Agreement with IBM Global Services, effective on July 1, 2002 and extend through June 30, 2003. The maximum contract sum is \$3,000,000, with a maximum annual sum of \$1,000,000. The cost of the contract will be funded using approximately \$2,603,700 in Federal/State revenue and \$396,300 in net County cost. The funding for this Agreement is included in the FY 2002-03 Proposed County Budget. In no event will this Agreement be executed if funding is not appropriated.

Board of Supervisors

GLORIA MOLINA

First District

YVONNE BRATHWAITE BURKE

Second District

ZEV YAROSLAVSKY

Third District

DON KNABE

Fourth District

MICHAEL D. ANTONOVICH

Fifth District

2. Authorize the Director of the Department of Children and Family Services (DCFS) to exercise the two one-year renewal options (the first renewal option to extend the agreement term through FY 2003-04 and the second renewal option to extend the agreement through FY 2004-05), provided that: (a) IBM Global Services remains the CWS/CMS vendor to the State of California under the State Agreement; (b) sufficient funding is available and appropriated; (c) approval of County Counsel and the Chief Administrative Office (CAO) is obtained prior to executing the renewal options; and (d) the Director of DCFS confirms in writing to the Board of Supervisors and the CAO within 10 workdays that the renewal options have been executed.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The current Agreement with IBM Global Services expires on June 30, 2002. DCFS needs to procure services from IBM Global Services for the next fiscal year since it is the State of California selected CWS/CMS vendor. Services to be procured include: (1) Los Angeles County specific enhancements to CWS/CMS application and database, (2) on-going daily downloads of Los Angeles County CWS/CMS data for use in DCFS authored child welfare data reporting applications, (3) moves, adds or changes to CWS/CMS servers and other infrastructure components to accommodate additional DCFS and other County department CWS/CMS users in existing or new office space, (4) moves, adds or changes to CWS/CMS servers to add or move CWS/CMS network printers, (5) upgrades of CWS/CMS server technology, consistent with CWS/CMS statewide requirements and our Business Automation Plans and (6) workstation software configuration checkout services for any new make/model/type of personal computers the County deploys for CWS/CMS use.

This action is necessary to make the CWS/CMS system more usable for staff in DCFS and other partner Los Angeles County departments serving children and families. It is also necessary to accommodate DCFS' organizational changes that require the re-location of staff units, office expansions, and the opening of new offices. If the Agreement is not approved, some staff will not have access to CWS/CMS as required by the State of California.

Implementation of Strategic Plan Goals

The recommended actions promote and further the Board-approved County Strategic Plan Goals and the County Business Automation Plan by enabling DCFS to: (1) provide valid and reliable information to the Department and external stakeholders to accurately measure outcome-based performance, (2) further conduct DCFS business electronically, (3) maintain and expand its electronic communication network so staff in County departments supporting children and families can better collaborate and integrate their services, and (4) minimize CWS/CMS system problems which promotes a positive work environment for both CWS/CMS users and support staff.

FISCAL IMPACT/FINANCING

The maximum contract sum is \$3,000,000, with a maximum annual sum of \$1,000,000. The cost of the contract will be funded using approximately \$2,603,700 in Federal/State revenue and \$396,300 in net County cost. The funding for this Agreement is included in the FY 2002-03 Proposed County Budget. In no event will this Agreement be executed if funding is not appropriated.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

CWS/CMS is mandated by Section 16501.5 of the California Welfare and Institutions Code. This system was made possible through federal funds that require a statewide system. (45 CFR 1355.53)

Your Board approved the previous sole source Agreement between Los Angeles County and IBM Global Services (Number 73182) for enhancements to CWS/CMS on December 12, 2000. The initial term end date was June 30, 2001. The Director of DCFS extended the contract, by delegated authority under the one-year renewal option, to June 30, 2002.

Your Board approved an Amendment to this Agreement, expanding the scope of work on February 5, 2002, to include moves, adds and changes to network infrastructure components and workstation image check-out services.

The current Agreement, Number 73182, was the result of exceedingly protracted negotiations. In controlling both the vast scope and dilatory pace of issues for negotiations, IBM leveraged its status as the only State-approved vendor. During the course of negotiations, IBM raised objections to virtually each and every one of the County's standard contractual terms. The terms and conditions in this new Agreement remain the same as in the current Agreement, Number 73182. Therefore, this new recommended Agreement deviates substantially from the County's standard contractual terms as follows:

1. The County's usually unfettered discretion to replace vendor personnel is omitted. [Agreement Section 3.3];
2. The County bears the monetary burden and risk of paying any tax imposed upon the enhancement services [Agreement Section 8.2];
3. IBM has limited its warranty for defects in deliverable to a term of one hundred (180) days. [Agreement Section 9.1];

4. IBM disclaims all implied warranties of fitness of merchantability and fitness for a particular purpose. [Agreement Section 9.6];
5. IBM is permitted, with or without County approval, to assign its right to payment to any entity under its control. [Agreement Section 11.0];
6. Subcontractors approved by the State of California (State) for work on the State contract with IBM Global Services are deemed pre-approved for work on this Agreement. [Agreement Section 15.1, Exhibit D];
7. IBM reserves the right to redact confidential information from its subcontracts before delivering copies to the County. [Agreement Section 15.9];
8. IBM limits its liability to County for damages to one million dollars (\$1,000,000) or the Maximum Annual Contract Sum, whichever is greater. [Agreement Section 18.1]. However, this limitation does not apply to IBM's obligations for personal injury and/or wrongful death, which remain unlimited. [Agreement Section 18.3];
9. IBM disclaims liability for "special, incidental, or consequential damages (including lost profits or savings)" suffered by the County. [Agreement Section 18.2];
10. IBM limits its indemnity to the County to one million dollars (\$1,000,000) or the Maximum Annual Contract Sum, whichever is greater. [Agreement Section 16.1, 18.1]. However, this limit does not apply to bodily injury, wrongful death, property damage, violation of law, breach of confidentiality, and/or patent, copyright and trade secret indemnification, which remain unlimited. [Agreement Section 16.1, et seq., 22.0];
11. IBM excludes County access to audit materials which reflect IBM's confidential or proprietary data. [Agreement Section 19.4];
12. IBM refuses to have the standard "Employee Acknowledgment, Confidentiality, and Copyright Assignment Agreement" signed by either IBM employees or its subcontractor employees. In mitigation, IBM has agreed to indemnify the County against breach of confidentiality, regardless of case or fault. [Agreement Section 16.1.5];

The position in which the Department still finds itself with respect to this highly uncharacteristic contracting process with the only State-approved vendor who could provide the services needed, together with our high degree of confidence that the potential for adverse consequences that might result from the default or violation of this contract is comparatively small given the relative limited scope of work to be performed and the risk allocation existing under this Agreement, lead us to conclude that this Agreement, as proposed, is both necessary and reasonable.

The Agreement has been approved by the CIO and the CAO, and approved as to form by County Counsel.

No viable alternatives are available. Based on the 1992 State contract with IBM Global Services, it is the only firm authorized to: maintain and modify the CWS/CMS system including enhancements to the CWS/CMS system; move, add and change network components (servers and printers); and certify workstation software images. This State contract requirement ensures that the integrity of CWS/CMS is maintained and holds a single vendor, IBM Global Services, responsible for maintaining contractual system performance and service levels. Were a county to procure these services from another vendor, it could imperil the State of California's ability to ensure that CWS/CMS meets statutory requirements (California *Welfare and Institutions Code* Section 16501.5).

CONTRACTING PROCESS

In 1992, the State of California Health and Human Services Data Center (HHSDC) conducted a competitive bid process and awarded IBM Global Services the contract (State Agreement #31091) for the design of the application, the design of the network, all hardware development, delivery of training, operation of the network, and maintenance of the entire CWS/CMS system. The State Agreement has been continuously renewed and has been approved for extension from August 1, 2002 through July 31, 2003. Counties are allowed to procure additional CWS/CMS services from IBM Global Services under the State Agreement # 31091, Rider I.

IBM Global Services has provided all CWS/CMS services to Los Angeles County in previous years under purchase orders approved by your Board on February 5, 1998, and March 22, 1999. The last purchase order expired December 30, 1999. Subsequently, IBM Global Services has provided CWS/CMS services to Los Angeles County under the current sole source Agreement between Los Angeles County and IBM Global Services (Number 73182).

The sole source justification for the current Agreement (Number 73182) similarly applies to this proposed Agreement. See Attachment A for original sole source justification and Attachment B for State approval for County's purchase of additional services.

IMPACT ON CURRENT SERVICES

Should the Board not approve this Agreement, DCFS will be negatively impacted as follows: (1) additional Los Angeles County specific changes to CWS/CMS will not be implemented, (2) DCFS-created child welfare reporting applications that rely on daily downloads of CWS/CMS data will cease to function, (3) physical moves or expansion of any DCFS office will result in an inability of workers at that site to access CWS/CMS, (4) CWS/CMS network printers cannot be added or moved, (5) additional staff from other

County departments may not obtain access to CWS/CMS to better integrate services (as required in the County Strategic Plan Program Goal 5), and (6) there could be extended delays in restoring staff access to CWS/CMS should there be CWS/CMS server, printer, or workstation problems.

Granting approval for this Agreement will ensure that: (1) CWS/CMS continues to become more usable for Los Angeles County, (2) Los Angeles County will continue to have child welfare data updated daily to measure outcome-based performance, (3) workers at DCFS offices that are planned to be physically moved or expanded will continue to have access to CWS/CMS, (4) CWS/CMS network printers can be added or moved as needed, (5) additional authorized staff from other County departments can be given access to CWS/CMS to better integrate services, and (6) Children's Social Workers and others accessing CWS/CMS will be able to complete their work with minimal CWS/CMS workstation software problems.

Respectfully submitted,

Reviewed by:

ANITA M. BOCK
Director

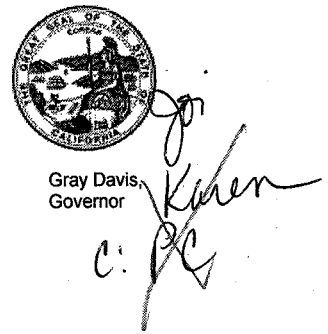
Jon W. Fullinwider
Chief Information Officer

AMB:kvs

Attachments (4)

c: Chief Administrative Officer
Chief Information Officer
County Counsel
Auditor-Controller

**ATTACHMENT B
COPY OF STATE APPROVAL FOR SOLE SOURCE OF
CWS/CMS SERVICES**



California Health and Human Services Agency Data Center
Child Welfare Services/Case Management System 1651
Alhambra Boulevard Sacramento, California 95816 (916)
263-1100 FAX (916) 263-1142

January 10, 2002

Joi Russell

Acting Deputy Director
Information Services
LACO 4060 Watson Plaza
Drive Lakewood, CA 90712

**SUBJECT: CLARIFICATION OF VENDOR ROLE FOR SERVERS AND
WORKSTATION IMAGES**

Dear Ms. Russell:

This letter is in response to Los Angeles County's inquiry regarding Child Welfare Services Case Management System (CWS/CMS) Project contracting policies relative to the above captioned.

The Moves, Adds, Changes (MAC) process is a part of the State overall CWS/CMS Configuration Management (CM) program. Together with other processes, such as change management and problem management, the MAC process ensures changes to the CWS/CMS baseline occur in a controlled fashion that promotes the continued reliability and performance of the system in all counties.

The system configuration items, the CWS/CMS application and the architectural components of the system, will be changed only through a controlled configuration management process. The State requires that when a county submits a MAC for any Move, Add or Change, involving any CWS/CMS application server, IBM must have responsibility for the server change.

Controlling access and the integrity of the work done to the CWS/CMS servers allows the State to maintain the appropriate oversight of its contractor and helps to ensure that "Service Level Agreements" (SLA) regarding server availability are met.

Another aspect of Configuration Management is control of the Dedicated workstation image. The State CWS/CMS vendor, IBM Global Services, has the responsibility of creating the base Dedicated desktop and laptop workstation images. Changes beyond the Dedicated image are the specific responsibility of each Co-existent county.

We hope that this addresses your concerns regarding the roles and responsibilities of the MAC process. If you have any questions or concerns please call Joyce Williams, Operations Manager, at (916) 263-1106.

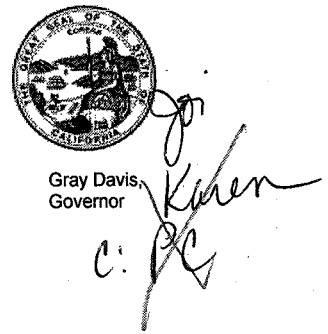
Sincerely,



BOB FERGUSON
Deputy Director

cc: Kathy Curtis, CWS/CMS
Neola Leipus, CWS/CMS
Richard O'Neil, CWS/CMS
Joyce Williams, CWS/CMS

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The system configuration items, the CWS/CMS application and the architectural components of the system, will be changed only through a controlled configuration management process. The State requires that when a county submits a MAC for any Move, Add or Change, involving any CWS/CMS application server, IBM must have responsibility for the server change.

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Sincerely,



BOB FERGUSON
Deputy Director

cc: Kathy Curtis, CWS/CMS
Neola Leipus, CWS/CMS
Richard O'Neil, CWS/CMS
Joyce Williams, CWS/CMS

CIO ANALYSIS

REQUEST TO APPROVE AN AGREEMENT WITH IBM GLOBAL SERVICES TO PROVIDE ENHANCEMENTS TO THE CHILD WELFARE SERVICES/CASE MANAGEMENT SYSTEM (CWS/CMS) FOR LOS ANGELES COUNTY'S DEPARTMENT OF CHILDREN AND FAMILY SERVICES (DCFS)

CIO RECOMMENDATION: **APPROVE** **APPROVE WITH MODIFICATION**
 DISAPPROVE

Contract Type:

New Contract **Contract Amendment** **Contract Extension**
 Sole Source Contract

New/Revised Contract Term: **Base Term:** 1 Yrs **# of Option Yrs** 2

Contract Components:

Software **Hardware** **Telecommunications**
 Professional Services

Project Executive Sponsor:

Anita Bock, Director
Department of Children and Family Services

Budget Information :

Y-T-D Contract Expenditures	\$0
Requested Contract Amount	\$1,000,000 (per year)
Aggregate Contract Amount	\$3,000,000 (total contract sum)

Project Background:

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project legislatively mandated?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project subvented? If yes, what percentage is offset? 86.79%

Strategic Alignment:

Yes	No	Question
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project in alignment with the County of Los Angeles Strategic Plan?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is this project consistent with the currently approved Department Business Automation Plan?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Does the project's technology solution comply with County of Los Angeles IT

		Directions Document? CWS/CMS uses OS/2 server and client/server technologies that are not consistent with the County's I/T Direction. However, CWS/CMS is a system developed and mandated by the State.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Does the project technology solution comply with preferred County of Los Angeles IT Standards? CWS/CMS uses OS/2 server and client/server technologies that are not consistent with the County's I/T Standards. However, CWS/CMS is a system developed and mandated by the State.

Project/Contract Description:

Services provided under this agreement include: (1) Implementing Los Angeles County specific enhancements to the statewide CWS/CMS application and database, (2) Providing on-going daily downloads of Los Angeles County CWS/CMS data for use in DCFS data reporting applications, (3) Implementing moves or changes to CWS/CMS servers and other infrastructure components to accommodate additional DCFS and other County department access to CWS/CMS based on new/relocation of office space, (4) Supporting moves or changes to CWS/CMS servers and network printers, (5) Upgrading of CWS/CMS server technology, consistent with CWS/CMS statewide requirements and CIO Business Automation Plans and (6) Performing Workstation CWS/CMS software configuration checkout services for any new make/model/type of personal computers the County deploys for CWS/CMS use.

Background:

In 1992 the State of California Department of Health and Human Services awarded a competitively bid contract to IBM Global Services for the design, implementation and operation of the CWS/CMS system. The State Agreement with IBM Global Services is currently extended through July 31, 2002. This Agreement provides counties who chose to use CWS/CMS equipment for other locally developed child and family services applications (co-located counties) to contract directly with IBM Global Services for maintenance of the system within their respective counties.

The County obtained CWS/CMS maintenance services from IBM Global in previous years under purchase orders and a prior agreement approved by your Board. Currently, IBM Global Services provides services to the County under the existing sole source Agreement Number 73182 approved by your Board in December 1999. This Agreement expires on June 30, 2002.

It is DCFS's understanding that the State is planning to extend their existing agreement with IBM Global Services for CWS/CMS maintenance and enhancement services until 2004. The proposed sole source Agreement is intended to coincide with State IBM Global Agreement and will allow the County to extend its Agreement, on a year to year basis, until the State selects a new CWS/CMS vendor. DCFS filed a sole source notification regarding this Agreement to your Board on April 18, 2002.

Project Justification/Benefits:

DCFS is mandated to use the State Child Welfare Services/Case Management System (CWS/CMS) for case management for the children and families in Los Angeles County. The Agreement will allow implementation of specific enhancements and modifications to the CWS/CMS application and database that are unique to DCFS. This is necessary to make the CWS/CMS system more usable for staff in DCFS and other Los Angeles County departments serving children and families. It is also necessary to accommodate DCFS's organizational changes that require the relocation of staff units, office expansions, and the opening of new offices.

Project Metrics

- Timely implementation of DCFS specific enhancements to CWS/CMS
- Timely moves, adds and changes to CWS/CMS equipment located at DCFS
- Timely and accurate equipment configuration testing

Impact If Proposal Is Not Approved

If the Agreement is not approved, DCFS indicates that CWS/CMS access will be unavailable to caseworkers and support staff if office moves require the relocation of State servers and printers. Staff from other departments may also not have access to CWS/CMS, resulting in a reduced level of service integration. In addition, without the use of certified application images, there may be increased workstation problems and delays in restoring access to CWS/CMS.

Alternatives Considered:

No viable alternatives are available to the County for CWS/CMS application changes, server and printer maintenance, or support for certification of CWS/CM client software images. Based on the 1992 State Contract with IBM Global, IBM Global is the only firm authorized to maintain and modify the CWS/CMS system including moves, adds and changes to network components (servers and printers) and certification of client software images. This State contract requirement ensures that the integrity of CWS/CMS is maintained and holds IBM Global responsible for maintaining contractual system performance and service levels.

Project Risks:

As stated in the DCFS Board Letter, the previous IBM Global Agreement was the result of exceedingly protracted negotiations. IBM leveraged its status as the only State approved vendor and raised objections to virtually all of the County's standard contractual terms. The terms and conditions in this new Agreement remain the same as in the previous Agreement. Therefore, this new recommended Agreement deviates substantially from the County's standard contractual terms.



AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

IBM GLOBAL SERVICES

for

**ENHANCEMENTS TO THE CALIFORNIA STATE CHILD WELFARE
SERVICES/CASE MANAGEMENT SYSTEM (CWS/CMS)**

for the

**COUNTY OF LOS ANGELES
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

May 2002

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AGREEMENT

This Agreement is made and entered into as of the Effective Date by and between the County of Los Angeles (hereafter "COUNTY") and IBM, a New York corporation, doing business in California through its division, IBM Global Services (hereafter "CONTRACTOR"), with regard to the following recitals ("Recitals"):

1. WHEREAS, the implementation and utilization of the statewide Child Welfare Services/Case Management System ("CWS/CMS") is mandated by, *inter alia*, California Welfare and Institutions Code section 16501.5;
2. WHEREAS, the State of California (hereafter "STATE") selected CONTRACTOR, through a competitive bid process, as the vendor to develop, design, and maintain CWS/CMS, including but not limited to the application software and hardware infrastructure;
3. WHEREAS, on or about January 24, 1992, CONTRACTOR and the STATE entered into a written contract (contract number 31091), which expires on July 31, 2003 for, *inter alia*, development, design, and maintenance of CWS/CMS (referred to hereafter as the "State Agreement," inclusive of any duly authorized amendment, modification, renewal, or successor agreement between the STATE and CONTRACTOR);
4. WHEREAS, on or about December 31, 1996, the STATE and CONTRACTOR agreed on specifications for CWS/CMS, as required in the State Agreement, in the deliverable document, "D51A – ISSC CWS/CMS Service Level Agreement", dated February 14, 1997 (hereafter, the "Service Level Agreement"), inclusive of any duly authorized amendment, modification, renewal, or successor Service Level Agreement between the State of California and CONTRACTOR;
5. WHEREAS, CONTRACTOR is the only vendor authorized by the STATE's Health and Human Services Data Center (previously the State of California Health and Welfare Agency Data Center; hereafter "HSDC") to make modifications and enhancements to CWS/CMS application software and hardware infrastructure;
6. WHEREAS, pursuant to the State Agreement, Section 28 (Warranty), CONTRACTOR warrants that CWS/CMS will operate in accordance with the functional and service level specifications agreed to by the STATE and CONTRACTOR;
7. WHEREAS, pursuant to the State Agreement, CONTRACTOR shall provide counties with technical support of CWS/CMS, as well as all necessary equipment, hardware, and software;
8. WHEREAS, the previous system used by the COUNTY's Department of Children and Family Services ("DCFS") contained many features unique to the COUNTY, and which were not included in the basic CWS/CMS application;

9. WHEREAS, enhancements to CWS/CMS are necessary to allow DCFS social workers to access and more effectively use the CWS/CMS database;

NOW THEREFORE, in consideration of the foregoing Recitals, all of which are incorporated as a part of this Agreement, CONTRACTOR and COUNTY hereby further agree as follows:

1.0 APPLICABLE DOCUMENTS

1.1 Statements of Work

The COUNTY and CONTRACTOR anticipate that various Statements of Work may be added to this Agreement from time to time as per the requirements of Section 6.0 (Change Notice, Amendments, and Statements of Work). The Statements of Work, seriatim and in chronological order, shall collectively constitute Exhibit C (Statements of Work).

1.2 The Agreement

The present document, and Exhibits A, B, C, D, E, and F, attached hereto and incorporated herein by this reference, collectively form, constitute, and are referred to throughout and hereinafter as the "Agreement."

1.3 Interpretation

In the event of any conflict and/or inconsistency in the definition and/or interpretation of any word, responsibility, schedule, and/or the contents and/or description of any Deliverable and/or other consideration, and/or otherwise, between and/or among the present document and/or the Exhibits, such shall be resolved by giving precedence first to this present document, and then to the Exhibits according to the following priority:

1. Exhibit A - Price Schedules from the State Agreement;
2. Exhibit B - CONTRACTOR's EEO Certification;
3. Exhibit C - Statements of Work;
4. Exhibit D - Schedule of State Approved Subcontractors;
5. Exhibit E - Sample SOW;
6. Exhibit F - Regulatory Requirements

1.4 Entire Agreement

This Agreement, as defined in Subsections 1.1, 1.2, and 1.3, shall constitute the complete and exclusive statement of understanding and agreement between COUNTY and CONTRACTOR, which supersedes any and all previous agreements, whether written or oral, and all communications relating to the subject matter of this Agreement, except for the predecessor agreement (COUNTY contract number 73182).

1.5 Definitions

The following terms and phrases in quotes and with an initial letter capitalized shall have the following specific meaning when used in this Agreement, hereinafter and throughout:

1.5.1 Acceptance

"Acceptance" shall mean COUNTY's written approval of any Deliverable provided by CONTRACTOR to COUNTY pursuant to any duly authorized Statement of Work, and pursuant to Section 2.4 (Approval of Work, Tasks, Deliverables, Goods, and/or Services) and Section 2.5 (Approval of Invoices) of this base document.

1.5.2 CONTRACTOR's Project Director

"CONTRACTOR's Project Director" shall have the meaning specified in Subsection 3.1 (CONTRACTOR's Project Director).

1.5.3 CONTRACTOR's Project Manager

"CONTRACTOR's Project Manager" shall have the meaning specified in Subsection 3.2 (CONTRACTOR's Project Manager).

1.5.4 COUNTY

"COUNTY" shall mean the County of Los Angeles, California.

1.5.5 COUNTY's Project Director

"COUNTY's Project Director" shall have the meaning specified in Subsection 2.1 (COUNTY's Project Director).

1.5.6 COUNTY's Project Manager

"COUNTY's Project Manager" shall have the meaning specified in Subsection 2.2 (COUNTY's Project Manager).

1.5.7 CWS/CMS

"CWS/CMS" is as defined in Recital number one, and is synonymous with System. See "System," Subsection 1.5.18.

1.5.8 DCFS

"DCFS" shall mean COUNTY's Department of Children and Family Services.

1.5.9 Day(s)

"Day" or "days," whether singular or plural, whether used with initial capitalization or not, shall mean calendar days and not business or working days, unless otherwise expressly indicated.

1.5.10 Deficiency(ies)

"Deficiency" or "Deficiencies," whether singular or plural, shall mean and include (1) defect(s) in design, development, implementation, materials, or workmanship; (2) error(s); (3) omission(s); (4) deviation(s) from standards and/or any of the specifications set forth in the applicable Statement(s) of Work; and/or (5) other problem(s) which result in a Deliverable not performing in accordance with the provisions of this Agreement, including, without limitation, Exhibit C (Statements of Work).

1.5.11 Deliverable

"Deliverable" or "Deliverables," whether singular or plural, shall mean any work, task, subtask, deliverable, service, and/ or other consideration to be provided and/or provided by CONTRACTOR to COUNTY under this Agreement, as identified in any Statement of Work which is duly executed and issued pursuant to Section 6.0.

1.5.12 Effective Date

"Effective Date" shall mean July 1, 2002.

1.5.13 Fiscal Year

"Fiscal Year" shall mean the COUNTY's fiscal year, which commences each July 1 and runs through the following June 30.

1.5.14 Maximum Annual Contract Sum

"Maximum Annual Contract Sum" shall mean the maximum monetary amount payable per annum, commencing upon the Effective Date, by COUNTY to CONTRACTOR hereunder, as set forth in Subsection 7.1 (CONTRACT SUM - General).

1.5.15 Maximum Contract Sum

"Maximum Contract Sum" shall mean the maximum monetary amount payable, during the term of this contract, commencing upon the Effective Date, by COUNTY to CONTRACTOR hereunder, as set forth in Subsection 7.2 (CONTRACT SUM – Maximum Contract Sum).

1.5.16 Moves, Adds, and Changes

"MAC" or "MACs," whether singular or plural, shall mean the activity of making changes to key components of the STATE's CWS/CMS infrastructure located in COUNTY sites; in particular the CWS/CMS server hardware, CWS/CMS server software, and configuration of CWS/CMS server connections to the CWS/CMS network.

The STATE HHSDC prepared and published a CWS/CMS project document entitled "Moves, Adds, & Changes (MAC) Plan", dated 10/15/99, that says, "Types of CWS/CMS MACs include: add equipment to a site, move a site to a new location, change the configuration or equipment at a site, delete equipment from a site, or close a site."

Changes to COUNTY CWS/CMS infrastructure that require key System component MAC Services to be provided by CONTRACTOR shall include: add CWS/CMS servers to a site (add), take down CWS/CMS servers and remove them from a site (delete, close), move CWS/CMS servers from one site to another (move), change CWS/CMS server function through reconfiguration of server software (change), or upgrade CWS/CMS print server software to be able to find new or moved CWS/CMS printers (add or change).

1.5.17 Subcontractor

"Subcontractor" shall mean any person, entity, or organization to which CONTRACTOR proposes to delegate or has delegated any of its obligations hereunder in accordance with Section 15.0 (Subcontracting).

1.5.18 System

"System" shall mean all system software, system hardware, conversions, interfaces, and services, which collectively constitute the State of California's Child Welfare Services/Case Management System.

1.5.19 User

"User" shall mean any person or entity authorized by DCFS to access or use the System or any System component.

1.5.19 Working Day(s)

"Working day" or "working days," whether singular or plural, whether used with initial capitalization or not, shall mean 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding COUNTY observed holidays.

1.5.20 Workstation Configuration Checkout

"Workstation Configuration Checkout" shall mean the building and testing of a base CWS/CMS workstation software image that is compatible with the CWS/CMS application and can be used on COUNTY selected and procured workstations that meet minimum CWS/CMS workstation hardware requirements.

2.0 ADMINISTRATION OF AGREEMENT - COUNTY

2.1 COUNTY's Project Director

2.1.1 COUNTY's Project Director for this Agreement shall be the following person:

Joi J. Russell, Division Chief
DCFS Information Technology Services
4060 Watson Plaza Drive
Lakewood, CA 90712

phone: (562) 497-3353
fax: (562) 496-2338
e-mail: jrussell@dcfs.co.la.ca.us

2.1.2 COUNTY shall notify CONTRACTOR in writing of any change in the name or address of COUNTY's Project Director.

2.1.3 COUNTY's Project Director shall be responsible for COUNTY's performance of its tasks and ensuring CONTRACTOR's compliance with this Agreement.

2.1.4 COUNTY's Project Director shall meet or confer with CONTRACTOR's Project Director on a regular basis.

2.1.5 Except as expressly set forth in this Agreement, COUNTY's Project Director is not authorized to make any changes in any of the terms or conditions of this Agreement and is not authorized to obligate COUNTY in any respect whatsoever.

2.1.6 COUNTY's Project Director shall have the right at all times to inspect any and all work, task(s), Deliverable(s), and/or service(s) provided by or on behalf of CONTRACTOR, upon reasonable notice to CONTRACTOR.

2.2 COUNTY's Project Manager

2.2.1 COUNTY's Project Manager for this Agreement shall be the following person:

Pam Jacobian, Data Systems Supervisor
DCFS Management Information Division
4060 Watson Plaza Drive
Lakewood, CA 90712

phone: (562) 497-3352
fax: (562) 496-2338
e-mail: pjacobian@dcfs.co.la.ca.us

- 2.2.2 COUNTY shall notify CONTRACTOR in writing of any change in the name or address of COUNTY's Project Manager.
- 2.2.3 COUNTY's Project Manager shall be responsible for ensuring that any technical standards and requirements of COUNTY's performance under this Agreement are met.
- 2.2.4 COUNTY's Project Manager is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to obligate COUNTY in any respect whatsoever.
- 2.2.5 COUNTY's Project Manager shall advise COUNTY's Project Director as to CONTRACTOR's performance in areas relative to requirements and technical standards, including but not limited to completion criteria for Deliverables in the Statements of Work.

2.3 COUNTY Personnel

Unless otherwise stated in this Agreement, all COUNTY personnel assigned to this Agreement shall be under the exclusive supervision of COUNTY. Except as otherwise provided in this Agreement, CONTRACTOR understands and agrees that all such COUNTY personnel are assigned only for the convenience of COUNTY. CONTRACTOR hereby represents that its price, project schedule, and performance hereunder are based solely on the work of CONTRACTOR's personnel, except as otherwise expressly provided by this Agreement, including but not limited to any Statement of Work.

2.4 Approval of Deliverables

- 2.4.1 For any and all Deliverables provided by CONTRACTOR to COUNTY, the CONTRACTOR must have the written approval of COUNTY's Project Director and COUNTY's Project Manager, which approval shall be provided or denied in a timely manner considering the circumstances and the procedures set forth in this Agreement. Notwithstanding anything to the contrary in this Agreement, in no event shall COUNTY be liable or responsible for any such payment in the absence of and/or prior to such written approval.
- 2.4.2 For each Deliverable, COUNTY will provide to CONTRACTOR written approval or disapproval by COUNTY's Project Director and COUNTY's Project Manager

within thirty (30) days from delivery to COUNTY's Project Director and COUNTY's Project Manager of such Deliverable, provided that CONTRACTOR provides COUNTY's Project Director and COUNTY's Project Manager with a written notice simultaneously with the delivery of such Deliverable specifying the date on which such Deliverable was delivered to COUNTY's Project Director and COUNTY's Project Manager and specifying the last date for COUNTY's written approval or disapproval of such Deliverable.

- 2.4.3 COUNTY's Project Director shall determine if there is any discrepancy between the date specified by CONTRACTOR for COUNTY's approval or disapproval and the time limit set forth in this Subsection 2.4 for such approval or disapproval, and the determination of COUNTY's Project Director as to the correct such date shall be final, subject to Section 45.0 (Dispute Resolution Procedure).
- 2.4.4 Any written notice of disapproval from COUNTY's Project Director or COUNTY's Project Manager which specifies one or more bases for disapproval shall not be deemed or construed to constitute an exhaustive itemization of the bases for such disapproval, and shall not limit in any manner at any time prior to any written approval of such Deliverable by COUNTY's Project Director and/or COUNTY's Project Manager, COUNTY's rights subsequently to disapprove such Deliverable on the same basis and/or on another basis.
- 2.4.5 Notwithstanding any provision to the contrary, any failure to provide and/or delay in providing written approval or disapproval by the COUNTY of any Deliverable shall not be deemed to be an approval and/or a waiver of the right to disapprove.
- 2.4.6 COUNTY shall approve any Deliverable, consistent with the provisions of this Subsection 2.4, and if the Deliverable strictly complies with its completion and functional criteria in the applicable Statement of Work.

2.5 Approval of Invoices

All invoices submitted by CONTRACTOR for payment must have the written approval of COUNTY's Project Director prior to any payment thereof (less any offsets due to COUNTY), which approval shall be provided or denied in a timely manner not to exceed thirty (30) working days following submission of the invoice following COUNTY's approval of the applicable Deliverable pursuant to Subsection 2.4 (Approval of Deliverables).

3.0 **ADMINISTRATION OF AGREEMENT - CONTRACTOR**

3.1 CONTRACTOR's Project Director

- 3.1.1 CONTRACTOR's Project Director shall be the following person, who shall be a full-time employee of CONTRACTOR:

Nancy LePage
IBM Global Services
3775 North Freeway Boulevard
Sacramento, CA 95834

phone: (916) 567-2930
fax: (916) 567-2116
e-mail: nlepage@us.ibm.com

3.1.2 CONTRACTOR's Project Director shall be responsible for CONTRACTOR's performance and assuring CONTRACTOR's compliance with this Agreement.

3.1.3 CONTRACTOR's Project Director shall meet or confer with CONTRACTOR's Project Manager and COUNTY's Project Director on a regular basis.

3.2 CONTRACTOR's Project Manager

3.2.1 CONTRACTOR's Project Manager shall be the following person who shall be a full-time employee of CONTRACTOR:

Nabil Joudeh
IBM Global Services
3775 North Freeway Boulevard
Sacramento, CA 95834

phone: (916) 567-2965
fax: (916) 567-2116
e-mail: nabiljou@us.ibm.com

3.2.2 CONTRACTOR's Project Manager shall be responsible for CONTRACTOR's day-to-day activities as related to this Agreement and for reporting to COUNTY in the manner set forth in Subsection 3.4 (Reports by CONTRACTOR).

3.2.3 CONTRACTOR's Project Manager shall meet or confer with COUNTY's Project Director and COUNTY's Project Manager on a regular basis.

3.3 Approval of CONTRACTOR's Staff

3.3.1 The following persons shall be provided by CONTRACTOR and are hereby approved as of the Effective Date by COUNTY, are deemed to be "Key Staff" for purposes of this Agreement :

<u>Key Staff</u>	<u>Individual</u>
Project Director	Nancy LePage
Project Manager	Nabil Joudeh
Technical Project Manager	Anne Benton
Technical Project Manager	Marybeth Kavanagh

3.3.2 CONTRACTOR represents and warrants that it shall, to the maximum extent possible, take all commercially reasonable steps to assure continuity over time of the membership of the group constituting CONTRACTOR's Key staff, including, but not limited to, CONTRACTOR's Project Director and CONTRACTOR's Project Manager.

3.3.3 CONTRACTOR shall promptly fill any staff vacancy with personnel having qualifications at least equivalent to those of the staff member(s) being replaced.

3.3.4 In fulfillment of its responsibilities under this Agreement, CONTRACTOR shall utilize, and permit utilization of, only staff fully trained and experienced, and as appropriate, licensed or certified in the technology, trades, and tasks required by this Agreement.

3.3.5 In the event CONTRACTOR should ever need to remove any of its Key Staff from performing work under this Agreement, CONTRACTOR shall provide COUNTY with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible, and shall work with COUNTY on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity.

3.3.6 All staff employed by and on behalf of CONTRACTOR shall be adults who are fully fluent in both spoken and written English.

3.4 Reports by CONTRACTOR

3.4.1 In order to control expenditures and to provide COUNTY with ongoing information as to any and all Deliverables, CONTRACTOR shall provide COUNTY's Project Director and COUNTY's Project Manager with quarterly written reports, due on January 1, April 1, July 1, and October 1, which shall contain the following information:

- A. Period covered by the report;
- B. Overview of the reporting period;
- C. Any and all Deliverable(s) scheduled for the reporting period which was not completed;

- D. Any and all Deliverable(s) for the reporting period which was completed;
- E. Any and all Deliverable(s) completed in the reporting period which was not scheduled;
- F. Any and all Deliverable(s) to be completed in the next reporting period;
- G. Issues to be resolved;
- H. Issues resolved;
- I. Summary of project status as of reporting date; and
- J. Any other information which COUNTY may from time-to-time require, upon reasonable notice to CONTRACTOR.

3.4.2 CONTRACTOR shall deliver one (1) hard copy of each of such quarterly reports, together with a formal transmittal letter to COUNTY's Project Manager executed by CONTRACTOR's Project Manager, and CONTRACTOR shall also deliver a second copy of each such report electronically via e-mail.

4.0 WORK

4.1 General

Pursuant to the provisions of this Agreement, CONTRACTOR shall on a timely basis provide, complete, and deliver any and all Deliverables as set forth in this Agreement, including but not limited to the applicable Statement of Work.

4.2 Unapproved Work

4.2.1 If CONTRACTOR provides any Deliverable to COUNTY other than those specified in a duly executed Statement of Work, and/or if CONTRACTOR provides such items requiring COUNTY's prior written approval without first having obtained written approval, the same shall be deemed to be a gratuitous effort on the part of CONTRACTOR, and CONTRACTOR shall have no claim whatsoever against COUNTY therefore, under this Agreement or otherwise.

4.2.2 Nothing in this Section 4.2 under this Agreement is intended to preclude contractual claims which CONTRACTOR may have on other COUNTY contract(s), which relationship shall be controlled any such other applicable contract(s).

4.3 System

CONTRACTOR shall provide enhancements to the System for COUNTY in accordance with the terms and conditions set forth in this Agreement.

4.4 Other Work

4.4.1 CONTRACTOR shall perform limited key CWS/CMS component MACs (Moves, Adds, and Changes) to CWS/CMS servers and other infrastructure components located in COUNTY sites in accordance with the terms and conditions set forth in this Agreement,

4.4.2 CONTRACTOR shall provide Workstation Configuration Checkout services in accordance with the terms and conditions set forth in this Agreement.

5.0 **TERM**

5.1 The term of this Agreement shall commence upon the Effective Date, as defined in Subsection 1.5.12, and shall continue up until and including June 30, 2003, unless sooner terminated or later extended, in whole or in part, as provided in this Agreement.

5.2 The COUNTY, by and through the Director of DCFS, shall have the irrevocable option to extend this Agreement through June 30, 2005. The term of the Agreement may be extended by DCFS' Director for up to two (2) one-year periods, so long as CONTRACTOR remains the vendor to the State of California under the State Agreement or any successor agreement thereto. The Director of DCFS may exercise the COUNTY's option by advance written notification to the CONTRACTOR.

6.0 **CHANGE NOTICES, AMENDMENTS, AND STATEMENTS OF WORK**

6.1 COUNTY and CONTRACTOR reserve the right to change any provision of this Agreement, including but not limited to any Deliverable. Any such change shall be accomplished only as provided in this Section 6.0.

6.2 For any change requested which does not affect the Agreement term, Maximum Contract Sum, or any term or condition included in this Agreement, such change may be effected, but only on mutual consent, by means of a Change Notice executed by COUNTY's Project Director and CONTRACTOR's Project Director.

6.3 For any change requested which does affect the Agreement term, Maximum Contract Sum, or any term or condition included in this Agreement, such shall be valid and enforceable only by a written Amendment to this Agreement duly executed by COUNTY's Board of Supervisors and CONTRACTOR.

6.4 Notwithstanding any other provision of this Section 6.0, to the extent that any extension of time for CONTRACTOR's performance does not impact either the Deliverable or the Maximum Annual Contract Sum, COUNTY's Project Director

may, in his sole discretion, grant CONTRACTOR extensions of time in writing, provided that the aggregate of such extensions shall not exceed a total of forty-five (45) days per year.

- 6.5 Notwithstanding any other provision of this Section 6.0 or Section 33.0 (Termination for Convenience), and subject to all other provisions of this Agreement, DCFS shall take all appropriate action to carry out any orders of COUNTY's Board of Supervisors relating to this Agreement, and, for this purpose, DCFS is authorized to: (1) issue written notice(s) of partial or total termination of this Agreement pursuant to Section 33.0 (Termination for Convenience) without further action by COUNTY's Board of Supervisors, (2) prepare and sign Amendments to this Agreement which reduce the scope of work and the Maximum Contract Sum without further action by COUNTY's Board of Supervisors, and/or (3) prepare and sign Statements of Work for enhancements to the System without further action by COUNTY's Board of Supervisors.
- 6.6 Such notices of partial or total termination shall be authorized under the following conditions:
- A. Notices shall be in compliance with all applicable federal, state, and COUNTY laws, rules, regulations, ordinances, guidelines, and directives;
 - B. DCFS shall obtain the written approval as to form by the Office of the County Counsel for any notice; and
 - C. DCFS shall file a copy of all notices with the Executive Office of COUNTY's Board of Supervisors, COUNTY's Purchasing Agent, and COUNTY's Chief Administrative Office within fifteen (15) days after execution of each notice.
- 6.7 Such Amendments and/or Statements of Work shall be authorized upon and under the following conditions:
- A. Amendments and/or Statements of Work shall be in compliance with all applicable federal, state, and COUNTY laws, rules, regulations, ordinances, guidelines, and directives;
 - B. COUNTY's Board of Supervisors and the State of California have appropriated sufficient funds for purposes of such Amendments, Statements of Work, and/or this Agreement;
 - C. No Statement of Work shall add to, delete from, and/or otherwise alter any term or condition, or the effect thereof, of this present document, Exhibit A (Price Schedules), Exhibit B (CONTRACTOR's EEO Certification), and/or Exhibit D (Schedule State Approved Subcontractors).
 - D. Each Statement of Work shall comply in form and substance with Exhibit E (Sample SOW).

- F. DCFS shall file a copy of all Amendments and Statements of Work with the Executive Office of COUNTY's Board of Supervisors, COUNTY's Purchasing Agent, and COUNTY's Chief Administrative Office within fifteen (15) days after execution of each Amendment and Statement of Work.

7.0 MAXIMUM CONTRACT SUMS

7.1 General

For each COUNTY Fiscal Year, the Maximum Annual Contract Sum under this Agreement shall be the maximum monetary amount payable per annum by COUNTY to CONTRACTOR for supplying all the Deliverables specified under this Agreement, including any Amendment and/or Statement of Work hereunder. The Maximum Annual Contract Sum authorized by COUNTY for this Agreement, including, without limitation, all applicable taxes, shall not exceed the maximum amount of one million dollars (\$1,000,000)(throughout and hereinafter, the "Maximum Annual Contract Sum").

7.2 Maximum Contract Sum

The Maximum Contract Sum under this Agreement shall be the maximum monetary amount payable by COUNTY to CONTRACTOR for supplying all the Deliverables specified under this Agreement, including any Amendment and/or Statement of Work hereunder. The Maximum Contract Sum authorized by COUNTY for this Agreement, including, without limitation, all applicable taxes, shall not exceed the maximum amount of three million dollars (\$3,000,000)(throughout and hereinafter, the "Maximum Contract Sum").

7.3 COUNTY's Obligation in Future Fiscal Years

Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated for any payment for CONTRACTOR's performance hereunder or by any provision of this Agreement during any of COUNTY's future Fiscal Years unless and until COUNTY's Board of Supervisors and the State of California appropriate funds for this Agreement, the State Agreement, and System enhancements in their respective budgets for each such future Fiscal Year. In the event that funds are not so appropriated, then this Agreement shall terminate as of June 30 of the last Fiscal Year for which funds were appropriated. COUNTY shall notify CONTRACTOR in writing of any such non-appropriation of funds at the earliest possible date.

8.0 INVOICES AND PAYMENTS

8.1 General

CONTRACTOR shall invoice COUNTY for Deliverables which have been provided by CONTRACTOR pursuant to a duly authorized and executed Statement of Work, and approved in writing by COUNTY pursuant to the terms of this Agreement. All invoices under this Agreement shall be submitted to the following address:

Invoicing - DCFS Finance
Accounts Payable
Attention: Erlinda Dyer
425 Shatto Place, #204
Los Angeles, CA 90020

Each invoice submitted by CONTRACTOR shall specify:

- A. The COUNTY Agreement number, the Statement of Work number, and the Deliverable(s) for which payment is claimed;
- B. The date of written approval of the Deliverable(s) by COUNTY's Project Director;
- C. Any applicable withheld amount for payments claimed or reversals thereof;
- D. Any applicable credits due COUNTY under the terms of this Agreement or reversals thereof; and
- E. If CONTRACTOR has assigned, pursuant to the terms and conditions of this Agreement, its right to payment on the invoice, CONTRACTOR shall provide the full name, and address for payment purposes, of its assignee.

8.2 Sales/Use Tax

If any governmental authority imposes a tax upon the Deliverable(s) provided by CONTRACTOR to COUNTY, then CONTRACTOR shall provide proof of such tax along with the invoice, and COUNTY shall either pay such amount or provide exemption documentation. In no event shall COUNTY be required to pay any tax on CONTRACTOR's net income.

9.0 WARRANTIES

9.1 Warranty at Acceptance

CONTRACTOR hereby warrants to COUNTY that, at upon Approval under Subsection 2.4, and for one hundred eighty (180) days thereafter, each and

every Deliverable shall strictly comply with its completion and functional criteria, including but not limited to performance capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions, and requirements, set forth in the applicable portion of Exhibit C (Statements of Work).

9.2 Warranty Services Response

CONTRACTOR's System warranty services shall be provided from 7:00 a.m. to 7:00 p.m., Pacific Standard Time, Monday through Friday, as follows:

- A. For any Deficiency in a Deliverable, as determined by COUNTY's Project Director, which severely impairs the operation of the System or creates a serious loss of functionality important to the day-to-day operation of the System or a System component, in either case as determined by COUNTY's Project Director, then on receipt of notice from COUNTY to CONTRACTOR's CWS/CMS Help Desk, CONTRACTOR shall commence corrective action within twenty-four (24) hours. The correction of any such Deficiencies shall be at no cost to COUNTY;
- B. For any Deficiency in a Deliverable, as determined by COUNTY's Project Director, which substantially impairs the operation of the System or creates a serious loss of functionality important to the day-to-day operation of the System or a System component, in either case as determined by COUNTY's Project Director, then on receipt of notice from COUNTY to CONTRACTOR's CWS/CMS Help Desk, CONTRACTOR shall commence corrective action within forty-eight (48) hours. The correction of any such Deficiencies shall be at no cost to COUNTY;
- C. For any Deficiency in a Deliverable, as determined by COUNTY's Project Director, not covered in Subsection 9.2.A or Subsection 9.2.B as determined by COUNTY's Project Director, on receipt of notice from COUNTY to CONTRACTOR's CWS/CMS Help Desk, CONTRACTOR shall commence corrective action within fourteen (14) days. The correction of any such Deficiencies shall be at no cost to COUNTY.

9.3 Further Warranties

CONTRACTOR further warrants to COUNTY that, throughout the term of this Agreement:

- A. Any and all Deliverables shall be performed in a timely and professional manner by qualified personnel;
- B. Any documentation developed under this Agreement shall be uniform in format and appearance, unless otherwise requested by COUNTY's Project Manager;

- C. The System components shall be capable of interconnecting and/or interfacing with each other, and when taken together, shall be capable of delivering all of the functionality as set forth in this Agreement (including, without limitation, the Recitals and Exhibit C (Statements of Work));
- D. CONTRACTOR shall use its very best efforts to avoid any unplanned interruption of the operations of, or accessibility to the System or any System component through any device, method or means including, without limitation, the use of any "virus," "lockup," "time bomb," or "key lock," "worm," device or program, or disabling code, which has the potential or capability of compromising the security of COUNTY's database confidential or proprietary information or of causing any unplanned interruption of the operations of, or accessibility of the System or any System Component to COUNTY or any User or which could alter, destroy, or inhibit the use of the System, any System Component, or the data contained therein (collectively referred to for purposes of this Subsection 9.3.D as "Disabling Device"), which could block access to or prevent the use of the System or any System Component by COUNTY or Users. CONTRACTOR represents, warrants and agrees that it has not purposely placed, nor is it aware of, any Disabling Device on any System Component provided to COUNTY under this Agreement; and
- E. CONTRACTOR shall prevent viruses from being incorporated or introduced into any of the System software, software components of interfaces, or updates or enhancements thereto prior to delivery thereof to COUNTY, and shall utilize its best efforts to prevent any viruses being incorporated or introduced in the process of CONTRACTOR's loading of System software or the software components of interfaces, loading of updates and enhancements thereto, or loading of other Deliverable(s).

9.4 Notifications of Deficiencies for Warranty Services

In the event of any Deficiency during the applicable Warranty Period, as determined by COUNTY's Project Director, COUNTY's Project Director will notify CONTRACTOR of the Deficiency within three (3) working days, but failure by COUNTY to notify CONTRACTOR within such time period shall not affect CONTRACTOR's warranty obligations under this Agreement. CONTRACTOR shall undertake corrective action under Subsection 9.5 (Corrections During Warranty Periods) within the applicable time specified in Subsection 9.2 (Warranty Services Response). If such notice to CONTRACTOR is given orally, COUNTY shall also provide written confirmation of the corrective action request to CONTRACTOR within ten (10) days of such oral notification, but COUNTY's failure to do so shall not relieve CONTRACTOR of any duty hereunder. CONTRACTOR's response time shall not be stayed pending receipt of COUNTY's written confirmation.

9.5 Corrections During Warranty Periods

CONTRACTOR further covenants and warrants that during the applicable Warranty Period, CONTRACTOR shall at no cost to COUNTY:

- A. Repair or de-install and replace any Deliverable, or any part thereof, which fails to function according to the specifications as required by this Agreement; and
- B. Correct any and all Deficiencies in any Deliverable.

9.6 EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE ARE NO OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9.7 Notwithstanding Subsection 9.6 or any other provision to the contrary, nothing in this Agreement shall render invalid and/or unenforceable any warranty, express or implied, the benefit of which runs to the COUNTY under the State Agreement and/or any such successor agreement for CWS/CMS.

9.8 The warranties in Subsections 9.1 and 9.2 will be voided to the extent of any COUNTY misuse, unauthorized modifications, improper maintenance (by an entity other than CONTRACTOR or its Subcontractors), or failure caused solely by a product for which CONTRACTOR is not responsible.

10.0 CRIMINAL BACKGROUND DISQUALIFICATION

10.1 For the safety and welfare of the children to be served under this Agreement, CONTRACTOR agrees, to the fullest extent permitted by law, to ascertain arrest and conviction records for and an all current and prospective employees, independent contractors, volunteers, and/or subcontractors who come in contact with children in the course of their work, volunteer activity or performance of the Agreement, and shall maintain such records in the file for each such person.

10.2 CONTRACTOR shall immediately notify COUNTY of any arrest and/or subsequent conviction, other than for minor traffic offenses, of any and all employees, independent contractors, volunteers, and/or subcontractors who come in contact with children while providing services under this Agreement.

10.3 CONTRACTOR agrees not to engage or continue to engage the services of any person convicted of any crime involving harm to children, including but not limited to the offenses specified in California *Health and Safety Code* section 11590 (persons required to register as controlled substance offenders) and those defined in the following California *Penal Code* sections, or any future *Penal Code* sections which may address these acts and/or crimes:

SECTION

TITLE

261.5	Unlawful sexual intercourse with a minor.
272	Causing, encouraging or contributing to delinquency of person under 18 years of age.
273a	Great bodily harm to or death of a child; endangerment of person or health.
273ab	Assault resulting in death of child under eight years of age.
273d	Infliction of corporal punishment or injury on child resulting in traumatic condition.
273g	Degrading, immoral or vicious practices in the presence of children.
286	Sodomy.
288	Lewd or lascivious acts upon the body of a child under age fourteen.
288a	Oral copulation.
314	Indecent exposure.
647(a) & (d)	Disorderly conduct relating to lewd behavior/prostitution.
647.6	Annoyance of or molesting a child under age eighteen.

11.0 PROHIBITION AGAINST ASSIGNMENT AND DELEGATION

CONTRACTOR shall not assign its rights and/or delegate its duties under this Agreement, whether in whole or in part, without the prior written consent of COUNTY. Any attempted assignment and/or delegation without such prior written consent shall be null and void, and shall constitute a material breach of this Agreement. Notwithstanding the above, CONTRACTOR may assign its rights to payment hereunder to an entity under common control with CONTRACTOR, provided that CONTRACTOR remains responsible for performance of its duties hereunder. Any payments by COUNTY to any delegatee and/or assignee under this Agreement shall reduce dollar-for-dollar commensurate any payment(s) due and owing to CONTRACTOR.

12.0 WARRANTY AGAINST CONTINGENT FEES

- 12.1 CONTRACTOR represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business.
- 12.2 For breach of Subsection 12.1, COUNTY shall have the right (1) to terminate this Agreement and, (2) in its sole discretion, deduct from the Agreement price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13.0 TERMINATION FOR GRATUITIES

COUNTY may, by written notice to CONTRACTOR, terminate the right of CONTRACTOR to proceed under this Agreement upon one (1) calendar day's notice, if it is found that unlawful gratuities in the form of entertainment, gifts, or otherwise were offered or given by CONTRACTOR, or any agent or representative of CONTRACTOR, to any officer, employee, or agent of COUNTY with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such contract. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of default by CONTRACTOR.

14.0 INDEPENDENT CONTRACTOR STATUS

- 14.1 This Agreement is by and between CONTRACTOR and COUNTY and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between CONTRACTOR and COUNTY. 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. CONTRACTOR shall function as, and in all respects is, an independent contractor.
- 14.2 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. COUNTY 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.
- 14.3 CONTRACTOR understands and agrees that all persons performing work pursuant to this Agreement are, for all purposes, and in particular for purposes of workers' compensation liability, the sole employees of CONTRACTOR and not employees of COUNTY. CONTRACTOR shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any

person as a result of any injuries arising from or connected with any work performed by or on behalf of CONTRACTOR pursuant to this Agreement.

- 14.4 CONTRACTOR represents and warrants that each CONTRACTOR employee, and any subcontractor employee, have executed a confidentiality agreement sufficient to protect against wrongful dissemination of COUNTY's confidential information consistent with Section 51.0 (Confidentiality) of this Agreement.

15.0 SUBCONTRACTING

- 15.1 In entering into this Agreement COUNTY has relied on the status of CONTRACTOR as the vender on the State Agreement, and on obtaining the personal performance of, CONTRACTOR itself. Consequently, no performance of this Agreement, or any portion thereof, shall be subcontracted by CONTRACTOR without the prior written consent of COUNTY as provided in this Section 15.0 Any attempt by CONTRACTOR to subcontract any performance, obligation, or responsibility under this Agreement, without the prior written consent of COUNTY, shall be null and void and shall constitute a material breach of this Agreement, upon which COUNTY may immediately terminate this Agreement. Notwithstanding the above, the Subcontractors approved by the State of California and used on the State Agreement are deemed approved hereunder. The Subcontractors working on the State Agreement as of the Effective Date are set forth on Exhibit D (State Approved Subcontractors).

- 15.2 If CONTRACTOR desires to subcontract any portion of its performance, obligations, or responsibilities under this Agreement, CONTRACTOR shall make a written request to COUNTY for written approval to enter into the particular subcontract. CONTRACTOR's request to COUNTY shall include:

- A. The reason(s) for the particular subcontract;
- B. A detailed description of the work to be performed by the proposed Subcontractor;
- C. Identification of the proposed Subcontractor and an explanation of why and how the proposed Subcontractor was selected;
- D. A draft copy of the proposed subcontract which shall contain, at a minimum, the provisions substantially similar to those set forth in this Agreement;
- E. A Certificate of Insurance from the proposed Subcontractor which establishes that the Subcontractor maintains all the programs of insurance required by this Agreement; and
- F. Any other and/or further information and/or certifications requested by COUNTY.

- 15.3 COUNTY will review CONTRACTOR's request to subcontract and determine, in its sole discretion, whether or not to consent to such request on a case-by-case basis.
- 15.4 Notwithstanding any COUNTY consent to any subcontracting, CONTRACTOR shall remain responsible for any and all performance required of it under this Agreement, including, but not limited to, the obligation to properly supervise, coordinate, and perform Deliverable(s) required hereunder, and no subcontract shall bind or purport to bind COUNTY. Further, COUNTY's approval of any subcontract shall not be construed to limit in any way CONTRACTOR's performance, obligations, or responsibilities to COUNTY, nor shall such approval limit in any way COUNTY's rights and/or remedies contained in this Agreement or otherwise. Additionally, COUNTY approval of any subcontract shall not be construed in any way to constitute the determination of the allowableness or appropriateness of any cost or payment under this Agreement.
- 15.5 In the event that COUNTY consents to any subcontracting, the Subcontractor, on behalf of itself, its successors and administrators, shall assume and be bound by and shall be deemed to have assumed and agreed to be bound by each and all of the provisions of this Agreement and any amendment hereto.
- 15.6 In the event that COUNTY consents to any subcontracting, such consent shall apply to each particular subcontract only, and shall not be, or be construed to be, a waiver of this Section 15.0 or a blanket consent to any further subcontracting.
- 15.7 DCFS, by and through the COUNTY Project Director, is hereby authorized to act for and on behalf of COUNTY pursuant to this Section 15.0, including, but not limited to, consenting to any subcontracting.
- 15.8 CONTRACTOR shall be solely liable and responsible for any and all payments and other compensation to all Subcontractors and their officers, employees, and agents. COUNTY shall have no liability or responsibility whatsoever for any payment or other compensation for any Subcontractors or their officers, employees, and agents.
- 15.9 Upon COUNTY's request, CONTRACTOR shall deliver to COUNTY's Project Director a fully executed copy of each subcontract entered into by CONTRACTOR pursuant to this Section 15.0. CONTRACTOR may redact any confidential information prior to delivery to COUNTY.
- 15.10 In the event that COUNTY consents to any subcontracting, CONTRACTOR shall obtain an executed agreement with Subcontractor which is at least as restrictive as CONTRACTOR's obligations herein as to COUNTY's Confidential information.

16.0 INDEMNIFICATION

16.1 CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its districts administered by COUNTY, and their elected and appointed officers, employees, and agents (hereafter for purposes of this Section 16.0 "COUNTY") from and against any and all liability, including but not limited to any claim, demand, action, proceeding, damage, loss, fee (including attorney's fees and expert witness fees), costs, and/or expenses, arising from and/or in any way related to any of the act(s) and/or omission(s) of CONTRACTOR, CONTRACTOR's agent(s), employee(s), and/or Subcontractor(s). CONTRACTOR's obligations to indemnify and defend shall be subject to the limitation of liability in Subsection 18.1, except as the following categories, for which CONTRACTOR's obligations to COUNTY shall be unlimited:

16.1.1 Any bodily injury, wrongful death, damage to real property, and/or damage to tangible personal property;

16.1.2 Any violation on the part of CONTRACTOR, its employees, agents, and/or Subcontractors of any laws, statutes, rules, regulations, and/or ordinances;

16.1.3 Any violation on the part of CONTRACTOR, its employees, agents, and/or Subcontractors of any wage and hour law, including, but not limited to, the Federal Fair Labor Standards;

16.1.4 Any employer sanctions and any other liability which may be assessed against CONTRACTOR or COUNTY in connection with any alleged violation of any federal or state statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement; and/or

16.1.5 Any violation of Section 52.0 (Confidentiality) of this Agreement by CONTRACTOR, its agent(s), representative(s), employee(s), and/or Subcontractor(s), without regard to cause or fault by CONTRACTOR.

16.2 COUNTY shall provide CONTRACTOR with prompt written notice of any claim, demand, action, and/or proceeding that is subject to CONTRACTOR's duty to indemnify, defend, and hold harmless under Section 16.1.

16.3 COUNTY shall permit CONTRACTOR to control the defense of any claim, demand, action, and/or proceeding, and shall cooperate with CONTRACTOR in the defense. Notwithstanding the foregoing, COUNTY shall have the right to participate in any such defense at its sole cost and expense, except that in the event CONTRACTOR fails to provide COUNTY the full and adequate defense, as required by law and this Agreement, COUNTY shall be entitled to reimbursement of all such cost and expense.

17.0 INSURANCE

17.1 Without limiting CONTRACTOR's duties to indemnify, defend, and hold harmless COUNTY, CONTRACTOR shall provide and maintain at its own expense, during the entire term of this Agreement, the following programs of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to COUNTY's Risk Manager, and evidence of such programs satisfactory to COUNTY shall be delivered to COUNTY's Project Director, on or before the execution of this Agreement by COUNTY's Board of Supervisors. Such evidence shall specifically identify this Agreement and shall contain express conditions that COUNTY is to be given written notice by registered mail at least thirty (30) days in advance of any termination of any program of insurance, and, with respect to any modification of any program of insurance, at least thirty (30) days in advance or immediately following CONTRACTOR's first receipt of notice of modification in the event CONTRACTOR receives less than thirty (30) days advance notice of such modification.

17.2 Liability Insurance

Such insurance shall be primary to and not contributing with any other insurance maintained by COUNTY, shall name the County of Los Angeles as an additional insured, and shall consist of:

- A. Comprehensive General Liability insurance endorsed for Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. If the above insurance is written on a Claims Made Form, such insurance shall be endorsed to provide an extended reporting period of not less than five (5) years following the expiration or termination of this Agreement; and
- B. Comprehensive Auto Liability insurance endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than Three Hundred Thousand Dollars (\$300,000) per occurrence.

17.3 Workers' Compensation Insurance

A program of workers' compensation insurance in an amount and form to meet all applicable requirements of the California *Labor Code* including, without limitation, employer's liability with a One Million Dollar (\$1,000,000) limit, covering all persons performing work on behalf of CONTRACTOR and all risks to such persons under this Agreement.

17.4 Failure to Procure and Maintain Insurance

Failure on the part of CONTRACTOR to procure and maintain any and/or all the required insurance shall constitute a material breach of this Agreement upon which COUNTY may immediately terminate this Agreement.

18.0 LIMITATION ON LIABILITY

- 18.1 Notwithstanding any other provision of this Agreement, except for Section 18.4 and those Sections referenced therein, CONTRACTOR's liability to COUNTY for monetary damages shall not exceed one million dollars (\$1,000,000) or the aggregate monetary amount incurred by COUNTY under this Agreement during the eighteen (18) months preceding any act and/or omission which gives rise to liability, whichever is greater.
- 18.2 Notwithstanding any other provision of this Agreement, except for Section 18.4 and those Sections referenced therein, neither party shall be liable to the other for special, incidental or consequential damages (including lost profits or savings) even if that party is informed of the possibility of such damages.
- 18.3 Notwithstanding Section 18.1 and/or 18.2, and/or any other provision of this Agreement, CONTRACTOR's responsibility and/or liability for damages resulting from bodily injury and/or wrongful death shall not be effected and/or limited.
- 18.4 Notwithstanding Section 18.1 or any other provision of this Agreement, nothing shall effect and/or limit CONTRACTOR's obligations of indemnification, defense, holding COUNTY harmless, and/or insurance as per and/or under Subsection 16.1.1 [bodily injury, *et al.*], Subsection 16.1.2 [violation of laws, *et al.*], Subsection 16.1.3 [violation of FSLA], Subsection 16.1.4 [employer sanctions], Subsection 16.1.5 [confidentiality], Section 17.0 (Insurance), and Section 22.0 (Patent, Copyright and Trade Secret Indemnification).

19.0 RECORDS AND AUDITS

- 19.1 CONTRACTOR shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. CONTRACTOR shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. CONTRACTOR agrees that COUNTY, its authorized representatives, and/or any governmental entity which funds this Agreement in whole or in part, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or record relating to this Agreement. All such material, including, but not limited to, all pertinent financial records, time cards and other information, shall be kept and maintained by CONTRACTOR and shall be made available to COUNTY during the term of this Agreement and for a period of four (4) years thereafter unless COUNTY's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by CONTRACTOR at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then CONTRACTOR shall pay COUNTY for travel, per diem, and other costs incurred by COUNTY to examine, audit, excerpt, copy or transcribe such material at such other location, or alternatively, CONTRACTOR shall make such material available to COUNTY within Los Angeles County.

19.2 In the event that an audit is conducted of CONTRACTOR specifically regarding this Agreement by any federal or State of California auditor, then CONTRACTOR shall file a copy of such audit report with COUNTY's Auditor-Controller and COUNTY's Project Director within thirty (30) days of CONTRACTOR's receipt thereof, unless otherwise provided by applicable law or under this Agreement. COUNTY shall make a reasonable effort to maintain any confidentiality of such audit report(s).

19.3 Failure on the part of CONTRACTOR to comply with any of the provisions of this Section 19.0 shall constitute a material breach of this Agreement upon which COUNTY may immediately terminate this Agreement.

19.4 Notwithstanding any other provision of this Section 19.0, COUNTY shall not have access to CONTRACTOR's confidential or proprietary data documents reflecting CONTRACTOR's internal cost structures, including both direct and indirect rates, projected profit margins, salaries, and information relation to private sector customers.

20.0 DISCLOSURE OF INFORMATION

20.1 Except as expressly authorized in this Section 20.0, CONTRACTOR shall not disclose any information, including but not limited to any circumstances or events, which relates to any risk, threat, vulnerability, weakness, and/or problem regarding CWS/CMS and/or any COUNTY system or methodology, observed or obtained during the performance of this Agreement, to any person or entity, except as may be otherwise provided herein or required by law. In the event CONTRACTOR receives any court or administrative agency order, service of process, or request by any person or entity for disclosure of any such details, CONTRACTOR shall immediately notify COUNTY's Project Director in writing. Thereafter, CONTRACTOR shall comply with such order, process or request only to the extent required by applicable law. Notwithstanding the preceding sentence, to the maximum extent permitted by law, CONTRACTOR shall delay such compliance and shall cooperate with COUNTY to obtain relief from such obligations to disclose until COUNTY shall have been given a reasonable opportunity to obtain such and relief.

20.2 In recognizing CONTRACTOR's desire to identify its services and related clients, COUNTY shall not inhibit CONTRACTOR from publishing its role under this Agreement, so long any such publication is made within the following conditions:

A. CONTRACTOR shall develop all publicity material in a professional manner;

B. During the term of this Agreement, CONTRACTOR shall not publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of COUNTY without the prior written consent of COUNTY's Project Director. COUNTY shall not unreasonably withhold written consent; and

C. CONTRACTOR may, without the prior written consent of COUNTY, indicate in its proposals and sales materials that it has been awarded this Agreement with the County of Los Angeles, provided that the requirements of this Section 20.0 shall apply.

20.3 Notwithstanding any other provision of this Agreement, either party may disclose information about the other which (1) is lawfully in the public domain at the time of disclosure, (2) is disclosed with the prior written approval of the party to which such information pertains, (3) is required by law to be disclosed, (4) is obtained from another source which lawfully holds the information without obligation of confidentiality, or (5) is disclosed by the disclosing party to another without the obligation of confidentiality, or (6) is already in the receiving party's possession without obligation of confidentiality.

21.0 PROPRIETARY CONSIDERATIONS

21.1 CONTRACTOR and COUNTY agree that any and all materials, plans, reports, acceptance test criteria, acceptance test plans, departmental procedures and processes, Deliverables, data, and/or information (hereafter in this Section 21.0 collectively "Materials") developed under this Agreement for COUNTY, and all copyrights, patent rights, trade secret rights, title, interest, and other proprietary rights therein (collectively, "Rights") shall be governed by the provisions of the State Agreement.

21.2 To the extent that such Materials and Rights are not governed by the State Agreement or any such successor agreement, the following applies:

21.2.1 Such Materials and Rights shall be the sole property of COUNTY, and CONTRACTOR hereby assigns and transfers to COUNTY any and all CONTRACTOR's Rights to all such Materials developed under this Agreement;

21.2.2 Notwithstanding such COUNTY ownership, CONTRACTOR may retain possession of all working papers prepared by CONTRACTOR. During and for a minimum of four (4) years subsequent to the termination or expiration of this Agreement, CONTRACTOR shall retain any and all such Materials. COUNTY shall have the right to inspect any and all such working papers, make copies thereof, and use the working papers and the information contained therein; and

21.2.3 The COUNTY grants CONTRACTOR an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, display, reproduce, perform, distribute (internally and externally), and prepare derivative works of same.

- 21.3 To the extent not prohibited by the State Agreement or any such successor agreement, and upon request of COUNTY, CONTRACTOR shall execute all documents requested by COUNTY and shall perform all other acts requested by COUNTY to assign and transfer to, and vest in, COUNTY any and all CONTRACTOR's Rights in and to the Materials. COUNTY shall have the right to register all Rights in the name of the County of Los Angeles. Further, COUNTY shall have the right to assign, license, or otherwise transfer any and all of COUNTY's Rights in and to the Materials.
- 21.4 To the extent not prohibited by the State Agreement or any such successor agreement, and as requested in writing by COUNTY's Project Director, CONTRACTOR shall affix the following notice to Materials developed under this Agreement: "©Copyright 2002 (or such other date of first publication), County of Los Angeles. All Rights Reserved". CONTRACTOR shall affix such notice as directed by COUNTY.
- 21.5 During the term of this Agreement and for four (4) years thereafter, CONTRACTOR shall maintain and provide security for all CONTRACTOR's working papers prepared under this Agreement.
- 21.6 To the extent not prohibited by the State Agreement or any such successor agreement, any and all materials which are developed or were originally acquired by CONTRACTOR outside the scope of this Agreement ("Contractor Materials"), which CONTRACTOR desires to use hereunder, and which CONTRACTOR considers to be proprietary or confidential, must be specifically identified by CONTRACTOR to COUNTY's Project Director as proprietary or confidential, and shall be plainly and prominently marked by CONTRACTOR as "PROPRIETARY" or "CONFIDENTIAL."
- 21.7 CONTRACTOR hereby grants to COUNTY, for DCFS's use and for the use of any other User, an irrevocable perpetual, nonexclusive, nonterminable, paid-up license to use, modify, and reproduce any and all Contractor Materials described in Subsection 21.6, except for commercially available software.
- 21.8 Upon CONTRACTOR's notice to COUNTY under Subsection 21.6, COUNTY will use reasonable means to ensure that CONTRACTOR's proprietary and confidential Contractor Materials are safeguarded and held in confidence. COUNTY agrees not to reproduce, distribute, or disclose to entities other than DCFS and any User (other than outside counsel or consultants subject to non-disclosure agreements) CONTRACTOR's proprietary and confidential Contractor Material, without the prior written permission of CONTRACTOR or as required by law.
- 21.9 Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated in any way under this Agreement for:
- A. Any of CONTRACTOR's proprietary and/or confidential Contractor Materials not plainly and prominently marked with restrictive legends as required pursuant to Subsection 21.6;

- B. Any materials covered under Subsection 21.1; and
- C. Any disclosure of any materials which COUNTY is required to make under the California Public Records Act or otherwise by law. COUNTY shall comply with any notice requirement to CONTRACTOR under the Act or otherwise by law.

21.10 CONTRACTOR shall protect the security of and maintain the confidentiality, if any, of all Materials obtained or developed under this Agreement. Further, CONTRACTOR shall use whatever security measures are reasonably necessary to protect all such Materials from loss or damage by any cause, including, but not limited to, fire and theft while such Materials are in CONTRACTOR's possession and/or control.

21.11 CONTRACTOR shall not reproduce, distribute, or disclose to any person or entity any information identifying, characterizing, or relating to any risk, threat, vulnerability, weakness, or problem regarding data security in COUNTY's computer systems, or to any safeguard, countermeasure, or contingency plan, policy or procedure for data security contemplated or implemented by COUNTY, without COUNTY's prior written consent.

21.12 The provisions of Subsections 21.9, 21.10, and 21.11 shall survive the expiration or termination of this Agreement.

22.0 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION

22.1 Notwithstanding any provision to the contrary, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its officers, employees, and agents from and against any and all liability, including but not limited to claims, demands, actions, proceedings, damages, losses, fees (including attorney's fees and expert consultant and witness fees), costs, and/or expenses, for or by reason of any actual or alleged infringement of any patent or copyright, and/or other rights of any third party, and/or any actual or alleged trade secret disclosure or misappropriation, or the operation and utilization of any of CONTRACTOR's Deliverable(s) under this Agreement (hereafter collectively referred to as "Infringement Claim").

22.2 CONTRACTOR shall have no obligation to COUNTY under this Section 22.0 to the extent any Infringement Claim is caused by (1) COUNTY's use of the System other than in accordance with any specifications and/or other applicable documentation after such is provided to COUNTY's Project Director, (2) the COUNTY's modification of any Deliverable, (3) the COUNTY's failure to use corrections or enhancements after written notice by CONTRACTOR to COUNTY that such are available and necessary to prevent or correct such Infringement Claim, or (4) the COUNTY's use of such Deliverable in combination with any product or information not owned, licensed, or developed by CONTRACTOR.

- 22.3 Any legal defense pursuant to CONTRACTOR's indemnification obligations under this Section 22.0 shall be conducted by CONTRACTOR and performed by counsel selected by CONTRACTOR. Notwithstanding the preceding sentence, COUNTY shall have the right to participate in any such defense at its sole cost and expense, except that in the event CONTRACTOR fails to provide COUNTY with a full and adequate defense, as required by law and this Agreement, COUNTY shall be entitled to reimbursement for all such costs and expenses.
- 22.4 Without limiting the foregoing, in the event COUNTY's Project Director becomes aware that ongoing use of the System or System Components, or any part of them, is the subject of any Infringement Claim that might preclude or impair COUNTY's use of the System or System Component (e.g., injunctive relief), or that COUNTY's continued use of the System or System Component may subject it to punitive damages or statutory penalties or other costs or expenses, COUNTY shall give written notice to CONTRACTOR of such fact(s). Upon notice of such fact(s), CONTRACTOR shall, at no cost to COUNTY, either:
- 22.4.1 Procure the right, by license or otherwise, for COUNTY to continue to use the System or affected System component(s), or part(s) thereof;
 - 22.4.2 To the extent CONTRACTOR is unable to procure such right, replace or modify the System or System component(s), or part(s) thereof, with another system or components of equivalent quality and performance capabilities, in COUNTY's determination, to become non-infringing, non-misappropriating and/or non-disclosing; or
 - 22.4.3 If none of the alternatives in Subsection 22.4.1 or 22.4.2 is available, then CONTRACTOR shall request return or discontinued use of the infringing component(s) or part(s), and will refund in full to the COUNTY the amount paid for same.
- 22.5 CONTRACTOR shall control the defense of any such action. The COUNTY shall, at CONTRACTOR's sole expense, cooperate with CONTRACTOR in such defense and shall make available to the CONTRACTOR the persons, documents, and things reasonably requested by CONTRACTOR in the defense of any such action.

23.0 COMPLIANCE WITH APPLICABLE LAW

CONTRACTOR's activities hereunder shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference, including but not limited to those set forth in Exhibit F (Regulatory Requirements). CONTRACTOR shall have up to fifteen (15) days to correct any noncompliance with rules, regulations, ordinances, guidelines, and directives following written notice from COUNTY including written copies of such applicable rules, regulations, ordinances, guidelines and/or directives.

24.0 FAIR LABOR STANDARDS

CONTRACTOR shall comply with all applicable provisions of the Federal Fair Labor Standards Act.

25.0 NONDISCRIMINATION AND AFFIRMATIVE ACTION

- 25.1 CONTRACTOR certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and will be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, in compliance with all applicable federal and state anti-discrimination laws and regulations.
- 25.2 CONTRACTOR shall certify to, and comply with, the provisions of Exhibit B (CONTRACTOR's EEO Certification).
- 25.3 CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.
- 25.4 CONTRACTOR certifies and agrees that it will deal with its Subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap.
- 25.5 CONTRACTOR certifies and agrees that it, its affiliates, subsidiaries or holding companies under common control, shall comply with all applicable federal and state laws and regulations, including, but not limited to:
- i. Title VII, Civil Rights Act of 1964;
 - ii. Section 504, Rehabilitation Act of 1973;
 - iii. Age Discrimination Act of 1975;

- iv. Title IX, Education Amendments of 1973, as applicable; and
- v. Title 43, Part 17, Code of Federal Regulations, Subparts A & B;

and that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, or physical or mental handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination.

- 25.6 CONTRACTOR shall allow federal representatives access to CONTRACTOR's employment records during regular business hours to verify compliance with the above-referenced laws.
- 25.7 If any provision of this Section 25.0 has been violated, such violation shall, at the election of COUNTY, constitute a material breach of this Agreement upon which COUNTY may immediately terminate this Agreement.
- 25.8 The parties agree that in the event CONTRACTOR violates the anti-discrimination provisions of this Agreement, COUNTY shall, at its option, be entitled to the sum of Five Thousand Dollars (\$5,000) from CONTRACTOR for each such violation pursuant to California *Civil Code* Section 1671 as liquidated damages in lieu of terminating this Agreement.

26.0 EMPLOYMENT ELIGIBILITY VERIFICATION

- 26.1 CONTRACTOR represents and warrants that it fully complies with all federal and state statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in federal and state statutes and regulations.
- 26.2 CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for the period prescribed by law.

27.0 CAPTIONS AND SECTION HEADINGS

Captions, Section and Subsection headings used in this Agreement are for convenience only and are not a part of this Agreement and shall not be used in interpreting or construing this Agreement.

28.0 WAIVER

- 28.1 Failure of COUNTY and/or CONTRACTOR to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver

thereof. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. The rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided at law, in equity, and/or under this Agreement.

- 28.2 Without limitation of the foregoing, COUNTY may deduct from amounts otherwise payable to CONTRACTOR hereunder COUNTY's uncompensated damages for CONTRACTOR's breach of any provision hereof. The preceding sentence is intended only as a clarification of COUNTY's remedies in the event of breach, and shall not be deemed to impair any claims that CONTRACTOR may have against COUNTY or CONTRACTOR's rights to assert such claims pursuant to Section 46.0 (Dispute Resolution Procedure).

29.0 GOVERNING LAW, JURISDICTION, AND VENUE

- 29.1 This Agreement shall be governed by, and construed in accordance with, the substantive and procedural laws of the State of California.
- 29.2 CONTRACTOR agrees and consents to the jurisdiction of the courts of the State of California and the Federal District Court, Central District of California, for all purposes regarding this Agreement
- 29.3 CONTRACTOR further agrees and consents that venue of any action brought hereunder, whether in federal or state court, shall be exclusively in the County of Los Angeles, State of California.
- 29.4 CONTRACTOR and COUNTY agree that jurisdiction and/or venue shall not be found except as set forth in this Section 29.0.

30.0 SEVERABILITY

In the event that any provision of this Agreement is found to be void or invalid by a court of competent jurisdiction, such provision shall be deemed deleted and the remaining provisions shall not in any way be affected or impaired thereby, unless the essential purposes of this Agreement shall be materially impaired thereby.

31.0 HIRING OF EMPLOYEES

- 31.1 CONTRACTOR and COUNTY agree that, during the term of this Agreement and for a period of one (1) year thereafter, except with the prior written consent of the other party, neither party shall in any way intentionally induce or persuade any Project Director, Project Manager or other employee, within the meaning of Subsection 3.3 (Approval of CONTRACTOR's Staff) of one party to become an employee or agent of the other party.

31.2 Notwithstanding the foregoing, COUNTY and/or CONTRACTOR shall be entitled to make offers of employment to employees of the other necessary or desirable to perform work described in this Agreement, in the event that: (1) this Agreement is terminated by either party's default pursuant to Section 32.0 (Termination for Default), (2) CONTRACTOR is no longer the vendor on the State Agreement, or any successor agreement thereto, or (3), either party hires based upon a general advertisement or other general method of hiring.

32.0 TERMINATION FOR DEFAULT

32.1 Either party may, by written notice of default ("Notice of Default") to the other, terminate the whole or any part of this Agreement in any of the following circumstances of default:

- A. If a party violates a provision of this Agreement which by its terms herein is specified to be a material breach; or
- B. If CONTRACTOR fails to perform or comply with any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms and, in either of these two circumstances, does not cure such failure within a period of thirty (30) days (or such longer period as COUNTY may authorize in writing) after serving Notice of Default on CONTRACTOR.

32.2 If, after COUNTY has given Notice of Default under the provisions of this Section 32.0, it is determined by COUNTY that CONTRACTOR was not in default under the provisions of this Section 32.0, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 33.0 (Termination for Convenience).

32.3 Notwithstanding any provision to the contrary, except as provided by Section 18.0, any and all rights and/or remedies provided in this Section 32.0 and/or under this Agreement shall not be exclusive and are in addition to any other rights and/or remedies provided at law, in equity, and/or under this Agreement.

33.0 TERMINATION FOR CONVENIENCE

33.1 The COUNTY may terminate this Agreement when such action is deemed by COUNTY, in its sole discretion, to be in its best interest. Termination shall be effected by delivery of a notice of termination to CONTRACTOR specifying the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than fifteen (15) days after the notice is sent, provided that in the event COUNTY has purported to terminate this Agreement for default by notice pursuant to Section 32.0 (Termination for Default) and it has later been determined that CONTRACTOR was not in default, no additional notice shall be required upon such determination.

- 33.2 Upon service of a notice of termination, and except as otherwise directed by COUNTY, CONTRACTOR shall:
- A. Stop work under this Agreement on the date specified in such notice; and
 - B. Transfer to COUNTY, to the extent not previously transferred to COUNTY, Rights to all Materials pursuant to the terms of this Agreement.
- 33.3 Nothing in this Section 33.0 shall be deemed to prejudice any right of CONTRACTOR to make a claim against COUNTY in accordance with applicable law and regular COUNTY procedures for payment for any completed Statement of Work through the effective date of COUNTY's termination of this Agreement for convenience.

34.0 COUNTY AUDIT SETTLEMENTS

If, at any time during or after the term of this Agreement, representatives of COUNTY conduct an audit of CONTRACTOR regarding the work performed under this Agreement, and if such audit finds that COUNTY's dollar liability for any such work is less than payments made by COUNTY to CONTRACTOR, then the difference, shall be either repaid by CONTRACTOR to COUNTY by cash payment upon demand or, at the sole option of DCFS, deducted from any amounts due to CONTRACTOR from COUNTY. If such audit finds that COUNTY's dollar liability for such work is more than the payments made by COUNTY to CONTRACTOR, then the difference shall be paid to CONTRACTOR by COUNTY, but in no event shall COUNTY's payments to CONTRACTOR exceed the Maximum Contract Sum identified in Section 7.0 (Maximum Contract Sums).

35.0 CONFLICT OF INTEREST

- 35.1 No COUNTY employee whose position with COUNTY enables such employee to influence the award of this Agreement or any Statement of Work hereunder or any competing agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by CONTRACTOR or have any other direct or indirect financial interest in this Agreement. No officer or employee of CONTRACTOR, who may financially benefit from the performance of work hereunder, shall in any way participate in COUNTY's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence COUNTY's approval or ongoing evaluation of such work.
- 35.2 CONTRACTOR shall comply with all conflict of interest laws, ordinances and regulations now in effect or hereafter to be enacted during the term of this Agreement. CONTRACTOR warrants that it is not now aware of any facts which do or could create a conflict of interest. If CONTRACTOR hereafter becomes aware of any facts which might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts

to COUNTY. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances.

36.0 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

36.1 CONTRACTOR shall repair, or cause to be repaired, at its own cost and expense, any and all damage to COUNTY facilities, buildings, personal property, and/or grounds caused by CONTRACTOR or employees or agents of CONTRACTOR. Such repairs shall be made as reasonable after CONTRACTOR has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

36.2 If CONTRACTOR fails to make timely repairs, COUNTY may make any necessary repairs. All costs and expenses incurred by COUNTY, as determined by COUNTY, for such repairs shall be repaid by CONTRACTOR by cash payment upon demand, or without limitation of all COUNTY's other rights and remedies provided by law or under this Agreement, COUNTY may deduct such costs and expenses from any amounts due to CONTRACTOR from COUNTY under this Agreement.

37.0 AUTHORIZATION WARRANTY

CONTRACTOR hereby represents and warrants that the person executing this Agreement for CONTRACTOR is an authorized agent who 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.

38.0 NOTICES

38.1 All notices or demands required or permitted to be given or made under this Agreement, unless otherwise specified, shall be in writing and shall be addressed to the parties at the following addresses and delivered (1) by hand with signed receipt, (2) by first-class registered or certified mail, postage prepaid, or (3) by facsimile or electronic mail transmission followed within twenty-four (24) hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid, as follows:

If to COUNTY:

Joi J. Russell, Division Chief
DCFS Information Technology Services
4060 Watson Plaza Drive
Lakewood, CA 90712
Facsimile: (562) 496-2338
Electronic mail: jrussell@dcfs.co.la.ca.us

If to CONTRACTOR:

Nancy C. LePage
IBM Global Services
3775 N. Freeway Blvd.
Sacramento, CA 95834

Facsimile: (916) 567-2116
Electronic mail: nlepage@us.ibm.com

- 38.2 Notices shall be deemed given at the time of signed receipt in the case of hand delivery, three (3) days after deposit in the United States mail as set forth above, or on the date of facsimile or electronic mail transmission if followed by a same-day confirmation mailing. Address for notice may be changed by either party giving ten (10) days prior written notice thereof to the other party.
- 38.3 DCFS, through its Project Director, shall have the authority to issue all notices or demands which are required or permitted by COUNTY under this Agreement.

39.0 DELIVERY AND RISK OF LOSS

CONTRACTOR shall bear the full risk of loss due to total or partial destruction of any and all Deliverable(s) until such are delivered to and accepted by COUNTY.

40.0 ACCESS TO COUNTY FACILITIES

40.1 General

CONTRACTOR, its employees and agents, will be granted access to COUNTY facilities, subject to CONTRACTOR's prior notification to COUNTY's Project Director and full compliance with COUNTY's standard administrative and security requirements, for the purpose of executing CONTRACTOR's obligations hereunder. Access to COUNTY facilities shall be restricted to normal COUNTY business hours, 6:30 a.m. to 6:30 p.m., Monday through Friday, COUNTY observed holidays excepted. Access to COUNTY facilities outside normal business hours must be approved in writing in advance by COUNTY's Project Director, which approval will not be unreasonably withheld. CONTRACTOR shall have no tenancy, or any other property or other rights in COUNTY facilities.

40.2 Security Search Of CONTRACTOR's Staff

- 40.2.1 Weapons, drugs, alcohol, and other contraband are not permitted at COUNTY facilities and all persons entering are subject to search. CONTRACTOR's staff shall be subject to all COUNTY facility rules, regulations, policies and procedures while present at a COUNTY facility. As requested by the DCFS's staff, CONTRACTOR's staff shall submit to a search of his person and/or

property at any time while entering, leaving, or working at a COUNTY Facility. Any breach of security by CONTRACTOR or any CONTRACTOR staff may result in the denial of further access to COUNTY facilities and may be grounds for criminal prosecution.

40.2.2 CONTRACTOR warrants and represents that all current and prospective employees who are regularly assigned to work on this Agreement have undergone a criminal background investigation. CONTRACTOR has conducted or shall conduct at no expense to the COUNTY. CONTRACTOR shall not utilize any person for work hereunder without first conducting such criminal background investigation.

41.0 COUNTY FACILITY WORK SPACE

In order for CONTRACTOR to perform services hereunder and only for the performance of such services, COUNTY will, subject to COUNTY's standard administrative and security requirements, provide CONTRACTOR with work space and equipment at COUNTY facilities on a nonexclusive use basis for a maximum number of CONTRACTOR staff personnel as mutually agreed in writing by COUNTY's Project Director and CONTRACTOR's Project Director. COUNTY will also provide CONTRACTOR with reasonable telephone service in such work space for use only for purposes of this Agreement.

42.0 WARRANTY PASS THROUGH

42.1 CONTRACTOR does not itself make any warranty as to any third party products which it may provide.

42.2 Notwithstanding any other provision, CONTRACTOR shall assign to COUNTY to the fullest extent permitted by law or agreement and shall otherwise provide that the benefits of any applicable warranty or indemnity offered by any manufacturer of any of the System hardware, System software, interfaces, or any other product or service provided hereunder shall fully extend to and be enjoyed by COUNTY.

43.0 LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS AND CERTIFICATES

CONTRACTOR shall obtain and maintain in effect during the term of this Agreement any licenses, permits, registrations, accreditation's, and certificates required by any federal, state, and local laws, ordinances, rules, regulations, guidelines, and directives, which are applicable to CONTRACTOR'S services under this Agreement. CONTRACTOR further warrants and represents that all of its officers, employees, agents, and Subcontractors who perform services hereunder, shall obtain and maintain in effect during the term of this Agreement all licenses, permits, registrations, accreditation's, and certificates which are applicable to their performance hereunder. A copy of each such license, permit, registration, accreditation, and certificate required by all applicable Federal,

State, and local laws, ordinances, rules, regulations, guidelines, and directives shall be provided, in duplicate, to COUNTY's Project Director.

44.0 PHYSICAL ALTERATIONS

Except as otherwise provided herein, CONTRACTOR shall not in any way physically alter or improve any COUNTY facility without the prior written approval of DCFS in his sole discretion.

45.0 DISPUTE RESOLUTION PROCEDURE

45.1 CONTRACTOR and COUNTY agree to act promptly and diligently to mutually resolve any disputes which may arise with respect to this Agreement. All such disputes shall be subject to the provisions of this Section 45.0.

45.2 CONTRACTOR and COUNTY agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which reasonably must be delayed as a result of such dispute. COUNTY shall continue to pay sums not in dispute, during any such period of continued performance.

45.3 In the event of any dispute between the parties with respect to this Agreement, CONTRACTOR and COUNTY shall submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.

45.4 In the event that the Project Managers are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to the parties' respective Project Directors for further consideration and discussion to attempt to resolve the dispute.

45.5 In the event that the Project Directors are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall immediately be submitted to CONTRACTOR's Senior Executive for the California Division and DCFS's Director or his/her designee for further consideration and discussion to attempt to resolve the dispute.

45.6 In the event that CONTRACTOR's Senior Executive for the California Division and DCFS's Director or his/her designee are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then each party may assert its other rights and remedies provided under this Agreement and/or its rights and remedies as provided at law and/or in equity.

45.7 All disputes utilizing this dispute resolution procedure 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 45.0, the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face-to-face meeting or by telephone, or in writing by exchange of correspondence.

45.8 Notwithstanding any other provision of this Agreement, the right of either party to terminate this Agreement under Subsection 32.0 (Termination for Default), the right of the COUNTY to terminate this Agreement under Section 33.0 (Termination for Convenience), or and either party's right to seek injunctive relief to enforce the provisions of Sections 21.0 (Proprietary Considerations) and 51.0 (Confidentiality), shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of each party's rights, and shall not be deemed to impair any claims that a party may have against the other, or either party's rights to assert such claims after any such termination or such injunctive relief has been obtained.

46.0 NO THIRD PARTY BENEFICIARIES

Notwithstanding any other provision of this Agreement, CONTRACTOR and COUNTY do not in any way intend 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 diminish CONTRACTOR's obligations to indemnify, defend, hold harmless, and provide and maintain insurance hereunder.

47.0 RESTRICTIONS ON LOBBYING

CONTRACTOR and each COUNTY lobbyist or COUNTY lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by CONTRACTOR, shall fully comply with COUNTY Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of CONTRACTOR or any COUNTY lobbyist or COUNTY lobbying firm retained by CONTRACTOR to fully comply with COUNTY Lobbyist Ordinance shall constitute a material breach of this Agreement upon which COUNTY may immediately terminate or suspend this Agreement.

48.0 CONTRACTOR PERFORMANCE DURING CIVIL UNREST OR DISASTER

CONTRACTOR recognizes that COUNTY provides services essential to the residents of the communities it serves, and that these services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster or similar event. Notwithstanding any other provision of this Agreement, full performance by CONTRACTOR during any riot, insurrection, civil unrest, natural disaster or similar event is not excused if such performance remains physically possible without related danger to CONTRACTOR's or its Subcontractors' employees and suppliers. During any such event in which the health or safety of any of CONTRACTOR's staff members would be endangered by performing their services on-site, such staff members may perform any or all of their services remotely.

49.0 ARM'S LENGTH NEGOTIATIONS

This Agreement is the result of arm's-length negotiation between CONTRACTOR and COUNTY. Each party has had the opportunity to receive advice from independent counsel of its own choosing. This Agreement is to be interpreted fairly as between the parties, and not strictly construed as against either party.

50.0 SURVIVAL

The following provisions of this Agreement shall survive its expiration or termination for any reason: Section 16.0 (Indemnification), Section 17.0 (Insurance), Section 22.0 (Patent, Copyright and Trade Secret Indemnification), and Section 51.0 (Confidentiality).

51.0 CONFIDENTIALITY

51.1 Notwithstanding any provision to the contrary, CONTRACTOR acknowledges and agrees that the following materials, documents, data, and other information are deemed to be privileged, proprietary, and/or confidential:

- A. Dependency records;
- B. Delinquency records;
- C. Health care recipient records;
- D. Criminal records;
- E. Welfare recipient records;
- F. Data and information pertaining to entities and/or persons receiving services from the COUNTY; and
- G. Any and all reports developed by CONTRACTOR and/or its Subcontractor(s) under this Agreement

(collectively, "Confidential Material"). CONTRACTOR shall protect the security of and keep confidential any and all Confidential Material.

51.2 In accordance with all applicable federal, state, and local laws, regulations, ordinances, and directives relating to confidentiality (including Welfare and Institutions Code Sections 827, 10850 and the STATE's Manual of Policies and Procurement Division 19), CONTRACTOR shall ensure that its agent(s), representative(s), employee(s), and/or Subcontractor(s) do not disseminate any Confidential Material.

51.3 With respect to Confidential Material concerning any child dependency matter that is obtained by CONTRACTOR, CONTRACTOR shall: (1) not use any such information for any purpose whatsoever other than carrying out the express terms of this Agreement; (2) promptly transmit to COUNTY all requests for disclosure of any such information; (3) not disclose, except as otherwise specifically permitted by this Agreement, any such information to any person or organization other than COUNTY without COUNTY's prior written authorization that the information is releasable (except for Subcontractors); and (4) at the expiration or termination of this Agreement, return all such information to COUNTY or maintain such information according to the written procedures sent to CONTRACTOR by COUNTY for this purpose.

51.4 CONTRACTOR warrants and represents that only those CONTRACTOR and/or Subcontractor personnel required to perform the Services shall have access to COUNTY Confidential Materials.

51.5 The provisions of this Section 51.0 shall survive the expiration or other termination of this Agreement.

52.0 TERMINATION FOR IMPROPER CONSIDERATION

52.1 COUNTY may, by written notice to CONTRACTOR, immediately terminate the right of CONTRACTOR to proceed under this Agreement if consideration in any form was offered or given by CONTRACTOR, either directly or through an intermediary, to any COUNTY officer, employee or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment or extension of this Agreement or the making of any determinations with respect to CONTRACTOR's performance pursuant to this Agreement. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of default of CONTRACTOR.

52.2 CONTRACTOR shall immediately report any attempt by a COUNTY officer or employee to solicit such improper consideration. The report shall be made either to COUNTY manager charged with the supervision of the employee or to COUNTY Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.

52.3 Among other items, such improper consideration may take the form of cash, discounts, and service, the provision of travel or entertainment, or tangible gifts.

53.0 TIME IS OF THE ESSENCE

Time is of the essence for CONTRACTOR's performance of each Deliverable under this Agreement.

54.0 CONSIDERATION OF GAIN PROGRAM PARTICIPANTS FOR EMPLOYMENT

Should CONTRACTOR require additional or replacement personnel after the Effective Date, CONTRACTOR shall give consideration for any such employment openings to participants in COUNTY's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program who meet CONTRACTOR's minimum qualifications for the open position. COUNTY will refer GAIN participants by job category to CONTRACTOR.

55.0 COUNTY'S QUALITY ASSURANCE PLAN

COUNTY or its agent will evaluate CONTRACTOR's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing CONTRACTOR's compliance with the terms and performance standards of this Agreement. CONTRACTOR deficiencies which COUNTY determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to COUNTY's Board of Supervisors. The report will include improvement / corrective action measures taken by COUNTY and CONTRACTOR. If improvement does not occur consistent with the corrective action measures, COUNTY may terminate this Agreement or impose other penalties as specified in this Agreement.

56.0 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

CONTRACTOR shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice 1015.

57.0 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

57.1 CONTRACTOR acknowledges that COUNTY has established a goal of ensuring that all individuals who benefit financially from COUNTY through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon COUNTY and its taxpayers.

57.2 As required by COUNTY's Child Support Compliance Program (County Code Chapter 2.200) and without limiting CONTRACTOR's duty under this Agreement to comply with all applicable provisions of law, CONTRACTOR warrants that it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

58.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of CONTRACTOR to maintain compliance with the requirements set forth in Section 57.0 (CONTRACTOR's Warranty of Adherence to COUNTY's Child Support Compliance Program) shall constitute a default by CONTRACTOR under this Agreement. Without limiting the rights and remedies available to COUNTY under any other provision of this Agreement, failure to cure such default within ninety (90) days of notice by the Los Angeles County District Attorney shall be grounds upon which COUNTY's Board of Supervisors may terminate this Agreement pursuant to Section 32.0 (Termination for Default).

59.0 CONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT

CONTRACTOR acknowledges that COUNTY places a high priority on the enforcement of child support laws and the apprehension of child support evaders. CONTRACTOR understands that it is COUNTY's policy to encourage all COUNTY contractors to voluntarily post COUNTY's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at CONTRACTOR's place of business. COUNTY's District Attorney will supply CONTRACTOR with the poster to be used.

60.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT

60.1 A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is COUNTY's policy to conduct business only with responsible contractors.

60.2 CONTRACTOR is hereby notified that, in accordance with Chapter 2.202 of COUNTY Code, if COUNTY acquires information concerning the performance of CONTRACTOR on this or other contracts which indicates that CONTRACTOR is not responsible, COUNTY may, in addition to other remedies provided in this Agreement, debar CONTRACTOR from bidding on COUNTY contracts for a specified period of time not to exceed three (3) years, and terminate any or all existing contracts CONTRACTOR may have with COUNTY.

60.3 COUNTY may debar a contractor if COUNTY's Board of Supervisors finds, in its discretion, that CONTRACTOR has done any of the following: (1) violated any term of a contract with COUNTY, (2) committed any act or omission which negatively reflects on CONTRACTOR's quality, fitness or capacity to perform a contract with COUNTY or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against COUNTY or any other public entity.

60.4 If there is evidence that CONTRACTOR may be subject to debarment,

COUNTY's Chief Information Office and/or COUNTY's Internal Services Department will notify CONTRACTOR in writing of the evidence which is the basis for the proposed debarment and will advise CONTRACTOR of the scheduled date for a debarment hearing before COUNTY's Contractor Hearing Board.

- 60.5 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. CONTRACTOR and/or CONTRACTOR's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether CONTRACTOR should be debarred, and if so, the appropriate length of time of the debarment. If CONTRACTOR fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, CONTRACTOR may be deemed to have waived all rights of appeal.
- 60.6 A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to COUNTY's Board of Supervisors. COUNTY's Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board.
- 60.7 These terms shall also apply to any and all subcontractors of COUNTY contractors.

-END OF TERMS AND CONDITIONS-

**AGREEMENT BY AND BETWEEN
COUNTY OF LOS ANGELES AND IBM
FOR ENHANCEMENTS TO CWS/CMS FOR DCFS**

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be subscribed by its Chairman and the seal of such Board to be hereto affixed and attested by the Executive Officer, and IBM, a New York corporation, doing business in California through its subdivision, IBM Global Services, has caused this Agreement to be subscribed on its behalf by its duly authorized officer, this _____ day of _____, 2002.

COUNTY OF LOS ANGELES

By _____
Chairman, Board of Supervisors

ATTEST:
VIOLET VARONA-LUKENS
Executive Officer
Board of Supervisors

By _____
Deputy

CONTRACTOR
IBM, a New York Corporation,
doing business in California as IBM Global Services

By _____
Name _____
Title _____

APPROVED AS TO FORM:
LLOYD W. PELLMAN
County Counsel

By _____
John L. Geiger,
Senior Deputy

Exhibit A

Rider I from the State Agreement
(denotes current pricing and service availability to Counties)
(Incorporated by reference)

Exhibit B

CONTRACTOR's EEO Certification

Firm Name

Address

Internal Revenue Service Employer Identification Number

GENERAL

In accordance with Section 4.32.010, County Code, of the County of Los Angeles, the contractor, supplier, or vendor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

Name and Title of Signer

Signature

Date

Exhibit C

Statements of Work

Other Statements of Work to be developed as contract proceeds; see Exhibit E for SOW template.

Exhibit D
Schedule of State Approved Subcontractors

All Subcontractors Companies

<u>Company</u>	<u>Contract</u>	<u>Phone #</u>	<u>Address</u>	<u>State</u> <small>(where incorporated)</small>
CBSI – Inc. (AMMC)	Leigh Martinez	(720) 540-3222 (248) 526-0600	8620 Wolff Court Ste. 200 West Minister, CO 80031	Michigan
Highlands – Inc.	Bill Hilton	(303) 924-4066	2432 North Main St., Ste. 200 Longmont, CO 80501	Colorado
Synova – Inc.	Bob Hutton	(303) 652-4066 (303) 652-3840	6800 79 th Street, Ste. 201 Niwot, CO 80228	Michigan
Keane – Inc.	Jim Howe	(303) 924-5382	165 South Union Blvd. Lakewood, CO 80228	Massachusetts
Ciber – Corp.	Brian Hogan	(303) 939-2377	4000 Cambell Ave. Menlo Park, CA 94025	Colorado
Manpower – Corp.	Laura Lindloff	(916) 781-2322	1200 Melody Lane Roseville, CA 95678	Wisconsin
CSI – Corp.	Jackie Shearer	(800) 713-0057 X321	P.O. Box 24330 Tempe, AZ 8285	Arizona
Spherion – Corp.	Maria Miranda	(916) 927-7789	610 Arden Way, Ste. 218 Sacramento, CA 95815	Florida
CTG – Corp.	Mary Bartholomew	(408) 441-6777 (800) 992-5350 X3490	101 Metro Dr., Ste. 530 San Jose, CA 95110	New York

Exhibit D, continued – Schedule of State Approved Subcontractors

All Subcontractors Companies

KENDA – Corp.	Greg Abel	(916) 772-3700 X3005	3005 Douglas Blvd. S, Ste. 100 Roesville, CA 95661	New Hampshire
Maxim Group – Inc.	Raba Malak	(916) 561-3024	1651 Response Rd., Ste. 300 Sacramento, CA 95815	Maryland
Hubbert System – Corp.	Charlotte Williams	(916) 852-1545	11231 Gold Express, Ste. 100 Gold River, CA 95670	California
Graph X Staff – Corp.	Kristie Bird	(916) 920-2999	2020 Hurley Way, Ste. 395 Sacramento, CA 95825	California
Viridian - Inc.	John Santora	(949) 362-0263	2 Tanglewood Laguna Hills, CA 92656	California
Tascor (Shperion) – Corp.	Virginia Chavez	(916) 484-3960	966 Fulton Ave. Sacramento, CA 95825	Florida
CDI – Corp.	Thomas Young	(408) 727-1895 X115	2880 Lakeside Dr., Ste. 201 ST. Clara, CA 95054	California
SDI – Inc.	Huggette Bianchi	(954) 742-4222 X204	7770 West Oakland Park Blvd., Ste. 210 Sunrise, FL 33351-6744	Florida
OAO – Corp.	Valeria Snipes	(480) 756-9695	2266 S. Dobson Rd. Mesa, CA 85202	

Exhibit E

Sample Statement of Work

All Statements of Work submitted by Contractor under this Agreement shall conform to and include the following format and content and shall set forth, in detail acceptable to the COUNTY, and in its sole discretion, all required information.

I. SOW Cover Page Format

STATEMENT OF WORK #[]
CONTRACT NUMBER # []
for
[TITLE OF SOW]
FOR THE
COUNTY OF LOS ANGELES
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
(IBM Global Services Proposal # [])
[Month xx, 200x]

II. SOW Table of Contents Page Format

<u>Table of Contents</u>		
1.0	Introduction	3
2.0	Overview of Project	3
3.0	Deliverables and/or Work Products	4
4.0	Total Pricing/Budget	6
	Approvals	7

<u>Table of Exhibits</u>	
Exhibit A (name of Exhibit)	A1
Exhibit B (name of Exhibit)	B1

III. SOW Body Format

1.0 Introduction

This section (Introduction) shall detail the nature of the enhancements/service to be performed, and shall detail the background and pertinent information relating to the origin of the request, the need for the request, and shall list, in general terms, a brief description of the work to be performed.

2.0 Overview of Project

For each project named in Section 1.0 (Introduction) of this Statement of Work, an overview of all work to be performed shall be included in this Section 2.0. The overview should include, but is not limited to:

2.1 Analysis

List specific steps and detail what must be done to effectively analyze the needs of the system, and the enhancements and/or services that are to be performed.

For each person that will perform work for this portion of the Project, a detail of the estimated number of hours necessary and the billing level must be included. Additional costs for peripheral products / costs must be included detailing the costs for any such support as necessary to successfully complete the project. Prices must be consistent with Rider I of the Agreement between the State of California and IBM Global Services.

Personnel Level	Rate	Hours	Cost
Peripheral Support (detail as necessary)	Rate	Units	Cost
Sub Total			

2.2 Development/Methods/Peripheral Support

List specific methods and any hardware/software or other needs to produce the required system enhancement or perform the required service.

For each person that will perform work for this portion of the Project, a detail of the estimated number of hours necessary and the billing level must be included. Additional costs for peripheral products / costs must be included detailing the project. Prices must be consistent with Rider I of the Agreement between the State of California and IBM Global Services.

Personnel Level	Rate	Hours	Cost
-----------------	------	-------	------

Peripheral Support (detail as necessary)	Rate	Units	Cost
Sub Total			

2.3 Testing

List specific and detailed stage(s) and methods(s) that will be used to test the system enhancements or measure the performance of the services.

For each person that will perform work for this portion of the Project, a detail of the estimated number of hours necessary and the billing level must be included. Additional costs for peripheral products / costs must be included detailing the project. Prices must be consistent with Rider I of the Agreement between the State of California and IBM Global Services.

Personnel Level	Rate	Hours	Cost
Peripheral Support (detail as necessary)	Rate	Units	Cost
Sub Total			

2.3 Implementation

List the specific and details of implementation including all necessary hardware and software that will be necessary to effectively accomplish and complete the system enhancements(s) or perform the required service.

For each person that will perform work for this portion of the Project, a detail of the estimated number of hours necessary and the billing level must be included. Additional costs for peripheral products / costs must be included detailing the project. Prices must be consistent with Rider I of the Agreement between the State of California and IBM Global Services.

Personnel Level	Rate	Hours	Cost
Peripheral Support (detail as necessary)	Rate	Units	Cost
Sub Total			

3.0 Deliverables and/or Work Products

This section shall describe the end product of all portions of this Statement of Work as detailed above, and shall list, in complete detail the final product that is being delivered to COUNTY.

4.0 Total Pricing/Budget

This section shall detail the total pricing for this project and shall list the associated costs in sufficient detail. For any costs other than personnel (as allowed in Rider I of the Agreement between the State of California and IBM Global Services) the cost shall be described in detail in a footnote to the Budget. No retroactive authorization will be permitted.

Personnel Level	Rate	Hours	Cost
Peripheral Support (detail as necessary)	Rate	Units	Cost
Total			

This section shall include the following paragraphs:

- x.x CONTRACTOR shall provide the deliverables indicated in SOW #X for cost not to exceed \$XX,XXX.XX
 - x.x.x In the event that CONTRACTOR fails to deliver and the COUNTY accept each and every Deliverable in this SOW # X when XXX hours / \$XX,XXX.XX have been expended, CONTRACTOR shall continue to work to complete any deliverables which have not been accepted by the COUNTY by the earliest possible date. Additionally, CONTRACTOR shall bear any and all risk of cost overruns relating to this SOW # X, and COUNTY has no obligation to pay for any work and/or other consideration which is in excess of the XXX hour/\$XX,XXX.XX maximum.

Approvals

Each Statement of Work must receive prior written approval before any work is performed under this Agreement. Signatures below indicate approval of all parties to this Agreement. Any work performed without the express written approval of all parties to this Agreement shall be deemed a gratuitous effort.

County of Los Angeles

By _____
Name Joi J. Russell
Title Interim Division Chief Date _____

IBM Global Services

By _____
Name Nancy LePage
Title Project Executive Date _____

Approved As To Form:

Lloyd W. Pellman
County Counsel

By: _____
Tom Fagan, Deputy County Counsel

EXHIBIT F

Regulatory Requirements

This Agreement is made possible by funds received from the State of California as well as the federal government of the United States of America. In order to secure the funding for this Agreement, the CONTRACTOR agrees to comply with the following:

The mandatory standards and policies relating to energy efficiency in the California State energy conservation plan (Title 24, California Administrative Code).

- Section 306 of the Clean Air Act (42 USC 1857(h))
- Section 508 of the Clean Water Act (33 USC 1368)
- Executive Order 11738
- Environmental Protection Agency regulations (40 CFR Part 15)
- Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR Part 60).
- California Welfare and Institutions Code Section 10850
- MPP Division 19