



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE**

**REQUEST FOR PROPOSALS**

**CISCO SECURITY APPLIANCE MAINTENANCE & SUPPORT**

**RFP NUMBER 1211-005**

*Court Website for Online Procurement:*

[www.BidSync.com](http://www.BidSync.com)

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Additional RFP Documents are posted on the Court Website ([www.BidSync.com](http://www.BidSync.com)). Such documents may include, but are not limited to:

- Administrative Rules of the Bid/RFP
- Bidder Proposer Submission Forms & Certifications
  - Proposer Certification Form
  - Proposer's Acceptance of the PO/Contract Terms and Conditions
  - Certification of Acceptance
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**I. INTRODUCTION**

**1.1 Issuing Body**

The Superior Court of California, County of Orange (“Court”) is the third largest trial Court of general jurisdiction in California with 115 Judges and 29 Commissioners. The Court employs over 1800 people in more than 70 different job classifications to perform a wide range of Court-related functions. Cases are heard in seven (7) Justice Centers located across the county.

**1.3 Project Overview**

The Court is requesting proposals from highly qualified Contractors with expertise in providing Cisco Security Appliance Platinum Maintenance and Support.

The anticipated term of such contract would be a Five (5) Year Firm Fixed Price Agreement

**II. PROCUREMENT AND EVALUATION PROCESS**

**2.1 Procurement Schedule and General Instructions**

The Court has developed the following list of key events from RFP Issuance through Performance Start Date of New Contract.

All deadlines are subject to change at the Court’s discretion.

**Timeline of Important Events and Dates**

<b>No.</b>	<b>EVENTS</b>	<b>Key Dates</b>
1	Issue RFP	Tentative Date: 11/19/2012 FINAL DATE/TIME POSTED IN BIDSYNC
2	Deadline for Submission of Contractor Questions, Requests for Clarifications or Modifications	Tentative Date: 11/30/2012 FINAL DATE/TIME POSTED IN BIDSYNC
3	Proposal Due Date and Time	Tentative Date: 12/06/2012 FINAL DATE/TIME POSTED IN BIDSYNC
4	Evaluation Period (estimated)	December
5	Potential Interviews, Negotiations (estimated)	December
6	Notice of Intent to Award (estimated)	December
7	Notice of Award (estimated)	December
8	Contract Issuance ( estimated)	December
9	Agreement Start Date: (estimated)	December 19, 2012
10	Agreement End Date (estimated)	December 18, 2017

This RFP, associated documents, and/or all addenda that may be issued will be available on the following website(s), referred to individually and collectively as “Court Website” or as “BidSync”: [www.BidSync.com](http://www.BidSync.com).

Further references in this RFP to “Court Website” or to “BidSync” refer to [www.BidSync.com](http://www.BidSync.com).

***Contractor should regularly access and monitor Court Website for any/all information related to RFP.***

### 2.1.1 Contact List

RFP Contact: Karl K. Truong  
Procurement Specialist  
[ktruong@occourt.org](mailto:ktruong@occourt.org)

Contracting Officer: Sherry Clifford  
Contracts Officer  
[sclifford@occourts.org](mailto:sclifford@occourts.org)

## 2.2 Proposal Conference – N/A

## 2.3 Overview of Evaluation Process

### 2.3.1 Evaluation Committee

The Court will conduct a comprehensive and impartial evaluation of proposals received in response to this RFP. All proposals received from Contractors will be reviewed and evaluated by a committee of qualified personnel (“Evaluation Committee”). The name, units, or experience of the individual members will not be made available to any Contractor.

### 2.3.2 Evaluation of Cost Sheets/Cost Proposals

Cost sheets, cost proposals, and/or electronically submitted quotes, may be reviewed only if a proposal is determined to be otherwise qualified.

Where more than one line item is specified in the solicitation, the Court reserves the right to determine the highest evaluated Contractor, either on the basis of individual items, combination of items as specified in the solicitation, or on the basis of all items included in the solicitation, unless otherwise expressly provided.

### 2.3.3 Requests for Additional Information

The Court reserves the right to seek clarification or additional information from any Contractor throughout the solicitation process. The Court may require a Contractor’s representative to answer questions during the evaluation process with regard to the Contractor’s proposal. Failure of a Contractor to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.

**2.4 Minimum Qualifications**

To be considered for full evaluation and possible award, Contractors **must** meet the threshold minimum qualification requirements listed in the following table (minimum requirements can be met by combining experience, expertise, and resources of Contractor and any proposed Subcontractors):

**Table of Minimum Qualifications**

No.	Minimum Qualifications
1	Contractor must be a Cisco Certified Partner and have a Five (5) or more years of experience providing high quality Cisco Security Appliance Maintenance & Support services for government entities, public sector clients, or similar clients. Such services to be the same or substantially similar to those described in Attachment A, Scope of Work. Contractor’s proposal shall include the contact information, contract value, duration and time frame and must identify the agency if a government entity.
2	Contractor shall not be currently under suspension or debarment by any state or federal government agency and Contractor shall not be tax delinquent with the State of California or Federal Government (reference Additional Document, “Bidder/Proposer Submissions Forms & Certifications”).
3	Contractor must hold any/all required licenses and permits to conduct business in State of California, County of Orange and, if a Corporation, <b>must be in good standing</b> with the State of California in regard to Attachment A, Scope of Work. (reference Additional Document, “Bidder/Proposer Submissions Forms & Certifications”)
4	Contractor must meet insurance requirements, or show proof of ability to meet the requirements of such coverage, as set forth in <u>Attachment B – Model Agreement</u> .
5	Contractor shall certify that it has no interest that would constitute a conflict of interest under California Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or rule 10.103 or rule 10.104 of the California Rules of Court, which restrict employees and former employees from contracting with judicial branch entities. (reference Additional Document, “ Bidder/Proposer Submission Forms & Certifications”).
6	Pursuant to Public Contract Code (PCC) section 10295.4, the Court shall not enter into any contract for the acquisition of goods or services with a person or entity identified by the Franchise Tax Board (FTB) or the Board of Equalization (BOE) as one (1) of the 500 largest tax delinquents. Contractor <b>must</b> certify that they do not currently appear on and there is no reason to believe Contractor will/may be placed on the Delinquent Taxpayer lists.

The Contractor must state specifically in its Executive Summary (see Section 3.1) how it meets/complies with, or will meet/comply with each minimum qualification specified above. Subject to the Court’s right in its complete discretion to waive minor deviations or defects, only those proposals that meet all of the foregoing minimum qualifications may be considered for a full evaluation and a possible contract award.

**2.5 Evaluation Criteria**

Proposals will be evaluated to determine the proposal or proposals that offer the best value to the Court and the community which the Court serves.

The Court will evaluate the proposals using the criteria set forth in the table below. Award, if made, will be to the highest scored proposal.

<b>Criteria</b>	<b>Weight</b>
<p><b>Experience in providing high quality services of the type in this RFP in similar assignments</b></p> <p><i>a. Contractor must specifically indicate in its proposal the number of years of experience in providing the services as required by this criterion</i></p> <p><i>b. Contractor must specifically indicate in its proposal how the assignments it deems as similar are in fact similar to the services required by the Court.</i></p>	10%
<p><b>Quality of Work Plan in proposal</b></p> <p><i>a. Contractor must provide in its proposal an in depth description as to how it plans to provide the services required by the Court.</i></p>	20%
<p><b>Cost/Pricing factors</b></p> <p><i>a. Cost/Price must be all inclusive. At no time after submission of its proposal will Contractor increases be considered for any reason. Markup, Overhead, and Profit must be included in Contractor’s Cost/Price Proposal at time of submission.</i></p>	50%
<p><b>Financial viability and stability</b></p> <p><i>a. Contractor must submit a full detailed copy of its Dun &amp; Bradstreet Credibility Corp. report with its proposal.</i></p> <p style="text-align: center;"><b>OR</b></p> <p><i>b. Contractor must submit Financial and Bankruptcy and Litigation indentification for the preceding three (3) years with its proposal.</i></p>	10%
<p><b>Acceptance of the Terms and Conditions</b></p>	10%

Although some factors may be weighted more than others, all are considered necessary, and a proposal must be technically acceptable in each area to be eligible for award. With regards to cost, the Court reserves the right, in its sole discretion, to reject any proposal whose price is outside the competitive range.

**III. PROPOSAL FORMAT AND CONTENT**

Responsive proposals should provide straightforward, concise information that satisfies the requirements of this solicitation. Responsive proposals will display conformity to the Court’s instructions, requirements of this solicitation, and the completeness and clarity of content.

Please adhere to the use of a minimum font size of 10 point.

***CONTRACTOR'S PROPOSAL MUST BE ELECTRONICALLY SUBMITTED THROUGH BIDSINC, UPLOADED AS AN ATTACHMENT.***

Contractors awarded a contract will be required to provide an electronic version in Word and/or Excel format of the submitted proposal. Information must be submitted to the buyer identified in Bidsync within three business days of receipt of Notice of Award.

In the "DOCUMENTS" section of the bid information on BidSync, please refer to the document titled "Directions – Uploading Attachments" for relevant directions.

**THE FOLLOWING IS A STRONGLY-RECOMMENDED "OUTLINE/TABLE OF CONTENTS" THAT PROPOSER SHOULD FOLLOW IN ORGANIZING A PROPOSAL:**

1. Executive Summary
2. Work Plan – Directly Related to SOW
3. Cost Proposal
4. Experience
5. Financial Report
6. Required Proposal Forms and Documents to be completely filled out

**3.1 Executive Summary**

The Contractor must provide an Executive Summary of its proposal. The Executive Summary should be a "high-level", general overview of how the Contractor proposes to accomplish the requirements of this RFP. The Executive Summary should demonstrate the Contractor's understanding of the requirements. The Contractor must also address in this section how it meets the minimum qualification requirements in Section 2.4.

**3.2 Technical Approach and Methodology**

**3.2.1 Work Plan and Methodology**

Contractor shall provide a specific, detailed work plan that describes how the Contractor intends to provide the requested services which are set forth in Attachment A, Scope of Work.

Explain, in full detail, how the Contractor will meet all the needs of Court detailed in the Scope of Work. Contractor should not summarize its services in this section. Rather, explain exactly how the Contractor can meet Court's needs. If applicable, include items such as technical details and descriptions, key personnel, implementation plans, customer service, timetables, deliverables, ongoing communication with Court, etc.

As part of the Work Plan and Methodology, if applicable to this SOW, Contractor should respond to the SOW requirements item by item and explain how the contractor can/cannot meet each requirement of the SOW.

Contractor should demonstrate a clear understanding of the tasks and the potential problems in meeting the Scope of Work requirements. The Contractor should include a statement and discussion of anticipated major difficulties and problems areas, together with potential or recommended approaches for their solution.



### **3.3 Cost Proposal**

#### **3.3.1 Government Rates**

It is expected that all Contractors responding to this solicitation will offer the Contractor's government or most favorable comparable rates.

#### **3.3.2 Pricing and Price Adjustments**

Contractor must submit pricing in the form and format as specified on the court Website.

The Court is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employee's wages. The Court will pay for any applicable State of California or local sales or use taxes on the products provided or the services rendered. Taxes shall be included as a separate line item on a Contractor's invoice.

The prices proposed in the Contractor's response will be valid for a minimum of 150 days following the Submission Deadline for the RFP.

The Contractor's cost proposal must describe how future price increases will be minimized and capped and how both increases and decreases will be passed on to Court if the contract is renewed after the initial term. The Contractor must explain the proposed process to implement price changes, and how the Court will be notified.

It is unlawful for any person engaged in business within this State to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions code.

If applicable, Contractor should suggest a Payment Milestone Schedule in accordance with the Contractor's Work Plan.

### **3.4 Experience**

The Court requires the Contractor and its subcontractors to have prior experience in all aspects of the products and services described in Attachment A, Scope of Work for customers similar to or with relevance in the size, complexity and scope of this RFP. Contractor shall provide a statement of experiences on similar assignments to include volume of work performed. \

### **3.5 Required Proposal Forms and Documents**

In addition to the items described above in Sections 3.1 through 3.3, et seq, all Proposers must also complete and submit all required Documents. These Documents are on BidSync and are submitted electronically through BidSync.

**IV. ATTACHMENTS**

Attachment A, Scope of Work – One Page

Attachment B, Model Agreement/ Terms and Conditions - Pages 1-47

Attachment C, Proposer's Pricing Sheet/Cost Proposal/Line Items – One Page

**V. ADDITIONAL RFP DOCUMENTS**

Additional RFP Documents are posted on the Court Website ([www.BidSync.com](http://www.BidSync.com)).

Such documents may include, but are not limited to:

- Administrative Rules of the RFP
- Bidder Proposer Submission Forms & Certifications
  - Proposer Certification Form
  - Proposer's Acceptance of the PO/Contract Terms and Conditions
  - Certification of Acceptance
- Contractor Information Questionnaire
- Court Locations
- Insurance Requirements & Sample Insurance Certificate
- Directions – Uploading Attachments
- Payee Data Record

**END OF RFP DOCUMENT**

# ATTACHMENT A – SCOPE OF WORK

## Cisco Ironport Security Appliance Maintenance & Support

1. **Background and Summary** – The Court owns two C350 Ironport appliances that are end of life and need to be replaced. The Court needs to replace these two appliances and also needs to renew maintenance on the Ironport software. This software and hardware solution includes spam protection, malware and targeted attack protection, data loss prevention, email encryption, and tracking and reporting tools.

2. **Requirements/Specification** – This solution should include the following options:

### **Management Tools**

- Centralized Management
- Email Security Manager
- SNMP Enterprise MIB
- Intuitive GUI

### **Spam Defense**

- Cisco IronPort Web Reputation Filters
- Cisco IronPort Anti-Spam

### **Virus Defense**

- Cisco IronPort Outbreak Filters
- Sophos Antivirus
- McAfee Antivirus

### **Policy Enforcement**

- Content Filters
- Data Loss Prevention
- Cisco IronPort Email Encryption

### **Email Authentication**

- DKIM and DomainKeys Signing
- IronPort Bounce Verification™

3. **Results/Deliverables** – This solution should include licenses for 1800 users and Ironport platinum 24/7 support. This solution should include two Cisco Email Security Appliances C370's (C370-BUN-R-NA Standard Configuration Production Units) installed with Ironport Anti-Spam, Sophos Anti-Virus, Virus Outbreak Filters, PXE Encryption for ESA.

**ATTACHMENT B – MODEL AGREEMENT**



**AGREEMENT FOR CISCO SECURITY APPLIANCE SERVICES**

**BETWEEN**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

**AND**

**XXX**

**AGREEMENT # SC4923**

**COMMENCES: DECEMBER 19, 2012**

**TERMINATES: DECEMBER 18, 2017**

**DOLLAR AMOUNT: XXX**

**IT GOODS AND/OR SERVICES AGREEMENT**

Agreement Number SC4923	Amendment Number
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER XXX	

This Agreement is made between Contractor Name, Address, hereafter (“Contractor”) and the Superior Court of California, County of Orange, and entity of the State of California, hereafter (“Court”)

**Background**

- A. Court has need for Cisco Security Appliance Maintenance and Support Services.
- B. Court has elected to award a contract to Contractor based on Contractor’s experience, expertise, and ability to meet the needs of the Court.

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the Court hereinafter expressed, does agree to furnish to the Court services and materials as follows:

**1. Contract Documents.** Incorporated into this Agreement herewith, and attached hereto, are the following documents (“Contractor Documents”):

- Exhibit A, Definitions;
- Exhibit B-1, General Terms and Conditions;
- Exhibit B-2, Supplemental Terms and Conditions;
- Exhibit C, Payment Provisions;
- Exhibit D, Scope of Work; and
- Exhibit E, Travel Guidelines

In the event of a conflict between the Contract Documents, the following descending order of precedence shall govern:

- Exhibit A, Definitions;
- Exhibit B-1, General Terms and Conditions;
- Exhibit B-2, Supplemental Terms and Conditions;
- Exhibit C, Payment Provisions;
- Exhibit D, Scope of Work; and
- Exhibit E, Travel Guidelines

**2. Term and Effective Date of Agreement.** Any Amendments, starting with the most recent, shall take precedence over the existing Agreement.

No guarantee is given as to any estimated usage amount. As set forth in this Agreement, Contractor agrees to provide the Work as specified, as needed by the Court, at prices listed upon this Agreement regardless of service usage.

The Term of this Agreement begins on December 19, 2012, the Effective Date, and concludes on December 18, 2017, the Expiration Date, unless otherwise terminated for any reason in accordance with such termination clause as specified in this Agreement.

This Agreement is of no force or effect until signed by both parties and Contractor shall not perform any of its obligations under this Agreement, until this Agreement is fully executed and Court is in possession of a Court accepted Certificate of Insurance as required.

**3. Contract Amount.** As set forth further in Exhibit C, Payment Provisions, the Contract Amount shall not exceed **XXXXX Dollars and XX/100 (\$XX,XXX.XX)**.

**4. Representatives.**

A. **Notices.** Notices, as may be required in the Agreement, will be provided to the following:

Court	Contractor
Karl K. Truong Procurement Specialist 700 Civic Center Drive West, Santa Ana, CA 92701 Phone: (XXX)XXX-XXXX Email: <a href="mailto:ktruong@occourts.org">ktruong@occourts.org</a>	Contractor Contact Name Title Contractor's Address Phone: (XXX)XXX-XXXX Email: <a href="mailto:XXXXXXXXXXXXXX">XXXXXXXXXXXXXX</a>
and	
Luis Najera Court Technology Manager 700 Civic Center Drive West, Santa Ana, CA 92701 Phone: (XXX)XXX-XXXX Email: <a href="mailto:lnajera@occourts.org">lnajera@occourts.org</a>	

B. **Project Management.** The roles and responsibilities of the Court's Project Manager(s) and the Contractor's Project Lead, named below, are outlined in the Agreement.

Court Project Manager(s)	Contractor Project Lead
Luis Najera Court Technology Manager 700 Civic Center Drive West, Santa Ana, CA 92701 Phone: (XXX)XXX-XXXX Email: <a href="mailto:lnajera@occourts.org">lnajera@occourts.org</a>	Contractor Contact Name Title Contractor's Address Phone: (XXX)XXX-XXXX Email: <a href="mailto:XXXXXXXXXXXXXX">XXXXXXXXXXXXXX</a>
and (CC)	
Karl K. Truong Procurement Speicalist 700 Civic Center Drive West, Santa Ana, CA 92701 Phone: (XXX)XXX-XXXX Email: <a href="mailto:ktruong@occourts.org">ktruong@occourts.org</a>	

**5. Signatures.**

IN WITNESS HEREOF, this Agreement has been entered into by the parties hereto, effective upon the Effective Date.

<b>Superior Court of California, Orange County</b>	<b>Contractor Name</b>
Signature:	Signature:
Name: Alan Carlson or Sherry Clifford	Name:
Title: Chief Executive Officer / Contracts Officer	Title:
Date:	Date:

**End of Contract Cover Sheet**

## EXHIBIT A

### DEFINITIONS

1. **Acceptance:** means the written acceptance issued to Contractor by the Court's Project Manager after Contractor has completed a Deliverable, in compliance with this Agreement, including without limitation, Exhibit D, Scope of Work.
2. **Administrative Office of the Courts (AOC):** staff agency to the Judicial Council of California, the policy-making body of the California Court system.
3. **Agreement:** entire integrated agreement, including all Contract Documents, Exhibits, Attachments, and Amendments incorporated therein, signed by Court and Contractor, for performance of the Work.
4. **Amendment:** written Contract Document issued by Court, and signed by both Contractor and Court, modifying the Agreement and identifying any of the following: (1) change in the Work; (2) change in Contract Amount; (3) change in schedule for delivery and performance of Work; or (4) any change to other terms and conditions.
5. **Applicable Law:** any applicable laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders.
6. **Appropriation Year:** authorized period of time for government spending for a defined purpose. The Appropriation Year for state-funded agreements ends on June 30th of each year. The Appropriation Year for federally funded agreements ends on September 30th of each year.
7. **Bid:** A response to a competitive solicitation issued by the Court, regardless of the Solicitation Document used by the Court (e.g., Request for Quote "RFQ", Invitation for Bid "IFB", or Request for Proposal "RFP").
8. **Business Day:** means days of the week excluding Saturday and Sunday, as well as Contractor's pre-established and published holidays applicable to its employees.
9. **Certificate of Insurance:** A document that provides evidence that an insurance policy has been underwritten and that includes a statement of the policy coverage.
10. **Claims:** claims, suites, actions, arbitrations, demands, proceedings, fines, penalties, losses, damages, liabilities, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs), including those based on the injury to or death of any person or damage to property.
11. **Compensation:** all remuneration owed to Contractor in respect of Services, including Contractor's professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.
12. **Confidential Information:** (i) any information related to the business or operations of the Court, including information relating to Court's personnel and users; (ii) all financial, statistical, personal, technical and other data and information of the Court (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know is confidential; and (iii) all Deliverables, Developed Works, Court Works and Court Data. Confidential Information does not include information (that Contractor demonstrates to the Court's satisfaction, by written evidence): (a) that Contractor lawfully knew prior to the Court's first disclosure to Contractor, (b) that a Third Party rightfully disclosed to



Contractor free of any confidentiality duties or obligations, or (c) that is, or through no fault of Contractor has become, generally available to the public.

13. **Consulting Services:** refers to the services performed under “Consulting Services Agreements”, which are defined in Public Contract Code section 10335.5, substantially, as contracts that:

- (1) Are of an advisory nature;
- (2) Provide a recommended course of action or personal expertise;
- (3) Have an end product that is basically a transmittal, either written or oral, that is related to the governmental functions of the state agency administration and management and program management or innovation; and
- (4) Are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

The end product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

“Consulting Services Agreements” do not include:

- (1) Contracts between a state agency and the federal government; or
- (2) Contracts with local agencies, as defined in Revenue and Taxation Code, section 2211, to subvene federal funds for which no matching state funds are required.

14. **Contract Amount:** total dollar amount of the Agreement.

15. **Contractor:** means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the Court to do the Contract Work. Contractor is one (1) of the parties to this Agreement as defined on the Cover Sheet.

16. **Contractor Key Personnel:** the Contractor Project Manager and those Project Staff members identified as “Key Personnel” as set forth in a Statement of Work.

17. **Contractor Service Location(s):** any location (except a Court Service Location) from which Contractor performs Services.

18. **Contractor Works:** Works owned or developed prior to the provision of the Services, or developed by Contractor independently from the provision of the Services and without use of the Court Works or Confidential Information.

19. **Court:** Superior Court of California, as indicated on the Contract Cover Sheet. Court is a party to this Agreement.

20. **Court Contractors:** the agents, subcontractors and other representatives of the Court, other than Contractor and Subcontractors.

21. **Court Data:** all data and information of the Court or Court Contractors disclosed to or accessed by Contractor or Subcontractors, including all such data and information relating to the Court and its respective contractors, agents, employees, technology, operations, facilities, markets, products,

capacities, systems, procedures, security practices, court records, court proceedings, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter, patents and other intellectual property and proprietary information.

22. **Court Project Manager:** the individual(s) appointed by the Court to communicate directly with the Contractor Project Manager.
23. **Court Service Locations:** any Court Facility, Justice Center, or Location at which Contractor performs Services.
24. **Court Works:** Works owned, licensed, made, conceived, or reduced to practice by the Court or a Court Contractor, any Works developed or acquired separate from this Agreement, and all modifications, enhancements, derivative works, and Intellectual Property Rights in any of the foregoing.
25. **Coversheet:** refers to the first sheet of this Agreement.
26. **Data:** information, including, but not limited to, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
27. **Data Safeguards:** industry-standard safeguards against the destruction, loss, misuse, unauthorized disclosure, or alteration of the Court Data or Confidential Information, and such other related safeguards that are set forth in Applicable Laws, a Statement of Work, or pursuant to Court policies and procedures.
28. **Day:** means calendar day
29. **Deliverable:** Developed Works, Contractor Works, Third Party Works, hardware, software, firmware, documentation, services or any combination thereof (including those identified as “Deliverables” in a Statement of Work, together with all Upgrades thereto), as well as any other items, specified in the Agreement, that Contractor shall complete and deliver or submit to Court.
30. **Deliverable Basis:** means that the Services provided under to the Court by Contractor under this Agreement shall result in the provision of a Deliverable or Deliverables.
31. **Defect:** any failure of any Deliverable to conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation.
32. **Developed Works:** Works created, made, or developed by Contractor or Subcontractors, either solely or jointly with the Court or Court Contractors, in the course of the performance of the Services under this Agreement, and all Intellectual Property Rights therein and thereto, including, without limitation, (i) all work-in-progress, data or information, (ii) all modifications, enhancements and derivative works made to Contractor Works, and (iii) all Deliverables; provided, however, that Developed Works do not include Contractor Works.
33. **Documentation:** all technical architecture documents, technical manuals, user manuals, flow diagrams, operations guides, file descriptions, training materials and other documentation related to the Deliverables; together with all Upgrades thereto.
34. **DVBE:** is an acronym for disabled veterans business enterprise.
35. **Effective Date:** has the meaning defined on the coversheet of this Agreement.
36. **Expenses:** means and includes both Travel and Living Expenses and Reimbursable Expenses.

37. **Expiration Date:** is the last day of the Term, unless the Initial Term is extended by exercise of an option. In that event, the Expiration Date will instead refer to the date specified as the expiration date in the notice of exercise of the option.
38. **Firm Fixed Price:** means a single fixed amount or amounts designated as payment for a Deliverable or Deliverables.
39. **Firm Fixed Price Basis:** means that the Contractor shall receive, as full and complete compensation for the provision of Deliverable(s), Firm Fixed Price(s), which shall constitute complete compensation for all costs, expenses, and efforts incurred by Contractor in provision of Deliverable(s).
40. **Hourly Basis:** means that Contractor shall be paid at an hourly rate for each hour of authorized Work actually performed.
41. **Initial Term:** is the period commencing on the Effective Date and expiring on the Expiration Date set forth on the coversheet of this Agreement.
42. **Intellectual Property Rights:** all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorships, including copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.
43. **IT Infrastructure:** software and all computers and related equipment, including, as applicable, central processing units and other processors, controllers, modems, servers, communications and telecommunications equipment and other hardware and peripherals.
44. **JBE:** is an acronym for “Judicial Branch Entity.”
45. **Judicial Branch Entity:** Any California superior or appellate court, the Judicial Council of California, the Administrative Office of Courts, and the Habeas Corpus Resource Center; these entities comprise the “Judicial Branch”.
46. **Judicial Branch Personnel:** means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.
47. **Judicial Branch Contract Law (JBCL):** Part 2.5 of the Public Contract Code (“PCC”); PCC 19201-19210.
48. **Loss:** as used in the indemnity provisions of this Agreement includes any actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorneys’ fees.
49. **Malicious Code:** any (i) program routine, device or other feature or hidden file, including any time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm any of the Court’s hardware, software, data or other programs, and (ii) hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.

50. **Material:** all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication hardware and software.
51. **Notice:** written document signed by an authorized representative of either party to this Agreement, providing formal notification and sent by either:
- (1) Depositing in the U. S. Mail or commercial express mail, prepaid, to the address of the authorized representative of the other party. Notice will be effective on the post-marked date; or
  - (2) Hand-delivery to the other party's authorized representative, as set forth in the Agreement. This Notice shall be effective on the date of receipt.
  - (3) Email notification – Court/Contractor may provide initial notification by email followed by delivery as defined in this Section 34 either section (1) or (2).
52. **Option Period:** means the period, if any, through which this Agreement may be extended by the parties upon mutual agreement.
53. **Parties or Party:** means “us”, the Superior Court of California, County of Orange, and/or “you”, the Contractor, as the context requires.
54. **PCC:** is an acronym for “Public Contract Code”.
55. **Progress Payment:** A partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.
56. **Project Lead:** Contractor's representative who will operate as the main interface with the Court regarding the Work to be performed under this Agreement.
57. **Project Staff:** the personnel of Contractor and Subcontractors who provide the Services.
58. **Proposal:** A response to a Request for Proposals that describes the offeror's approach, scope of work, schedule and cost to provide goods or services, as well as the ability to meet other relevant criteria established by the Court.
59. **Public Contract Code:** the set of California statutes that govern how state and local agencies contract for goods and services.
60. **Service Fees:** the fees for the Services set forth in Exhibit D, Scope of Work.
61. **Service Location(s):** any Court or Contractor Service Location.
62. **Services:** collectively, the services provided under this Agreement, including those services and Deliverables set forth in Exhibit D, Scope of Work, and any incidental services or responsibilities that are reasonable and customary in the industry and not specifically described in this Agreement (or the Scope of Work), but which are required for the performance and delivery of these services.
63. **Source Code:** human-readable program statements written by a programmer or developer in a high-level or assembly language that are not directly readable by a computer and that need to be compiled into object code before they can be executed by a computer.

64. **Specifications:** with respect to each Deliverable, the detailed statements and documents setting out the functionality and requirements for each component of the Deliverable.
65. **Statement/Scope of Work (SOW):** a statement of Services and/or Deliverables to be provided pursuant to and governed under the terms of this Agreement, as agreed to by both parties.
66. **Stop Work Order:** written notice to Contractor from Court, directing Contractor to stop performance of Work for a period of ninety (90) days following delivery of the order to Contractor, or for a longer period by mutual agreement of the parties.
67. **Subcontractor:** a person or business entity that has a contract (as an "independent contractor" and not an employee) with Contractor to provide some portion of the Work of this Agreement.
68. **Task:** one or more functions, services, or actions, as specified in the Agreement, to be performed by Contractor for the Court
69. **Term:** comprises the Initial Term and any Option Period.
70. **Termination Assistance Period:** the period commencing upon the Expiration Date or earlier termination of this Agreement and expiring six (6) months thereafter, as such period may be extended by the Parties.
71. **Termination Date:** has the same meaning as "Expiration Date" unless this Agreement is validly terminated before the applicable Expiration Date, in which case Termination Date means the effective date this Agreement is validly terminated.
72. **Third Party:** any individual or entity not a party to the Agreement.
73. **Third Party Works:** Works that are licensed or obtained by Contractor from a Third Party.
74. **Upgrades:** all new versions, bug fixes, error corrections, workarounds, updates, upgrades, modifications, patches and new releases of software, Deliverables, or Documentation.
75. **Work:** any or all labor, services, Deliverables, equipment, supplies, Materials, Tasks, and any other items or activities necessary for the performance and completion of Contractor's obligations in compliance with the requirements of the Agreement. Work may also include Work Orders, Tasks, Deliverables, and/or Submittals required by the Court.
76. **Works:** all inventions (whether patentable or not), discoveries, literary works and other works and authorship (including software), designations, designs, know-how, technology, tools, ideas and information.

**END OF EXHIBIT A**

## EXHIBIT B-1

### GENERAL TERMS AND CONDITIONS

1. **Accounting.** Contractor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (U.S. GAAP).
2. **Assignment and Subcontracting; Successors.**
  - A. **Permitted Assignments and Subcontracts.** Neither party may assign or subcontract its rights or duties under this Agreement, except as follows:
    - 1) The Court may assign the Court's rights and duties to any Judicial Branch Entity. The Court shall notify Contractor in writing within thirty (30) days following the assignment.
    - 2) Either party may assign its rights and duties or subcontract portions of this Agreement to a third party if the non-assigning party gives advance written consent to the assigning party. Consent may be withheld for any reason or no reason. If a non-assigning party does consent, the consent will take effect only if there is a written agreement between the assigning or subcontracting party and all assignees and subcontractors, stating the assignees and subcontractors:
      - a) are jointly and severally liable to the non-assigning party for performing the duties in this Agreement of the assigning/subcontracting party;
      - b) affirm the rights granted in this Agreement to the non-assigning party;
      - c) make the representations and warranties made by the assigning/subcontracting party in this Agreement; and
      - d) appoint the non-assigning party an intended third party beneficiary under the written agreement with the assigning/subcontracting party.

No assignment or subcontract will release either party of its duties under this Agreement.

- B. **Successors.** This Agreement binds the parties as well as their heirs, successors, and assignees.

### 3. **Audit and Records**

- A. **Audit.** Upon reasonable notice, Contractor will provide to Court, to any federal or state entity with monitoring or reviewing authority or to Court's authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under this Agreement, subject only to a lawyer's duty of confidentiality owed to a represented party. Contractor agrees to provide Court with all relevant information requested, and will permit access to its premises at reasonable times, for the purpose of interviewing employees and inspecting and copying any relevant records. Contractor shall correct errors and deficiencies by the 20<sup>th</sup> day of the month following the review or audit.

Contractor shall provide to the Court and Court Contractors, on Contractor's premises (or, if the audit is being performed of a Subcontractor, Subcontractor's premises if necessary), space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office-related equipment and duplicating services as the Court or such Court Contractors may reasonably require to perform the audits described in this Section. Without limiting the

foregoing, this Agreement is subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.

- B. **Copies.** Contractor may retain copies of any original documents Contractor provides to the Court.
- C. **Ownership.** The Court is the exclusive owner of all materials collected and produced in connection with the Services. Upon the Termination Date (subject to any mutually agreed period of continuation of Services), or upon the Court's notice at any time, and subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the Court or to another party at the Court's discretion. Contractor shall maintain all other materials in an accessible location and condition for a period of not less than four (4) years after the later of:
  - 1) Contractor's receipt of final payment under this Agreement; and
  - 2) The Court's resolution with Contractor of findings of any final audit.
  - 3) Any interest of Contractor in data, products, recordings, writings, or services of any kind prepared by Contractor for performance of services under this Agreement shall become the property of the Court. Upon Court's written request, Contractor shall provide Court with all such data, products, recordings, writings, etc., within thirty (30) days of the request.
- D. **Retention of Records.** Contractor will maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with state and federal law. The minimum retention period will be four (4) years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.
- 4. **Availability of Funds.** The Court's obligation to compensate Contractor is subject to the availability of funds. The Court shall notify Contractor if funds become unavailable or limited during the Term.
- 5. **Certifications and Representations.** Contractor's signature on the cover page shall also serve as certification for the following paragraphs, A-Z.
  - A. **Authority and Binding Effect.** Contractor warrants it has the full power and authority to enter into and perform its obligations under this Agreement, to grant the rights and licenses herein, and Contractor's signatory has authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and is in good standing in the State of California. The execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action on the part of Contractor.
  - B. **Compliance with Permits, Laws, and Regulations.** Contractor, its business, and its performance of its obligations under this Agreement comply in all material respects with all Applicable Laws.

During the term of this Agreement, Contractor will obtain and keep current and in full force and effect, all necessary licenses, approvals, permits and authorizations required by Applicable Laws for performance of the Services. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and

penalties arising from its noncompliance with any Applicable Law. Such permits and licenses will be made available to Court, upon request.

Contractor will promptly provide Notice to Court of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Contractor proceeds with the Work in question without resolution of the conflict, Contractor will be solely liable for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

- C. **Drug-free Workplace.** Contractor certifies that it and its Subcontractors will provide a drug-free workplace as required by Calif. Gov. Code, § 8355-8357.
- D. **Electronic Waste Recycling Act.** If this Agreement provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code sections 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.
- E. **Labor/Collective Bargaining.** Contractor certifies that it and its Subcontractors will provide notice of their obligations under the foregoing provisions to labor organizations with which it or they have collective bargaining agreements, prior to execution of this Agreement.
- F. **National Labor Relations Board (NLRB) Certification.** Contractor certifies that, within the immediately preceding two-year period, no more than one final, unappealable finding of contempt of Court by a federal Court has been issued against Contractor because of Contractor's failure to comply with an order of the National Labor Relations Board.
- G. **No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- H. **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Court Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- I. **No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- J. **No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest, breach, or default under any of Contractor's other contracts.
- K. **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse effect on Contractor's business, the validity or enforceability of this Agreement, or Contractor's ability to perform this Agreement.



- L. **Non-discrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California’s Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of non-discrimination.
- M. **Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the Court.
- N. **Prohibition Against Hiring Court Employees.** Contractor certifies and will require all Subcontractors to certify to the following:  
“Former Court employees will not be offered employment position for two years from the date of separation, if that employee participated in the decision-making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed Agreement, within the prior twelve-month period of Court employment.”
- O. **Sales and Use Tax Collection.** Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.
- P. **Special Provisions regarding Compliance with National Labor Relations Board Orders.** If this Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from the Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor’s failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
- Q. **Special Provisions regarding Compliance with the Child Support Compliance Act.** If Contractor is a private entity, and this Agreement provides for Compensation of \$100,000.00 or more:
- 1) Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - 2) Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

R. **Special Provisions regarding Compliance with the Sweatfree Code of Conduct.** If this Agreement provides for furnishing equipment, materials, or supplies other than public works, or for the laundering of apparel, garments or corresponding accessories:

- 1) No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Court under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108. This declaration is made under penalty of perjury.
- 2) Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a) and shall provide the same rights of access to the Court.

S. **Special Provisions regarding Discharge Violations.** If Contractor is a private entity, Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

T. **Special Provisions regarding Domestic Partners, Spouses, and Gender Discrimination.** If this Agreement provides for total Compensation of more than \$100,000, Contractor is in compliance with Public Contract Code section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

U. **Use of Postconsumer Material.** If this Agreement provides for the purchase and sale of Goods specified in PCC section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods.

Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable.

Contractor shall use recycled products in its performance under this Agreement to the maximum extent doing so is economically feasible.

Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of postconsumer material as defined in PCC section 12200, in such goods regardless of whether the goods meet the requirements of PCC section 12209.

With respect to printer or duplication cartridges that comply with the requirements of PCC section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

- V. **Work Eligibility.** All personnel assigned to perform this Agreement are able to work legally in the United States and possess valid proof of work eligibility.
- W. **Special Provisions for Agreements for Equipment, Materials, or Supplies; Loss Leader Prohibition.** If this Agreement involves the furnishing of equipment, materials, or supplies, Contractor shall not sell or use any article or product as a “loss leader” as defined in Business and Professions Code section 17030.
- X. **Special Provisions for Agreements for Certain Services with Compensation over \$200,000.** If this is an Agreement for Services, other than consulting services, with total compensation over \$200,000, Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.
- Y. **Special Provisions regarding Conflict Minerals.** Contractor certifies either; (i) it is not a “scrutinized company” as defined in PCC 10490(b), or (ii) the goods or services the Contractor will provide to the Court are not related to products and services that are the reason the Contractor must comply with Seciton 13(p) of the Securities Exchange Act of 1934.
- Z. **Covenant as to Representations and Warranties.** Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the Court if any representation and warranty becomes untrue.

## 6. Changes in Work; Stop Work

### A. Changes in Work.

- 1) Court reserves the right to require Contractor to make changes in the Work, as set forth in Exhibit D, Scope of Work, which may include additions, deletions, or modifications to the Work, or changes in the timing or level of effort for the Work.
- 2) From time to time during the Term of this Agreement, the Parties may mutually agree on a change to the Services, which may require an extension or reduction in the schedule and/or an increase or decrease in the fees and expenses and/or the Services (each, a “Change”), including (i) a change to the scope or functionality of the Deliverables; or (ii) a change to the scope of the Services.
- 3) For any change proposed by Court or Contractor, Contractor will submit in writing:
  - a) A description of the proposed change and the reasons for the change;
  - b) A summary of the total compensation to be paid Contractor with a breakdown of tasks and costs, including any reduction in Work or costs resulting from the change; and
  - c) A statement of the expected impact on schedule.

- 4) If Court and Contractor agree on a Change, the Parties will seek to mutually agree on a change order identifying the impact and setting forth any applicable adjustments in Exhibit D, Scope of Work and/or payments to Contractor. Court will issue an Amendment documenting the change, for the parties' execution.
- 5) If the parties cannot agree to the terms of a change, Contractor will proceed diligently with Work unless otherwise directed by Court, and any continuing disagreement will follow the process set forth in the provisions entitled "Dispute Resolution." Contractor should not proceed with any change prior to receiving a written directive or Amendment from Court. All costs for changes performed by Contractor without Court's prior written approval will be at Contractor's sole risk and expense.

**B. Stop Work.**

- 1) Court may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the Work, for ninety days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree.
  - 2) Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to Court during the applicable Stop Work period. Within ninety days after a Stop Work Order is delivered to Contractor, or within any mutually agreed extension of that period, Court will either cancel the Stop Work Order or terminate the Work, as provided in Section 28, Termination.
  - 3) If a Stop Work Order is cancelled by the Court, or the period of the Stop Work Order or any extension thereof expires, Contractor will promptly resume Work covered by such stop work order. Court may make an equitable adjustment in the delivery schedule, the Contract Amount, Exhibit D, Scope of Work, or all, if (a) the Stop Work Order directly and proximately results in an increase in the time required for the performance of any part of the Scope of Work; and (b) Contractor asserts its right to such equitable adjustment within thirty (30) days after the end of the applicable Stop Work period.
  - 4) If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated other than for cause, Court may allow reasonable costs resulting from the Stop Work Order.
  - 5) Court will not be liable to Contractor for loss of profits because of any Stop Work Order.
- 7. Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. Jurisdiction for any legal action arising from this agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 8. Confidential Information.** The provisions of this section shall survive beyond the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than reasonable care and industry-standard care. During the Term and at all times thereafter, Contractor will refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement.

Contractor will not remove any Confidential Information from the Court's facilities or premises without the Court's express prior written consent. Upon the Court's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the Court or, if so directed by the Court, destroy all Confidential Information (in every form and medium), and (b) certify to the Court in writing that Contractor has fully complied with the foregoing obligations.

- A. **Permissible Disclosures.** Contractor may disclose Court's Confidential Information on a "need to know" basis to Contractor's employees and Subcontractors and any representatives of Court that are working on the project, provided that they have executed a confidentiality agreement with Contractor which requires that they protect the Court's confidential information to the same extent as this section. Additionally, Contractor may disclose the Confidential Information, to the extent necessary to (i) comply with any applicable law, rule, regulation, or ruling; (ii) respond to any enforceable summons or subpoena; or (iii) enforce its rights under this Agreement, provided advance notice has been delivered to the Court.
  - B. **Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the Chief Executive Officer.
  - C. **Requirements of Strict Confidence.** While performing Work under this Agreement, Contractor and its Subcontractors may gain access to Confidential Information that, if disclosed to Third Parties, may be damaging to Court, its personnel, Court users, or other government entity. Neither Contractor nor its Subcontractors acquires any right or title to the Confidential Information, and Contractor and its Subcontractors agree not to disclose any Confidential Information to any Third Party. All Confidential Information disclosed to Contractor or its Subcontractor will be held in strict confidence and used only in performance of Work under this Agreement. In the event of any unauthorized disclosure or loss of Confidential Information, Contractor will immediately provide Notice to Court, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.
  - D. **Specific Performance; Breach of Confidentiality.** Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations hereunder, that any such breach will likely result in irreparable harm, and therefore, that upon breach or threatened breach of the confidentiality obligations, the Court shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies by law.
9. **Consideration.** Subject to the terms of this Agreement, Contractor shall invoice the Court, and the Court shall compensate Contractor, as set forth in Exhibit C, Payment Provisions. The consideration or Service Fees to be paid to Contractor under this Agreement shall be the total and complete compensation to be paid to Contractor for all Work performed under this Agreement, including all of Contractor's expenses incurred, such as travel and per diem expenses, unless otherwise expressly provided, as set forth in Exhibit C, Payment Provisions. Contractor shall bear, and the Court shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature which Contractor incurs.
- A. **Payment Does Not Imply Acceptance of Work.** Court's payment will not relieve Contractor from its obligation to replace unsatisfactory Work, even if the unsatisfactory character of such Work may have been apparent or detected at the time such payment was made. Work, Data, or components that do not conform to requirements of this Agreement will be rejected, and will be replaced by Contractor, without delay or additional cost to Court.

- B. **Disallowance.** If Contractor receives payment from Court for a service or reimbursement that is later disallowed or rejected by the Court, Contractor will promptly refund the disallowed amount to Court upon Court's request. At its option, Court may offset the amount disallowed from any payment due to Contractor, under this Agreement or any other agreement.

## 10. Contractor Status

### A. Independent Contractor.

- 1) Contractor, Subcontractors, and their officers, agents, employees, and all others acting on behalf of Contractor for this Work, act as independent contractors and not as Court agents, officers or employees. Contractor has no authority to bind or incur any obligation on behalf of Court. Except as expressly provided in Exhibit D, Scope of Work, Contractor has no authority or responsibility to exercise any rights or power vested in Court.
- 2) This Agreement will not be considered under any circumstance to create a joint-venture relationship.
- 3) If any governmental entity concludes that Contractor is not an independent contractor, Court may terminate this Agreement immediately upon Notice. Alternatively, Contractor may agree to a reduction in Court's financial liability, so that Court's total costs under this Agreement do not exceed the originally contemplated amount.

### B. Contractor's Employees.

- 1) Contractor's employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor.
- 2) Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's employees, consultants, and independent contractors.
- 3) If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor's independent status with respect to Court, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) Court will have the right, but not the obligation, to participate in any discussion or negotiation occurring with the federal or state entity, regardless who initiates such discussions or negotiations.
- 4) Contractor will indemnify and hold Court harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between Court and any Contractor or Subcontractor personnel.

C. **Exclusive Control of Means and Method of Performance.** Contractor will determine the method, details, and means of performing or supplying the Work under this Agreement. Contractor will be responsible to Court only for the requirements and results specified in this Agreement and more particularly as set forth in Exhibit D, Scope of Work, and will not be subjected to Court's control with

respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor will have the “right to control” and bear the sole responsibility for the job site conditions and safety.

**D. Subcontracting.**

- 1) Contractor will not engage a Subcontractor to perform any portion of this Work, without the express written consent of Court. Any subcontracting without Court’s written consent is a material breach of this Agreement.
- 2) Contractor warrants and represents that all Subcontractors will be subject to the same terms and conditions applicable to Contractor under this Agreement. Contractor will incorporate this Agreement as the prime agreement in any subcontracting relationship. Contractor will be liable for all Subcontractor acts or omissions, including indemnity obligations.

**11. Contractor’s Personnel.**

- A. Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor’s duties. If the Court is dissatisfied with any of Contractor’s personnel, for any reason or no reason, Contractor shall replace them with qualified personnel.
- B. Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to this project. Any additional personnel are subject to approval by the Court.
- C. For Contractor’s employees, Subcontractors, or agents performing work, and with access to Court’s systems (on-site or remotely) in the performance of their Work under this Agreement, Court will have the right, but not the obligation, to request or conduct a background check, before granting access to Court’s premises or systems or at any other time. Contractor will cooperate with Court in performing any background checks, will provide prompt Notice to Court of (i) any person refusing to undergo such background check, and will immediately remove such person from the project, and (ii) the results of any background check as requested by Court. Contractor will obtain all releases, waivers, or permissions required for the release of such information to Court. Any additional costs will be borne by Contractor.

Granting or denying access will be at the sole discretion of the Court. The contractor will receive a written response with a notification of “Approved” or “Denied” for the facility access for each individual. No background information will be released to the contractor.

It is the responsibility of the Contractor to notify the Court of any additional staff or change in staff, to submit to the court a completed and signed Application and Consent for Background Check form for each person, and to receive authorization from the court before the individual begins to work in a court facility.

- D. If this Agreement provides for the payment of \$5,000 or more for Consulting Services performed for the Court, Contractor has attached to this Agreement resumes of each Contractor participant who will exercise a major administrative role or major policy or consultative role.
- E. Contractor and any subcontractor(s) shall provide certain Key Personnel as may be particularly identified in this Agreement, the Scope of Work, etc. Court reserves the right to disapprove the continuing assignment of any such Key Personnel if, in the Court’s opinion, the performance of such Key Personnel is unsatisfactory. If the Court exercises this right, the Contractor shall immediately assign replacement Key Personnel, possessing equivalent or greater experience and

skills. If any Key Personnel, through no cause or fault of Contractor, become unavailable to provide services under this Agreement, Contractor shall immediately provide replacement Key Personnel possessing equivalent or greater experience and skills.

- F. Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Contractor does not promptly furnish replacement personnel acceptable to the Project Manager, Court may terminate this Agreement for cause.

**12. Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

**13. Default and Remedies.**

A. **Default.** A default exists under this Agreement if:

- 1) Contractor fails or is unable to meet for perform any of Contractor's duties under this Agreement, and this failure is not cured within ten (10) days following notice of default or is not capable of being cured within this cure period;
- 2) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business;
- 3) Contractor makes or has made under this Agreement any representation or warranty that is or was incorrect, inaccurate, or misleading;
- 4) Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under this Agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make this Agreement admissible when required is not fulfilled or performed.

B. **Notices.** Contractor shall notify the Court immediately if Contractor defaults, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement.

C. **Remedies.**

- 1) **Available Remedies.** The Court may do any of the following:
  - a. Withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights or setoff as may be provided in this Agreement or any other agreement between the Court and Contractor;
  - b. Require Contractor to enter into non-binding mediation;
  - c. Exercise, following notice, the Court's right of early termination of this Agreement as provided below; and
  - d. Seek any other remedy available at law or in equity.



- 2) **Remedies Cumulative.** All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy. The rights and remedies of the Court provided in this Agreement will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. The representations and warranties that Contractor makes in this Agreement shall be true and accurate as of the Effective Date, and shall remain true during the term of this Agreement and the Termination Assistance Period. Contractor shall promptly notify the Court if any representation or warranty becomes untrue.

**14. Dispute Resolution.** Court and Contractor will attempt, in good faith, to resolve any disputes informally. Contractor will meet with Court's Project Manager or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

**A. Escalation.**

- 1) If a dispute remains unresolved either party may give Notice requesting each party's Chief Executive Officer ("CEO") or designated representative to meet, exchange information and attempt resolution within fifteen days of the effective date of the Notice.
- 2) If the matter is not resolved as set forth in Section 14, Dispute Resolution, Subsection A, Escalation, Article 1), the aggrieved party will submit a second Notice which will:
  - a) provide detailed factual information;
  - b) identify the specific provisions in this Agreement on which any demand is based;
  - c) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and
  - d) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment. Notice will be signed by an authorized representative of the aggrieved party.
- 3) Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen days after receipt of a written request, unless otherwise agreed.

**B. Confidentiality During Dispute Resolution.** All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.

**C. Continued Performance of Work.** Pending final resolution of any dispute, Contractor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by Court. Contractor's failure to diligently proceed in accordance with Court's instructions will be considered a material breach of the Agreement.

## 15. Force Majeure

A. Force Majeure events include, but are not limited to:

- 1) catastrophic acts of nature, or public enemy;
- 2) civil disorder;
- 3) fire or other casualty for which a party is not responsible; and
- 4) quarantine or epidemic.

The party asserting a Force Majeure event will immediately provide Notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. Contractor will have no right to additional payment for costs incurred as a result of a Force Majeure event.

B. Any assertion of a Force Majeure event by Subcontractors will be attributed to Contractor.

**16. Indemnity.** Contractor shall indemnify and defend (with counsel satisfactory to the Court Office of the General Counsel) Judicial Branch Entities and Judicial Branch Personnel against all claims, damages, losses, and expenses, including attorney fees and costs, founded upon (i) Contractor's performance of, or failure to perform, the Services or Contractor's other duties under this Agreement, (ii) any other breach by Contractor of this Agreement, or (iii) Third Party Claims relating to infringement or misappropriation of any Intellectual Property Right by Contractor of the Deliverables, software, systems or other materials provided by Contractor or Subcontractors to Judicial Branch Entities (collectively, the "Covered Items"). Contractor shall not make any admission of liability or other statement of on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Court's prior written consent, which consent shall not be unreasonably withheld; and the Court shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

**A. Certain Remedies:** If any Covered Item provided under this Agreement becomes, or in Contractor's or the Court's reasonable opinion is likely to become, the subject of any Claim arising from or alleging infringement, misappropriation or other violation of, or in the event of any adjudication that such Covered Item infringes, misappropriates or otherwise violates any Intellectual Property Right of a Third Party, Contractor at its own expense shall take the following actions in the listed order of preference:

- 1) Secure for the Court the right to continue using the applicable Covered Item; or
- 2) If commercially reasonable efforts are unavailing, replace or modify the infringing Covered Item to make it non-infringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Covered Item.

**17. Infringement Protection.** Contractor shall hold the Court and its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted compositions, secret process, or patented or unpatented invention, article, or appliance furnished or used in connection with this Agreement.

## 18. Insurance Requirements; Required Coverage

- A. **General Insurance Requirements:** Contractor shall obtain, provide, and maintain at Contractor's expense the minimum insurance set forth in this section with reputable insurer(s). All insurance policies shall be placed with insurers admitted in the State of California and having an A.M. Best rating of not less than A-: VIII.
- B. **Minimum Scope and Limits of Coverage:** Contractor shall maintain the following minimum insurance in full force during the Term of the Agreement:
- 1) **Worker's Compensation and Employer's Liability.** The policy is required only if Contractor has employees. It must include worker's compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
  - 2) **Commercial General Liability Insurance.** Commercial General Liability Insurance provided on an occurrence form with limits of not less than \$1,000,000 per occurrence, and a \$2,000,000 annual aggregate. The policy must coverage for liabilities arising out of premises and operation, independent contractors, products – completed operations, liability assumed under an insured contract, personal and advertising injury liability, at minimum limits of \$1,000,000 per occurrence, and a \$2,000,000 annual aggregate.
  - 3) **Professional Liability.** The policy must cover liability resulting from any act, errors or omissions committed or alleged to have been committed by the Contractor's or any person or organization for whom the Contractor is responsible that arises out of professional services provided in the performance of the Work under this Agreement, at minimum limits of \$1,000,000 per claims made or per occurrence, and a \$2,000,000 annual aggregate.
  - 4) **Commercial Automobile Liability.** The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor's performance of the Work under this Agreement whether owned, non-owned, leased, rented, or hired. The minimum liability limit must be \$1,000,000 per occurrence, combined single limit.
  - 5) **Commercial Crime Insurance.** The policy must cover dishonest acts including loss due to theft of money, securities, property; forgery, and alteration of documents; or fraudulent transfer of money, securities, and property. The minimum liability limit must be \$50,000.
  - 6) **Sexual Misconduct and Molestation Liability.** If not covered under the terms and conditions of the Commercial general Liability insurance policy required in section 2 above, Sexual Misconduct and Molestation Liability insurance with coverage for negligent hiring, employment, training, investigation and retention or failure to report employees who commit acts of sexual misconduct or molestation at minimum liability \$1,000,000 per occurrence.
  - 7) **Claims Made Coverage.** If any required insurance is provided on a "claims made" form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three (3) years beyond the termination or expiration of this Agreement and the Court's acceptance of all Work provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date the Work commences under this Agreement.

- 8) **Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of primary insurance, excess liability insurance or umbrella liability insurance.
- C. **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions that exceed \$100,000 per occurrence must be declared to, and approved by, the Court. The deductible and/or self-insured retentions will not limit or apply to Contractor's liability to the Court and shall be the sole responsibility of Contractor.
- D. **Endorsements:** All Contractor policies will contain, or be endorsed to contain, the following provisions:
- 1) **Additional Insureds.** The State of California, the Judicial Council of California, the Administrative Office of the Courts, the County of Orange, and the Superior Court of California, County of Orange and the Presiding Judge, its elected and appointed officials, officers, agents and employees when acting in the scope of their appointment or employment shall be covered as additional insureds for liability arising out of activities performed by, or on behalf of, Contractor under the terms of the Agreement.

Wording for the Additional Insured Endorsement shall be the following:

*"The State of California, the Judicial Council of California, the Administrative Office of the Courts, the County of Orange, and the Superior Court of California, County of Orange and the Presiding Judge, its elected and appointed officials, officers, agents and employees when acting in the scope of their appointment or employment are named as additional insureds on all above policies except workers' compensation, professional liability, and crime insurance."*

- 2) **Insurance Primary.** The insurance provided is primary insurance with respect to the State of California, the Judicial Council of California, the Administrative Office of the Courts, the County of Orange, and the Superior Court of California, County of Orange and the Presiding Judge, its elected and appointed officials, officers, agents and employees, and non-contributory with any insurance or self-insurance maintained by the Court. Any insurance and/or self-insurance maintained by the State of California, the Judicial Council of California, the Administrative Office of the Courts, the County of Orange, and the Superior Court of California, County of Orange and the Presiding Judge, its elected and appointed officials, officers, agents and employees will not contribute with the insurance, or benefit Contractor in any way.
- 3) **Separation of Insureds.** The commercial general liability policy, or, if maintained in addition to that policy, the excess liability or umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer's liability.
- 4) **Certificates of Insurance.** Prior to Contractor beginning any performance of the Work, Contractor shall provide the Court certificates of insurance satisfactory to the Court, attesting to the existence of coverage. Any replacement certificates of insurance are subject to the approval of the Court, and, without prejudice to the Court, Contractor shall not perform Work prior to Court's approval of the certificates. Contractor must obtain and provide complete copies of each policy upon the Court's request. If at any time, the

foregoing policies become unsatisfactory to the Court, as to form or substance, or if a company issuing any such policy becomes unsatisfactory to the Court, Contractor shall, upon written notice from the Court, promptly obtain a new policy, and submit the same to the Court, with the appropriate certificates and endorsements, for Court approval.

- a) Certificate(s) of Insurance shall be submitted in accordance with Notice requirements set forth in the Agreement and as follows:

Superior Court of CA, Orange County  
Attn: Karl K. Truong, Procurement Specialist  
700 Civic Center Drive West  
Santa Ana, CA 92701

Certificate Holder name should read as follows: "Superior Court of California, County of Orange and County of Orange" and must reference Agreement No. SC4923/Karl K. Truong.

- b) **Failure to Provide Certificates of Insurance.** If Contractor fails to provide Certificate(s) of Insurance within seven (7) days of notification by the Court, award may be made to the next qualified vendor(s).

- 5) All of Contractor's policies will be endorsed to provide written notice to the Court of cancellation in coverage within thirty (30) business days, mailed to the Court. Such notice will be provided in accordance with Notice requirements set forth in the Agreement and must reference the relevant project, and Agreement number. Contractor shall provide Court with thirty (30) business day's written notice of any non-renewal or reduction in coverage with respect to these policies.

- E. **Waiver of Recovery or Subrogation.** Contractor and its insurance carrier waive any and all rights of recovery or subrogation against the State of California, the Judicial Council of California, the Administrative Office of the Courts, the County of Orange, and the Superior Court of California, County of Orange and the Presiding Judge, its elected and appointed officials, agents and employees when acting in the scope of their appointment or employment. This waiver will be reflected on the Certificate of Insurance provided by Contractor in accordance with the following:

Wording for Waiver of Recovery or Subrogation shall be the following:

*"Waiver of recovery or subrogation in favor of the State of California, the Judicial Council of California, the Administrative Office of the Courts, the County of Orange, and the Superior Court of California, County of Orange and the Presiding Judge, its elected and appointed officials, officer, agents and employees when acting in the scope of their appointment or employment applies to all policies as required by written contract."*

F. **Consequences of Lapse; Failure to Maintain Insurance.**

- 1) **Consequences of Lapse.** If required insurance lapses during the Term, the Court is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 2) **Failure to Maintain Insurance.** If Contractor fails to obtain the appropriate Waiver(s) of Recovery or Subrogation, Additional Insured status(es), or Certificates of Insurance from carrier, Contractor shall indemnify the State of California, the Judicial Council of California, the Administrative Office of the Courts, the County of Orange, and the Superior Court of California, County of Orange and the Presiding Judge, its elected and appointed officials, officers, agents and employees from all costs and liability caused by Contractor's breach.

G. **Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:

- 1) **Separate.** Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
- 2) **Joint.** Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

19. **Intellectual Property.** Contractor shall perform its obligations under this Agreement in a manner that the Services (including each Deliverable) and any portion thereof, does not infringe, or constitute and infringement, misappropriation or violation of, any Intellectual Property Right. Contractor has full Intellectual Property Rights and authority to perform all of its obligations under this Agreement, and Contractor is and will be either the owner of, or authorized to use for its own and the Court's benefit, all Contractor Works and Third Party Works used and to be used in connection with the Services.

20. **Limitation of Liability.** Court will not be liable to Contractor, its officers, employees, Subcontractors, or Third Parties for any indirect, special, or consequential damages, including lost profits or revenue, arising from or relating to this Agreement, regardless whether Court was advised of the possibility of such loss or damage. In no event will Court's liability for direct damages arising from or related to this Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Contractor by Court under this Agreement.

21. **Miscellaneous Provisions; Interpretation**

A. **Special Provisions for Agreements Providing for Compensation of \$50,000 or more; Union Activities Restrictions.** As required under Government Code sections 16645-16649, if this Agreement provides for total Compensation of \$50,000 or more to Contractor, then the covenants in this section apply to Contractor's activities. Contractor shall not:

- 1) Assist, promote, or deter union organizing by employees performing work under state or judicial branch contracts;
- 2) Use the state's or Court's funds received under this Agreement to assist, promote, or deter union organizing; or
- 3) For any business conducted under this Agreement, use any property of the state or Court to hold meetings with employees or supervisors, if the purpose of such meetings is to

assist, promote, or deter union organizing, unless the state or judicial branch property is equally available to the general public for holding meetings.

If Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, Contractor shall maintain records sufficient to show that no reimbursement from the state's or Court's funds has been sought for these costs, and provide those records to the Attorney General upon request.

**B. Special Provisions regarding DVBE Participation Certification.** If Contractor made a commitment to achieve disabled veterans business enterprise participation, Contractor shall within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the Court: (1) the total amount the prime Contractor received under the Agreement; (2) the name and address of any disabled veterans business enterprises (DVBE) that participated in the performance of this Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under this Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

**C. Special Provisions regarding Ownership of Results.**

1) *Special Provisions regarding Grant Funds.* If this Agreement provides Compensation to Contractor for a project funded through a grant, at the conclusion of the Project, title to all expendable and non-expendable personal property with a value of \$500 or more purchased with Court funds shall vest, automatically and without further action of the parties, with the Court. If Contractor provides written certification to the Court that the property will continue to be used for grant-related purposes and the Court approves such certification in writing, the Court may permit title to all such property to remain with Contractor in accordance with the Court's written instructions. Contractor must await specific written instructions from the Project Manager regarding any transfer of title or disposition.

2) *Special Provisions regarding Ownership of Certain Equipment.* If Compensation under this Agreement is not through grant funding and this Agreement provides for the provision of equipment purchased or built with Court funds, title to any equipment purchased or built with Court funds shall vest in the Court immediately upon payment of the purchase price. Before delivery to the Court, Contractor is responsible for loss or damage to the equipment to the extent it results from the negligent act or omission of Contractor or its directors, officers, employees, or agents, and Contractor shall make all necessary or appropriate repairs and adjustments.

**D. Special Provisions Applicable to Competitively Bid Contracts; Antitrust Claims.** If Services or Goods under this Agreement were obtained by means of a competitive bid, Contractor shall comply with the requirements of Government Code sections set out below.

1) Contractor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Court pursuant to the bid. Such assignment shall be made and become effective at the time the Court tenders final payment to the Contractor. (GC 4552)

- 2) If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)
- 3) Upon demand in writing by the Contractor, the Court shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (1) the Court has not been injured thereby, or (2) the Court declines to file a court action for the cause of action. (GC 4554)

**22. Modification.** No modification or change to this Agreement will be valid without written approval by Court, in the form of an Amendment, including any changes to Exhibit D, Scope of Work.

**23. Notices.** Notices under this Agreement must be in writing. Notices may be delivered in person, via a reputable express carrier, by registered or certified mail (postage pre-paid), or by email. Notice is effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the notice was refused, unclaimed, or deemed undeliverable. Notices must be addressed to a party's project manager, if one is designated in on the Cover Sheet of this Agreement. Either party may change its address for receipt of notice by entering a different recipient and address below or by giving notice at any time to the other party in the manner permitted by this paragraph.

**24. Prohibited Bids for End Product of this Agreement.** No person, firm, or subsidiary thereof which has been awarded a consulting services agreement may submit a bid for, or be awarded an agreement for, the provision of services, procurement of Materials or Data, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of this Agreement. This provision will not apply to any person, firm, or subsidiary thereof, which is awarded a subcontract under this Agreement in an amount no more than ten percent of the total monetary value of this Agreement.

**25. Public Contract Code.** Effective March 24, 2011, Part 2.5 of the California Public Contract Code (§ 19201 – 19210), cited as the California Judicial Branch Contract Law, requires the Judicial Branch (including the Court) to comply with Public Contract Code parts that apply to state agencies and departments re: procurement of goods/services. The California Judicial Branch Contract Law applies to all contracts initially entered into or amended by Judicial Branch entities (including the Court) on or after October 1, 2011.

**26. Scope of Work; Delivery; Acceptance.**

A. **Scope of Work.** Contractor will perform the Services described in this Agreement, Exhibit D, Scope of Work, and the Specifications. Except as set forth in Exhibit D, Scope of Work, Contractor is responsible for providing all facilities, materials, and resources (including personnel, equipment and software) necessary and appropriate for delivery of the Services and to meet Contractor's obligations under this Agreement, to the satisfaction of the Court.

B. **Delivery.** Contractor shall deliver to the Court the Deliverables in accordance with this Agreement.



C. **Acceptance.**

- 1) All Work provided by Contractor under this Agreement is subject to written acknowledgement and acceptance by Court's Project Manager. The Court may reject any Services or Deliverables that: (i) fail to meet applicable requirements, Specifications, or acceptance criteria; (ii) are not as warranted; (iii) are performed or delivered late, or not provided in accordance with this Agreement; or (iv) contain Defects. The Court's Project Manager will apply the acceptance criteria set forth in Exhibit D, Scope of Work, (including timeliness, completeness, technical accuracy and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the Work.
- 2) If the Work is not acceptable, Project Manager shall detail its failure to meet the acceptance criteria and provide a notice of rejection of such Deliverable or Service. Contractor shall have ten (10) business days, or as mutually agreed upon, from receipt of such notice to correct the failure(s) to conform to the acceptance criteria. Contractor will re-submit the Work and the Project Manager shall re-apply the acceptance criteria to determine its acceptance or non-acceptance. Thereafter, the parties shall repeat the process set forth in this Section until Contractor's receipt of Court's written acceptance of such corrected Work; provided, however, that if Court rejects any Work on at least two (2) occasions, Court may terminate that portion of this Agreement which relates to the rejected Work at no expense to Court.
- 3) If or when Contractor does not provide service(s) as specified, the Court may provide or contract with others to provide the service(s), and the amount payable under the Agreement shall be reduced by the cost to Court of labor, material, overhead, and administration for such corrective action. Such action does not constitute an acceptable alternative to performance of the Work by the Contractor.
- 4) If the Court rejects any Services or Work Product after payment to Contractor, the Court may exercise all contractual and other legal remedies, including (i) setting off the overpayment against future invoices payable by the Court, (ii) setting off the overpayment against any other amount payable for the benefit of Contractor pursuant to this Agreement or otherwise, and (iii) requiring Contractor to refund the overpayment within thirty (30) days of the Court's request.

D. **Prior Work.** Prior work, performed by Contractor pursuant to Court's authorization, but before execution of this Agreement, will be considered as having been performed subject to the provisions of this Agreement.

E. **Non-Exclusivity.** This is a non-exclusive agreement. Court reserves the right to perform, or have others perform the Work of this Agreement. Court reserves the right to bid the Work to others or procure the Work by other means.

27. **Services and Deliverables.** (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and (ii) Contractor will use

efficiently the resources or services necessary to provide the Services; and perform the Services in the most cost efficient manner consistent with the required level of quality and performance. Contractor represents and warrants that each Deliverable will conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation. For each such Deliverable, the foregoing representation and warranty in this section shall commence for such Deliverable upon the Court's acceptance of such Deliverable, and shall continue for a period of one (1) year following Acceptance. In the event any Deliverable does not conform to the foregoing provisions of this section, Contractor shall promptly correct all non-conformities.

## 28. Standard of Performance; Warranties

A. **Standard of Performance.** Contractor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Agreement, and pursuant to the governing rules and regulations of the industry. Contractor understands that Court relies on the accuracy, competence, and completeness of Contractor's services.

### B. Warranties.

- 1) Contractor warrants and represents that all Work shall meet all applicable requirements of the latest revision of the Mechanical, National Electrical, Unified Building and Plumbing, and any other code which may apply to the Work. Contractor must warranty all Work against defects in workmanship; and shall satisfactorily correct, at no cost to the Court, any such defect that may become apparent within a period of one (1) year after completion of the work. The warranty period shall commence upon date of acceptance by the Court. Court's approval of designs or specifications furnished by Contractor will not relieve Contractor of its obligations under this warranty.

Contractor warrants and represents that all parts furnished during the Work shall be the latest improved models in current production, as offered to commercial trade, and shall be of quality material. USED, SHOPWORN, DEMONSTRATOR, PROTOTYPE, RECONDITIONED OR DISCONTINUED MODLES OR MATERIALS ARE NOT ACCEPTABLE. The warranty period for Contractor provided materials shall be for a period of one (1) year after completion of the installation or within manufacturer's warranty, whichever is the later period. The warranty period shall commence upon date of acceptance by the Court. Contractor shall provide specified Court Project Manager with all manufacturers' warranty documents upon completion of the installation and prior to leaving the job site.

- 2) **Non-Infringement.** Contractor represents and warrants to Court that it is and will be either its own, or be authorized to use for its own and the Court's benefit, all intellectual property rights used and to be used in connection with providing and/or performing the Work.
- 3) All warranties will inure to Court, its successors, assigns, customer agencies, and users of the Work provided hereunder.

- 4) Unless otherwise specified, the warranties set forth in this Section 26 commence after Work has been approved and accepted by Court.

**29. Survival.** Terms that will survive termination or expiration of this Agreement include, but are not limited to: Assignment, Audit Rights and Retention of Records, Confidentiality, Indemnification, Limitation of Liability, Warranties.

**30. Termination**

A. **Termination for Cause.** Court may terminate this Agreement, in whole or in part, and be relieved of any payments, if Contractor fails to perform the requirements of this Agreement at the time and in the manner agreed. Court may proceed with the Work in any manner deemed proper. All costs to Court arising from Contractor's default, including costs to complete or correct the Work, will be deducted from any sum due Contractor. Contractor will not be entitled to recover overhead or profit on the uncompleted portions of the Work.

If the Court terminates this Agreement or any portion thereof for cause, the Court may acquire from third parties, under the terms and in the manner the Court considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the Court for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Court for such goods or services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Court. Contractor shall continue the Services not terminate hereunder.

B. **Termination for Convenience.**

- 1) Court may terminate this Agreement, in whole or in part, at any time and for any reason, upon at least ten (10) days Notice to Contractor. Upon receipt of the termination Notice, Contractor will promptly discontinue Work as specified in the Notice.
- 2) If Court terminates all or part of this Agreement other than for cause, the Court will pay Contractor for the Work satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the Work.

C. **Termination due to Fund Appropriation and Availability.**

- 1) Court's obligations under this Agreement are subject to the availability of funds authorized for this Work. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current Appropriation Year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement.
- 2) Upon Notice, Court may terminate this Agreement in whole or in part, without prejudice to any right or remedy of Court, for lack of appropriation of funds. Upon termination, Court will pay Contractor for the fair value of Work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.

D. **Termination due to Death, Permanent Incapacity.**

- 1) This entire Agreement will terminate immediately without further action of the parties upon the death or temporary or permanent incapacity, of a natural person who is a party to this Agreement or a general partner of a partnership that is a party to this Agreement.

**E. Effect of Termination and/or Expiration.**

- 1) Upon any expiration or termination, or any portion thereof, Contractor shall promptly provide the Court with all originals and copies of Deliverables (including (i) any partially-completed Deliverables and related work product or materials; and (ii) any Contractor Works, Third Party Works, and Developed Works comprising such Deliverables or partially-completed Deliverables), Confidential Information, Court Data, Court Works, and all portions thereof, in its possession, custody, or control. In the event of any termination of this Agreement or any portion thereof, the Court shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the Court's termination is not based on a Default, Court shall pay any fees due under this Agreement for Deliverables completed and accepted as of the date of the Court's termination notice. Should Contractor not comply with the provisions of this section, Court will have the right to take possession of any materials, equipment, Deliverables, and other Work including partially completed Work. Contractor will immediately assign to Court all of Contractor's right, title, and interest in and to such Work and related materials and Work product, and any and all intellectual property rights.
  - a. Contractor shall return to the Court any equipment purchased or built with Court funds, with costs incurred by Contractor being reimbursed by the Court.
- 2) Upon termination of any kind, Court may withhold from payment any sum that Court determines to be owed to Court by Contractor, or necessary to protect Court against loss due to outstanding liens or claims of former lien holders.
- 3) Upon the Expiration/Termination Date:
  - a. The Court shall be released from compensating Contractor for Services, other than those Contractor satisfactorily performed before the Termination Date, and for any indirect costs.
  - b. Without prejudice to the Court, Contractor shall be released from performing Services.

**F. Termination Assistance.** At the Court's request and option, during the Termination Assistance Period, Contractor shall provide, at the same rates charged immediately before the start of the Termination Assistance Period, to the Court or to its designee (collectively, "Successor") services reasonably necessary to enable the Court to obtain from another contractor, or to provide for itself, services to substitute for or replace the Services, together with all other services to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to the Successor (collectively, the "Termination Assistance Services"). Termination Assistance Services will be provided to the Court by Contractor regardless of the reason for termination or expiration. At the Court's option and election, the Court may extend the Termination Assistance Period for an additional six (6) months.

**31. Cancellation.**

**A. Cancellation Rights.**

- 1) The Court may also cancel delivery immediately of all or any portion of unshipped Goods or limit Contractor's Services, and, proportionately, Contractor's compensation except to reimburse Contractor for its actual costs incurred before expenses arising out of early termination by the Court, and any direct and indirect expenses incurred by cancellation of Goods in process that are custom made for the Court, if terminated for reason of cause as defined in Section 28 A, Termination for Cause.

**32. Time is of the Essence.** Time of performance is of the essence in the performance of services by Contractor under this Agreement.

**33. Travel Rate Guidelines.** Contractor's travel expenses are not reimbursable by the Court, unless the Agreement expressly indicates that the Court will reimburse such expenses in accordance with Exhibit E, Travel Guidelines.

**34. Waiver; Severability**

**A. Waiver of Rights.** Court's action, inaction, or failure to enforce any right or provision of this Agreement is not a waiver of its rights, and will not prevent Court from enforcing such rights on any future occasion.

**B. Severability.** The provisions of this Agreement will be effective in all cases, unless otherwise prohibited by applicable state or federal law. The provisions of this Agreement are separate and severable. The invalidity of any sentence, paragraph, provision, section, or portion of this Agreement will not affect the validity of the remainder of this Agreement.

**35. Entire Agreement.**

**A.** Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and will not be used to interpret or determine the validity of this Agreement.

**B.** This Agreement was negotiated between the parties, and neither party "prepared" this Agreement for purposes of California Civil Code §1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.

**C.** This Agreement constitutes the entire and final understanding of the parties regarding this matter, and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to the this matter.

**END OF EXHIBIT B-1**

## EXHIBIT B-2

### SUPPLEMENTAL TERMS AND CONDITIONS

#### 1. Data and Security.

- A. **Safety and Security Procedures.** Contractor shall maintain and enforce, at the Contractor Service Locations, industry-standard safety and physical security policies and procedures. While at each Court Service Location, Contractor shall comply with the safety and security policies and procedures in effect at such Court Service Location.
- B. **Data Security.** Contractor shall comply with the Data Safeguards. Contractor personnel and Subcontractors shall not attempt to access, and shall not allow access to the Court data and other Confidential Information that is not required for the performance of the Services by such personnel or Subcontractors. In the event Contractor or a Subcontractor discovers or is notified of a breach or potential breach of security relating to the Court data or other Confidential Information, Contractor shall promptly, at its own expense:
- 1) Notify the Court Project Manager (“CPM”) of such breach or potential breach; and
  - 2) If the applicable Court Data or other Confidential Information was in the possession of Contractor or Subcontractors at the time of such breach or potential breach, Contractor shall:
    - a. Investigate and cure the breach or potential breach; and
    - b. Take measures satisfactory to the Court to prevent such breach or potential breach from recurring.
- C. **Security Assessments.** At least once a year, or upon the Court’s request, Contractor shall, at its expense, perform, or cause to have performed an assessment of Contractor’s compliance with the safety and security policies set forth in this Agreement or any Statement of Work. Contractor shall provide to the Court the results, including any findings and recommendations made by Contractor’s assessors, of such assessment, and, at its expense, take any corrective actions. The Court and Court Contractors may, at the Court’s expense, perform the assessments described in this Section and “snap” assessments (e.g., safety and data/physical security assessments) of the Court Service Locations.

2. **Four-Digit Date Compliance.** Contractor represents and warrants that it will provide only Four-Digit Date Compliant Deliverables and/or Services to the Court. “Four-Digit Date Compliant” Deliverables and Services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries.

#### 3. Intellectual Property.

- A. **Contractor/Third Party Works.** Contractor shall set forth in an exhibit to each Statement of Work all Contractor Works and Third Party Works that Contractor intends to use in connection with that Statement of Work. The Court shall have the right to approve in writing the introduction of any Contractor Works or Third Party Works into any Deliverable or Service prior to such introduction. Contractor grants to the Court, together with all Court Contractors, without additional charge, a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, non-exclusive license to use, reproduce, perform, display, transmit, distribute, modify, create derivative works of, make, have made, sell, offer for sale and import Contractor Works and Third Party Works

(including Source Code) and to sublicense such rights to other entities, in each case for the purpose of conducting the Court's business.

- B. **Rights in Developed Works.** Upon their creation, the Developed Works (and all Intellectual Property Rights therein) will be the sole and exclusive property of the Court. Contractor (for itself, Project Staff and Subcontractors) hereby irrevocably assigns, transfers and conveys to the Court without further consideration all worldwide right, title and interest in and to the Developed Works, including all Intellectual Property Rights therein. Contractor further agrees to execute, and shall cause Project Staff and Subcontractors to execute, any documents or take any other actions as may be reasonably necessary or convenient to perfect the Court's or its designee's ownership of any Developed Works and to obtain and enforce Intellectual Property Rights in or relating to Developed Works. Contractor may use Developed Works solely to provide the Services during the term of this Agreement. Contractor shall promptly notify the Court upon the completion of the development, creation or reduction to practice of any and all Developed Works.
  - C. **Retention of Rights.** The Court retains all rights, title and interest (including all Intellectual Property Rights) in and to the Court Works. Subject to rights granted herein, Contractor retains all rights, title and interest (including all Intellectual Property Rights) in and to the Contractor Works.
  - D. **Third-Party Rights.** Contractor hereby assigns to the Court all of Contractor's licenses and other rights (including any representations, warranties, or indemnities that inure to Contractor from third parties) to all Third Party Works incorporated into the Deliverables or Services. If such licenses and rights cannot be validly assigned to or passed through to Court by Contractor without a Third Party's consent, then Contractor will use its best efforts to obtain such consent (at Contractor's expense) and will indemnify and hold harmless the Court, Judicial Branch Entities and Judicial Branch Personnel against all Claims arising from Contractor's failure to obtain such consent.
4. **Malicious Code.** No Deliverable will contain any Malicious Code. Contractor shall immediately provide to the Court written notice in reasonable detail upon becoming aware of the existence of any Malicious Code. Without limiting the foregoing, Contractor shall use best efforts and all necessary precautions to prevent the introduction and proliferation of any Malicious Code in the Court's IT Infrastructure or networks or in the Contractor systems used to provide Services. In the event Contractor or the Court discovers the existence of any Malicious Code, Contractor shall use its best efforts, in cooperation with the Court, to effect the prompt removal of the Malicious Code from the Deliverables and the Court's IT Infrastructure and the repair of any files or data corrupted thereby, and the expenses associated with the removal of the Malicious Code and restoration of the data shall be borne by Contractor. In no event will Contractor or any Subcontractor invoke any Malicious Code
5. **Progress Reports.** As directed by the Court, Contractor must deliver progress reports or meet with Court personnel on a regular basis to allow: (i) the Court to determine whether the Contractor is on the right track and the project is on schedule, (ii) communication of interim findings, and (iii) opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly.
6. **Project Staff.**
- A. **Contractor Project Manager.** The Contractor Project Manager shall serve, from the Effective Date, as the Contractor project manager and primary Contractor representative under this Agreement. The Contractor Project Manager shall (i) have overall responsibility for managing

and coordinating the performance of Contractor's obligations under this Agreement, including the performance of all Subcontractors; and (ii) be authorized to act for and bind Contractor and Subcontractors in connection with all aspects of this Agreement. The Contractor Project Manager shall respond promptly and fully to all inquiries from the Court Project Manager.

B. **Contractor Key Personnel.** The Court reserves the right to interview and approve proposed Contractor Key Personnel prior to their assignment to the Court. Contractor shall not replace or reassign any Contractor Key Personnel unless the Court consents in advance in writing or such Contractor Key Personnel (i) voluntarily resigns or takes a leave of absence from Contractor, (ii) has his/her employment, professional or other for-hire relationship terminated by Contractor, (iii) fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) dies or is unable to work due to his or her disability. If Contractor needs to replace a Contractor Key Personnel for any of the foregoing reasons, Contractor shall:

- 1) notify the Court promptly;
- 2) provide resumes for proposed replacement Contractor Key Personnel within two (2) Business Days after so notifying the Court; and
- 3) be responsible for all costs and expenses associated with any replacement of any Contractor Key Personnel member (including, without limitation, any costs and expenses associated with training, project orientation or knowledge transfer reasonably required for replacement personnel to provide the applicable Services).

C. **Subcontractors.** Contractor shall not subcontract or delegate any of the obligations under this Agreement except as approved by the Court in writing in advance. The Court may withdraw its approval of a subcontractor if the Court determines in good faith that the subcontractor is, or will be, unable to effectively perform its responsibilities. If the Court rejects any proposed subcontractor in writing, Contractor will assume the proposed subcontractor's responsibilities. No subcontracting shall release Contractor from its responsibility for performance of its obligations under this Agreement. Contractor shall remain fully responsible for the performance of Subcontractors hereunder, including, without limitation, all work and activities of Subcontractors providing services to Contractor in connection with the Services. Contractor shall be the sole point of contact with Subcontractors under this Agreement, and Contractor shall be solely responsible for Subcontractors, including, without limitation, payment of any and all charges resulting from any subcontract. The Court's consent to any subcontracting or delegation of Contractor's obligations will take effect only if there is a written agreement with the Subcontractor, stating that the Contractor and Subcontractor:

- 1) are jointly and severally liable to the Court for performing the duties in this Agreement;
- 2) affirm the rights granted in this Agreement to the Court;
- 3) make the representations and warranties made by the Contractor in this Agreement;
- 4) appoint the Court an intended third party beneficiary under Contractor's written agreement with the Subcontractor; and
- 5) shall comply with and be subject to the terms of this Agreement, including with respect to Intellectual Property Rights, Confidential Information and Data Safeguards.

D. **Project Staff.** Contractor shall appoint to the Project Staff:



- 1) Individuals with suitable training and skills to perform the Services; and
- 2) Sufficient staffing to adequately provide the Services.

Contractor shall make commercially reasonable efforts consistent with sound business practices to honor the specific request of the Court with regard to assignment of its employees. The Court shall have the right to require Contractor to remove any personnel from the Project Staff that interact with any personnel of the Court or Court Contractors (including, without limitation, the Contractor Project Manager) upon providing to Contractor a reason (permitted by law) for such removal. Contractor may, with the Court's consent, continue to retain such member of the Project Staff in a role that does not interact with any personnel of the Court or Court Contractors. The Contractor Project Manager and the Court Project Manager shall work together to mitigate any impact on the schedule as set forth in a Statement of Work caused by any replacement of a Project Staff member. Contractor shall be responsible for all costs and expenses associated with any Project Staff replacement. Contractor shall assure an orderly and prompt succession for any Project Staff member who is replaced. Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

**E. Conduct of Project Staff.**

- 1) While at the Court Service Locations, Contractor shall, and shall cause Subcontractors to:
  - a. comply with the requests, standard rules and regulations and policies and procedures of the Court regarding safety and health, security, personal and professional conduct generally applicable to such Court Service Locations;
  - b. otherwise conduct themselves in a businesslike manner.
- 2) Contractor further shall enter into an agreement with each of the members of the Project Staff which assigns, transfers and conveys to Contractor all of such Project Staff member's right, title and interest in and to any Developed Works, including all Intellectual Property Rights in and to Developed Works.
- 3) Contractor shall cooperate with the Court if the Court wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Court may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Court of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Court and performed by Contractor. Contractor shall remove from the Project Staff any person refusing to undergo such background checks and any other person whose background check results are unacceptable to Contractor or that, after disclosure to the Court, the Court advises are unacceptable to the Court.

**7. Third Party or Court Services.** Notwithstanding anything in this Agreement to the contrary, the Court shall have the right to perform or contract with a Third Party to perform any service within or outside the scope of the Services, including services to augment or supplement the Services or to interface with the IT Infrastructure of the Court or Court Contractors. In the event the Court performs or contracts with a Third Party to perform any such service, Contractor shall cooperate in good faith with the Court and any such Third Party, to the extent reasonably required by the Court, and the Court shall reimburse

Contractor for its actual out-of-pocket costs and personnel time based on the discounted rate table set forth in the applicable Statement of Work, in each case, as incurred in providing such assistance. Such cooperation shall include, without limitation, providing such information as a person with reasonable commercial skills and expertise would find reasonably necessary for the Court or a Third Party to perform its work relating to the Services.

8. **Communication(s):** Any correspondence referring to the terms, prices and conditions of this Agreement must be directed to the Contracts & Procurement Unit, Attn: Karl K. Truong
9. **Publicity:** Contractor may not make a public announcement, or issue any press release or other writing, related to this Agreement without first obtaining the Court's prior written approval, which may be denied for any or no reason.

**END OF EXHIBIT B-2**

## EXHIBIT C

### PAYMENT PROVISIONS

#### 1. Contract Amount

- A. The total amount the Court may pay to Contractor under this Agreement for performing all Work, as well as all Travel and Living Expenses and/or Reimbursable Expenses specified therein, shall not in any event exceed the Total Contract Value to Date specified on the cover sheet of this Agreement, Section 3, Contract Amount.
- B. The total amount the Court may pay to Contractor under this Agreement (“Contract Amount”) shall not in any event exceed the total of all Total Amount(s) to Date on the coversheet of this Agreement, Section 3, Contract amount and all amendments authorized under this Agreement.

#### 2. Taxes

The Court is exempt from federal excise taxes and no payment will be made for any taxes levied on Contractor’s or any Subcontractor’s employees’ wages. The Court will pay for any applicable State of California or local sales or use taxes on the Deliverables provided or Services rendered pursuant to this Agreement.

#### 3. Invoicing Requirements

##### A. Invoice Procedures:

After the Court has accepted Services and Work Product, Contractor will send one (1) original correct, itemized invoice for the accepted Services and Work Product to “Accounts Payable,” at the address shown below. Invoices shall reference the Agreement and Purchase Order Number(s) as applicable.

Invoices are to be submitted in arrears for the services provided and within thirty (30) days of the accepted Work. Billing shall cover services not previously invoiced.

##### B. Invoice Submittals

Invoices may be submitted either electronically via e-mail or hard copy submittal by mail, in accordance with the following instructions:

- Electronic Submittal of Invoices

Contractors may submit Invoices electronically (PDF version) to the Court Accounting Services email address: [AccountingServices@occourts.org](mailto:AccountingServices@occourts.org).

On the Subject Line of the e-mail, please reference Contractor Name, Invoice Number(s), Agreement Number, and Purchase Order Number.

***Example:***

*Contractor Name. – Invoice # XXXXX – Agreement # SC4923*

OR

- Hard Copy Submission of Invoices

Contractors may mail Invoices (hard copy) to Court PO box address if they choose not to submit them electronically.

Superior Court of California, County of Orange  
Financial Services (Reference PO. # XXXXX)  
700 Civic Center Drive West  
P.O. Box 22002  
Santa Ana, CA 92702

**C. Invoice Instructions**

Contractor will print each invoice on Contractor's standard printed bill form, and each invoice will include at least (i) the Purchase Order Number, (ii) a unique invoice number, (iii) Contractor's name and address, (iv) the nature of the invoiced charge, (v) the total invoiced amount, (vi) any/all receipts for Contractor provided materials, and (vii) all other details the Court considers reasonably necessary to permit the Court to evaluate the Services performed and the Work Product delivered, including the number of hours worked and the applicable hourly rate. If requested, Contractor will promptly correct any inaccuracy and resubmit the invoice.

**D. Invoice Details**

Contractor will submit invoices to the Court. Each invoice will have a number and will include, at minimum, the following information:

- (1) Purchase Order # XXXX
- (2) Service request date
- (3) Description of service(s), including the following information:
  - Location where service(s) were performed
  - Description of service(s) performed
  - Court Project Manager
- (4) Hours billed
- (5) Hourly billing rate
- (6) List of materials used with pricing
- (7) Date of service completion
- (8) Name and address of contractor
- (9) Contractor's federal taxpayer's ID number.

Contractor will include all back up documentation and receipts associated with each invoice.

For Fixed Price Work Provided on a Deliverables Basis, Contractor shall invoice on successful acceptance of a Deliverable. Contractor's invoice(s) shall clearly specify:

- The Agreement number, SC4923;
- Purchase Order # XXXX
- A unique invoice number;
- Contractor's name and address;
- Contractor's Taxpayer identification number (FEIN);
- Description of the Deliverable
- The Fixed Price of the Deliverable
- Preferred remittance address, if different from the mailing address

For Time and Materials Not to Exceed Basis Work Provided on a Deliverables Basis, Contractor shall invoice on successful acceptance of a Deliverable. Contractor's invoice(s) shall clearly specify:

- The Agreement number, SC4923
- Purchase Order # XXXXX
- A unique invoice number;
- Contractor's name and address;
- Contractor's Taxpayer identification number (FEIN);
- For each Deliverable accepted in the previous calendar month, provide separately by Deliverable:
- Description of the accepted Deliverable
- Names, Titles, Hours, Rates and Dates of Performance for all of Contractor or its Subcontractor employees for hours of Work actually incurred in providing that Deliverable during the previous calendar month, including a total for all such Work.
- If the Court specifies that the Contractor is to be compensated for Travel and Living Expenses incurred in providing that Deliverable, the dates the expense was incurred, name of employee, and separate costs for air transportation, overnight lodging, and private vehicle ground transportation (include origin, destination, and miles claimed).
- If the Court specifies that the Contractor is to be compensated for Reimbursable Expenses incurred in providing that Deliverable, the date the expense was incurred description of the expense, and amount of the expense.
- A grand total for all hours, Travel and Living Expenses, and Reimbursable Expenses billed on the invoice, individually for each Deliverable and in total for the invoice, with a grand total
- Preferred remittance address, if different from the mailing address

For Time and Materials Not to Exceed Basis Work Not Provided on a Deliverables Basis, Contractor shall invoice as follows. Contractor's invoice(s) shall clearly specify:

- The Agreement number; SC4923
- Purchase Order # XXXXX
- A unique invoice number;
- Contractor's name and address;
- Contractor's Taxpayer identification number (FEIN);
- Names, Titles, Hours, Rates and Dates of Performance for all of Contractor or its Subcontractor employees for hours of Work actually incurred during the previous calendar month, including a total for all such Work.
- If the Court specifies that the Contractor is to be compensated for Travel and Living Expenses, the dates the expense was incurred, name of employee, and separate costs for air transportation, overnight lodging, and private vehicle ground transportation (include origin, destination, and miles claimed).
- If the Court specifies that the Contractor is to be compensated for Reimbursable Expenses, the date the expense was incurred, description of the expense, and amount of the expense.
- A grand total for all hours, Travel and Living Expenses, and Reimbursable

- Expenses billed on the invoice.
- Preferred remittance address, if different from the mailing address

**4. Payment**

The Court will endeavor to pay invoices within thirty (30) days after receipt of a correct, itemized invoice. In no event shall the Court be liable for interest or late charges for any late payments.

Payment shall be made by the Court to the Contractor at the address specified on the invoice.

The Court may withhold full or partial payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

**5. Pricing / Rate Sheet**

**6. Final Payment**

The following conditions must be fulfilled prior to final payment: suffice

- Contractor shall have delivered to the Court all applicable written guarantees and warranties, including those of its subcontractors, if applicable;
- The Contractor shall have delivered to the Court all applicable manuals;

The final payment shall be the amount of owed to Contractor, in accordance with this Agreement, less the following: (i) any amounts reasonably disputed by the Court; (ii) one hundred fifty percent (150%) of the Court's estimate of any amount necessary to complete any Punch List Items which are still not complete; (iii) any amounts attributable to stop notices which the Court is required to withhold under California law (i.e. Civil Code sections 3181 et. seq.).

**7. Release of Claims**

The acceptance by the Contractor of its final payment due under this Agreement shall be and shall operate as a release to the State Entities, County of Orange, and the Court of all claims and all liability to the Contractor for everything done or furnished in connection with this Agreement (including every act and neglect of the Court), with the exception of any claims that are expressly identified by the Contractor as outstanding as of the date of Contractor's submission of Contractor's final application for payment. Contractor's failure to identify any such claims shall operate as a release of all claims.

**END OF EXHIBIT C**

**EXHIBIT D**

**SCOPE OF WORK**

**END OF EXHIBIT D**

## EXHIBIT E

### TRAVEL RATE GUIDELINES

The Court's policy and limits on reimbursable travel-related expenses are listed below. To be eligible for lodging and/or meal reimbursement, expenses must be incurred in excess of 25 miles from headquarters; must be pre-approved in advance by Court designated project manager and is provided herein for Work performed on a time and material or reimbursable not-to-exceed basis. All Work performed on a fixed price lump-sum basis is inclusive of travel and travel expenses.

#### 1. **Lodging.**

Receipts are required and each day of lodging claimed must be listed separately on the reimbursement claim form. Maximum rates are listed below. Exceptions may be considered on a case-by-case basis, and for centrally booked conferences or meetings.

##### A. **In-state.**

Actual costs are reimbursable up to a maximum of \$110 per day, plus tax and energy surcharge. Within the counties of Alameda, San Francisco, San Mateo, and Santa Clara, the maximum rate is \$140, plus tax and energy surcharge.

##### B. **Out-of-state.**

Actual costs are reimbursable with appropriate prior approval.

#### 2. **Meals.**

Actual costs are reimbursable up to the limits stated below for continuous travel of more than 24 hours.

##### A. **Breakfast.**

Up to six dollars (**\$6.00**).

##### B. **Lunch.**

Up to ten dollars (**\$10.00**).

##### C. **Dinner.**

Up to eighteen dollars (**\$18.00**).

Meal reimbursement for one-day trips is taxable and reportable income unless travel included an overnight stay. For continuous travel of less than 24 hours, actual expenses up to the above limits may be reimbursable if:

A. Travel begins one (1) hour before normal work hours, breakfast may be claimed.

B. Travel ends one (1) hour after normal work hours, dinner may be claimed.

C. Lunch may not be claimed on trips of less than 24 hours.

In accordance with agency policy, judges, commissioners, and those non-represented personnel who earn more than \$100,000 per year are not reimbursed for travel-related lunch meal expenses, effective October 1, 2003.



**3. Incidental Expenses.**

Up to six dollars (**\$6.00**) per day. Incidentals are not reimbursable for one-day trips; they may only be claimed after 24 hours.

**4. Transportation.**

The actual cost of tickets for air, rail, bus, rental car, or other forms of public transportation is reimbursable. The lowest cost ticket available must be purchased. Receipts are required for rental cars and air travel. For ticketless travel, the traveler's itinerary may be submitted in lieu of a receipt.

A. The actual costs of cab fare, public parking, and tolls are reimbursable. Receipts are required for all expenses of three dollars and fifty cents (**\$3.50**) or more.

**B. Mileage.**

Personal vehicle mileage is reimbursable at a rate of thirty-four cents (**\$.34**) per mile

**C. Privately owned aircraft.**

Reimbursement is fifty cents (**\$.50**) per statute mile. This reimbursement is taxable and reportable income.

**5. Other Business Expenses.**

Actual cost is reimbursable. Receipts are required for all other business expenses, regardless of the amount claimed.

In the event receipts cannot be obtained or have been lost, a statement to that effect and the reason provided shall be noted in the expense account. In the absence of a satisfactory explanation, the amount involved shall not be allowed. Further, a statement explaining that a receipt has been lost shall not be accepted for lodging, airfare, rental car, or business expenses.

Receipts for telephone or telegraph charges related to court business of two dollars and fifty cents (**\$2.50**) or less are not required. However, claims for phone calls must include the place and party called.

**END OF EXHIBIT E**

**END OF AGREEMENT**

## ATTACHMENT C – COST PROPOSAL

Quantity	DESCRIPTION	UNIT PRICE	TOTAL PRICE
2	<p style="text-align: center;"><b>Cisco Email Security Appliances C370 (C370-BUN-R-NA Standard Configuration Production Units)</b></p> <ul style="list-style-type: none"> <li>• 1 Year Anti-Spam,</li> <li>• 1 Year Anti-Virus,</li> <li>• 1 Year Outbreak Filters,</li> <li>• 1 Year Centralized Management</li> <li>• 1 Year Platinum Support 24/7 (December 18, 2012 to December 17, 2013)</li> </ul>	\$	\$
<i>ONE TIME PURCHASE. PAYABLE NET 30 (DAYS)</i>			

ANNUAL CISCO IRONPORT PLATINUM 24/7 SOFTWARE MAINTENANCE & SUPPORT (include licenses for 1800 users)	ANNUAL PRICE
<b>December 18, 2013 through December 17, 2014</b>	\$
<b>December 18, 2014 through December 17, 2015</b>	\$
<b>December 18, 2015 through December 17, 2016</b>	\$
<b>December 18, 2016 through December 17, 2017</b>	\$
<i>THIS IS A CONTRACT FOR A FIVE (5) YEAR PLATINUM 24/7 MAINTENANCE &amp; SUPPORT. PRICING FOR FIVE (5) YEARS SHOULD BE FIRM FIXED PRICE. PAYABLE ANNUALLY IN ADVANCE.</i>	