



**Superior Court of California, County of Riverside**

**PURCHASE ORDER  
TERMS AND CONDITIONS**

The terms and conditions in this document are incorporated by reference into all Court Purchase Orders (POs) that make reference to them. These terms and conditions are in addition to all other terms and conditions printed on or attached by the Court to the PO. If there is any conflict between a provision in this document and any other provision of the PO, whether or not it is incorporated into the PO or set forth on its face, the provision contained in the PO shall prevail. No additional or different terms or conditions imposed by Vendor by attachment to the PO, in a Bill of Lading, click-through or shrink-wrap agreement, or similar document have any force or effect unless the Court and Vendor have agreed to them in a subsequently mutually signed writing that makes specific reference to the PO and this document, including the date the subject PO is issued and the number of the PO.

## TABLE OF CONTENTS

### PART A: GENERAL DEFINITIONS

### PART B: GENERAL TERMS AND CONDITIONS

1. Accounting
2. Additional Goods and/or Services
3. Amendment
4. Assignment; Subcontracting; Successors
5. Audit; Ownership of Results; Retention of Records
6. Certification Clauses
7. Choice of Law; Jurisdiction and Venue
8. Confidential Information
9. Conflict of Interest; Prohibition Against Gratuities
10. Consideration
11. Contractor Status
12. Counterparts; Signatures
13. Default and Remedies
14. Dispute Resolution
15. Entire Agreement
16. Force Majeure
17. Indemnification
18. Infringement Protection
19. Insurance Requirements
  - 19.1 General Coverages; or
  - 19.2 Specific Coverages
20. Limitation of Liability
21. Loss Leader
22. Modification
23. Non-Exclusivity
24. Notices
25. Prior Work
26. Prohibited Bids for End Product of this Agreement
27. Public Access to Records and Information
28. Public Contract Code
29. Scope of Work; Acceptance; Rejection
30. Shipping and Packing Slips
31. Standard of Performance; Warranties; Personnel Requirements; Background Checks
32. Stop Work
33. Survival
34. Termination
35. Time is of the Essence
36. Travel Rate Guidelines
37. Waiver; Severability
38. Work Site
39. Miscellaneous Provisions Applicable to Specific Contracting Situations

### PART C: ADDITIONAL INFORMATION TECHNOLOGY (IT) DEFINITIONS

### PART D: ADDITIONAL INFORMATION TECHNOLOGY TERMS AND CONDITIONS

1. Enhancements; Upgrades; Losses
2. License; Title to Equipment
3. Liquidated Damages
4. Manuals and Printed Materials
5. Patents, Copyrights, and Trade Secrets
6. Patent, Copyright, and Trade Secret Indemnity
7. Return of Confidential Information
8. Rights in Data; Right to Copy or Modify
9. Rights in Work Product
10. Training; Technical Support
11. Warranties (IT)
12. Miscellaneous Provisions Applicable to Specific Contracting Situations.

## PART A: GENERAL DEFINITIONS

1. **Administrative Office of the Courts (AOC):** Staff agency to the Judicial Council of California, the policy-making body of the California Court system.
2. **Amendment:** Written contract document issued by the Court, and signed by both Vendor and the Court, modifying the PO and identifying any of the following: (1) change in the Work; (2) change in PO Amount; (3) change in schedule for delivery and performance of Work; or (4) any change to other terms and conditions.
3. **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.
4. **Bid:** A response to a competitive solicitation issued by the Court, regardless of the type of solicitation document used by the Court (e.g., Request for Quote, Invitation for Bid, or Request for Proposal).
5. **Certificate of Insurance:** A document that provides evidence that an insurance policy has been underwritten and that includes a statement of the policy coverage.
6. **Compensation:** All remuneration owed to Vendor in respect of Work, including Vendor's professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.
7. **Confidential Information:** (i) Any financial, statistical, personal, technical, or other data or information that is designated confidential by a party to this PO; (ii) all information related to the business of the Court that may be obtained orally, in writing, or from any source, or on any court mainframe, court or judicial branch computer network or workstation, and all software, whether owned or licensed by the Court and whether accessed by Vendor by direct or remote access method; (iii) any information relating to the methods, processes, financial data, lists, apparatus, statistics, programs, research, development, or related information of the Court concerning the past, present, or future official business and/or the results of the provision of services to the Court; and (iv) information relating to Court Personnel and Court users. Confidential Information does not include: (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information generally and lawfully available to the public, other than as a result of disclosure by the receiving party in breach of this PO; (iii) information independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
8. **Court:** The Superior Court of California, County of Riverside.
9. **Court Personnel:** Members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of the Court.
10. **Court Property:** Includes monetary items such as currency, coins, precious metals, checks, notes, bonds, negotiable instruments, and securities, physical structures or real property, and all other things of value.
11. **Data:** Information, including, but not limited to, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
12. **Deliverable:** Hardware, software, firmware, documentation, services or other items, specified in the PO, that Vendor shall complete and deliver or submit to the Court.
13. **DVBE:** An acronym for Disabled Veterans Business Enterprise.
14. **Expiration Date:** 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.
15. **Initial Term:** The period commencing on the Effective Date and expiring on the Expiration Date set forth on the coversheet of this PO.
16. **Goods:** Goods to be furnished and/or serviced by Vendor as described in the PO.
17. **Judicial Branch Contract Law (JBCL):** Public Contract Code §§ 19201-19210.
18. **Judicial Branch Entity (JBE):** State of California public entity that includes the Supreme Court of California, any superior Court, any Court of appeal, the Judicial Council of California, the Administrative Office of the Courts, or the Habeas Corpus Resource Center, as defined in California Government Code § 900.3. These entities comprise the "Judicial Branch."

19. **Judicial Branch Personnel:** Members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.
20. **Loss:** As used in the indemnity provisions of this PO, includes any actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorneys' fees.
21. **Material:** All types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication hardware and software.
22. **Notice:** Written document signed by an authorized representative of either party to this PO, 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 date of receipt; or
  - (2) hand-delivery to the other party's authorized representative, as set forth in the PO. This Notice shall be effective on the date of receipt.
23. **Option Period:** The period, if any, through which this PO may be extended by a party.
24. **Progress Payment:** Partial payment following the completion of a deliverable, milestone, or stage of progress under the PO.
25. **Project Lead:** Vendor's representative who will operate as the main interface with the Court regarding the Work to be performed under this PO.
26. **Project Manager:** Court representative who will operate as the main interface between Vendor and the Court regarding the Work to be performed under this PO.
27. **Proposal:** Response to a Request for Proposal that describes the offeror's approach, PO, schedule and cost to provide goods or services, as well as the ability to meet other relevant criteria established by the Court.
28. **Purchase Order (PO):** Entire integrated agreement which includes the Purchase Order, this document, referenced Attachments, and Amendments incorporated therein, signed by the Court and Vendor, for performance of the Work.
29. **Purchase Order (PO) Amount:** Total dollar amount of the PO.
30. **Services:** Services to be performed by Vendor as described in the PO.
31. **Stop Work Order:** Written notice to Vendor from the Court, directing Vendor to stop performance of Work for a period of ninety (90) days following delivery of the order to Vendor, or for a longer period by mutual agreement of the parties.
32. **Subcontractor:** A person or business entity that has a contract (as an "independent contractor" and not an employee) with Vendor to provide some portion of the Work of this PO.
33. **Term:** Comprises the Initial Term and any Option Period.
34. **Termination Date:** Has the same meaning as Expiration Date unless this PO is validly terminated before the applicable Expiration Date, in which case Termination Date means the effective date this PO is validly terminated.
35. **Third Party:** Any individual or entity not a party to the PO.
36. **Work:** Any or all labor, goods, services, Deliverables, equipment, supplies, Materials, tasks, and any other items or activities to be furnished under this PO or are necessary for the performance and completion of Vendor's obligations in compliance with the requirements of the PO. Work may also include tasks, Deliverables, and/or submittals required by individual work order(s).

## **PART B: GENERAL TERMS AND CONDITIONS**

- 1. Accounting.** Vendor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (U.S. GAAP).
- 2. Additional Goods and/or Services.** Although the Court has exercised diligence in providing a full list of Goods, Services, and/or specifications contained in the PO, the Court reserves the right to require Vendor to provide additional Goods and/or Services up to ten percent (10%) in quantity or ten percent (10%) of the value of the PO Amount, with payment to Vendor commensurate with the rates established in the PO, or if none, as mutually agreed upon.
- 3. Amendment.** No modifications, alterations, changes, or waiver to the PO or any of its terms shall be valid or binding unless accomplished by a written amendment, signed by both parties, that specifically references and incorporates the terms of the PO into the written amendment.
- 4. Assignment; Subcontracting; Successors.**
  - A. Assignment.
    - (1) The Court may assign the Court's rights and duties (or subcontract portions of the PO) to any other public entity. The Court shall notify Vendor in writing within 30 days following the assignment.
    - (2) In addition, either party may assign its rights and duties or subcontract portions of the PO to a third party, but only if the non-assigning party gives prior 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 PO between the assigning/subcontracting party and all assignees/subcontractors, stating that the assignees/subcontractors:
      - (a) are jointly and severally liable to the non-assigning party for performing the duties in the PO of the assigning/subcontracting party;
      - (b) affirm the rights granted in the PO to the non-assigning party;
      - (c) make the representations and warranties made by the assigning/subcontracting party in the PO; and
      - (d) appoint the non-assigning party an intended third party beneficiary under the written PO with the assigning/subcontracting party.
    - (3) No assignment or subcontract will release either party of its duties under the PO.
  - B. Subcontracting. Vendor may engage a subcontractor to perform any portion of the Work, but only with the prior written consent of the Court. Any subcontracting without the Court's written consent is a material breach of the PO. Subcontractors will be subject to the same terms and conditions applicable to the Vendor under the PO and shall incorporate the PO into any subcontracting relationship. Vendor shall be liable for all subcontractor acts or omissions, including indemnity obligations.
  - C. Successors. The PO binds the parties as well as their heirs, successors, executors, administrators, and assignees.
- 5. Audit; Ownership of Results; Retention of Records.**
  - A. Audit. Upon reasonable notice, Vendor will provide to the Court, to any federal or state entity with monitoring or reviewing authority, or to the Court's authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under the PO, and, as necessary, to determine compliance with relevant federal, state, and local

statutes, rules, and regulations, subject only to a lawyer's duty of confidentiality owed to a represented party. Vendor agrees to provide the 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. Unless otherwise agreed upon, Vendor shall correct errors and deficiencies by the 20th day of the month following the review or audit.

- B. Ownership. Unless otherwise provided in this PO, the Court is the exclusive owner of all Materials collected and produced in connection with the Work. Upon the Termination Date (subject to any mutually agreed period of continuation of Work), or upon the Court's notice at any time, and subject only to the duty of confidentiality owed to a represented party, Vendor shall give original materials to the Court or to another party at the Court's direction.
  - C. Copies. Vendor may retain copies of any original documents Vendor provides to the Court.
  - D. Retention of Records. Vendor will maintain all financial data, supporting documents, and all other records relating to performance and billing under the PO 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.
- 6. Certification Clauses.** Vendor certifies that the representations below are true and will remain true throughout the term of this PO. Vendor shall have an affirmative duty to promptly notify the Court if any of these representations are not or are no longer true:
- A. Authority. Vendor has authority to enter into and perform its obligations under this PO, and Vendor's signatory has authority to bind Vendor to this PO. This PO constitutes a valid and binding obligation of Vendor, enforceable in accordance with its terms. Vendor is qualified to do business and in good standing in the State of California.
  - B. Not an Expatriate Corporation. Vendor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code § 10286.1, and is eligible to contract with the Court.
  - C. Sales and Use Tax Collection. Vendor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.
  - D. No Gratuities. Vendor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this PO or securing favorable treatment with respect to any determinations concerning the performance of this PO.
  - E. No Conflict of Interest. Vendor has no interest, and will not engage in any interest, that would constitute a conflict of interest under Public Contract Code §§ 10365.5, 10410 or 10411, which, in general, limit entering into follow-on contracts with a consultant who would benefit thereby from the consultant's advice provided under the first contract; Government Code §§ 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.
  - F. No Interference with Other Contracts. To the best of Vendor's knowledge, this PO does not create a material conflict of interest or default under any of Vendor's other contracts.
  - G. No Litigation. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Vendor's knowledge, threatened against or affecting Vendor or Vendor's business, financial condition, or ability to perform this PO, 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 Vendor's business, the validity or enforceability of this PO, or Vendor's ability to perform this PO.

- H. Compliance with Laws Generally. Vendor complies in all material respects with all laws, rules, and regulations applicable to Vendor's business and services, and pays all undisputed debts when they come due.
- I. Work Eligibility. All personnel assigned to perform this PO are able to work legally in the United States and possess valid proof of work eligibility.
- J. Drug Free Workplace. Vendor provides a drug-free workplace as required by California Government Code §§ 8355 through 8357.
- K. No Harassment. Vendor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Vendor may interact in the performance of this PO, and Vendor takes all reasonable steps to prevent harassment from occurring.
- L. Non-discrimination. Vendor 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 §§ 12990 et seq.) and associated regulations (Code of Regulations, title 2, §§ 7285 et seq.). Vendor 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. Vendor has notified in writing each labor organization with which Vendor has a collective bargaining or other PO of Vendor's obligations of non-discrimination.
- M. Prohibition Against Hiring Court Employees. Vendor 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 PO, 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 PO, within the prior twelve-month period of Court employment."
- N. Provisions regarding Domestic Partners, Spouses, and Gender Discrimination. If this PO provides for total Compensation of more than \$100,000, Vendor is in compliance with Public Contract Code § 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.
- O. Provisions regarding Compliance with National Labor Relations Board Orders. If this PO 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 Vendor (but not to exceed in the aggregate \$7,500 per year from the Vendor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Vendor within the immediately preceding two-year period because of Vendor's failure to comply with an order of a federal court requiring Vendor to comply with an order of the National Labor Relations Board. Vendor swears UNDER PENALTY OF PERJURY that this representation is true.
- P. Provisions regarding Compliance with the Sweatfree Code of Conduct. If this PO provides for the furnishing of 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 PO 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. Vendor 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 § 6108.
  - (2) Vendor cooperates fully in providing reasonable access to Vendor'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 Vendor's compliance with the requirements under paragraph (1) and shall provide the same rights of access to the Court.
- Q. Provisions regarding Compliance with the Child Support Compliance Act. If Vendor is a private entity, and this PO provides for Compensation of \$100,000 or more:
- (1) Vendor 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) Vendor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- R. Provisions regarding Discharge Violations. If Vendor is a private entity, Vendor 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. Vendor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.
- S. Provisions regarding the Electronic Waste Recycling Act. If this PO provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code §§ 42460 et seq., Vendor complies with the requirements of that Act, and Vendor maintains documentation and provides reasonable access to its records and documents that evidence compliance.
- T. Provisions regarding Darfur Contracting Certification. Public Contract Code §§ 10475 – 10481 apply to any bidder or proposer that currently or within the previous three years has had business activities or other operations outside of the United States and seeks to submit a bid or proposal to the Superior Court of California, County of Riverside. Vendor certifies, UNDER PENALTY OF PERJURY, that it is either (a) not a scrutinized company as defined in Public Contract Code § 10476; or (b) is a scrutinized company that has been granted express permission by the Superior Court of California, County of Riverside to submit a bid or proposal. A bidder or proposer who has submitted a false certification may be liable for civil penalties or other measures.
- U. Provisions regarding Plastic Trash Bag Law. Public Resources Code §§ 42290 et seq., requires any plastic trash bag supplier, manufacturer or wholesaler, or any of its divisions, subsidiaries, or successors, to be compliant with the Recycled Content Plastic Trash Bag Law, regardless of the goods or services being provided under the PO. Vendor certifies, UNDER PENALTY OF PERJURY, that it, and its divisions, subdivisions, and successors, comply with the Recycled

Content Plastic Trash Bag Law, and shall continue to comply with the same throughout the term of the PO.

- V. Provisions Regarding Parts Cleaning. If this PO involves parts cleaning, Vendor shall use recycled solvents, to the maximum extent economically feasible, in the performance of Work under this PO. Vendor further certifies, UNDER PENALTY OF PERJURY, that any post-consumer or secondary materials provided or used in the Work by Vendor meet all California minimum post-consumer content requirements.
- W. Provisions Regarding Document Printing POs. If this PO is for printing documents, Vendor shall use recycled products, to the maximum extent economically feasible, in the performance of Work under this PO. Vendor further certifies, UNDER PENALTY OF PERJURY, that any recycled products provided or used in the Work by Vendor meet all California minimum post-consumer content requirements.

**7. Choice of Law; Jurisdiction and Venue.** California law, without regard to its choice-of-law provisions, governs the PO. Jurisdiction and venue for any legal action arising from the PO shall exclusively reside in Riverside, California, and the parties hereby consent to the jurisdiction and venue of such courts.

**8. Confidential Information.**

- A. Confidential Information. While performing Work under the PO, Vendor and its subcontractors may gain access to Confidential Information that, if disclosed to third parties, may be damaging to the Court, its personnel, court users, or other government entity. Neither Vendor nor its subcontractors acquires any right or title to the Confidential Information, and Vendor and its subcontractors agree not to disclose any Confidential Information to any third party. All Confidential Information disclosed to Vendor or its subcontractor will be held in strict confidence and used only in performance of Work under the PO. If the Court requests additional security measures to protect Confidential Information from disclosure, Vendor shall not unreasonably refuse or delay to adopt the same. In the event of any unauthorized disclosure or loss of Confidential Information, Vendor will immediately provide notice to the Court, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.
- B. Permissible Disclosures. Vendor may disclose the Court's Confidential Information only on a "need to know" basis to Vendor's employees and subcontractors and any representatives of the Court who are working on the project and who have also executed confidentiality POs that protect the Court's confidential information. Additionally, Vendor may disclose the Confidential Information, to the extent necessary to comply with any applicable law, rule, regulation, or ruling, provided Vendor gives advance notice to the Court.
- C. Publicity. Vendor shall not make any public announcement or press release about the PO without the prior written approval of the Court.
- D. Specific Performance. Vendor understands that a default under this section will result in irreparable damage for which no adequate remedy will be available. Accordingly, injunctive or other equitable relief is a remedy that the Court will be entitled to seek.

**9. Conflict of Interest; Prohibition Against Gratuities.**

A. Conflict of Interest.

- (1) Vendor covenants that it and its Subcontractors presently have no interest, and will acquire no interest, which would directly or indirectly conflict in any manner or to any degree, with the full and complete performance required under this PO. Vendor further agrees to submit full disclosure statements, if required by law to do so, pursuant to the requirements of the

California Fair Political Practices Act or any other applicable federal or state law, regulation, or conflict of interest code.

- (2) Vendor and its Subcontractors and employees will not participate in proceedings that involve the use of Court funds or that are sponsored by the Court if the Vendor, its Subcontractors, or their employees, principals, partners, family members, or organizations have a financial interest in the outcome of the proceedings.
- (3) Vendor and its Subcontractors and employees will not engage in actions resulting in, or creating the appearance of:
  - (a) use of an official position with the government for private gain;
  - (b) preferential treatment to any particular person associated with this Work or PO;
  - (c) impairment of the Court's independence or impartiality;
  - (d) a decision made outside official channels; or
  - (e) adverse effects on the confidence of the public in the integrity of the Court.

**B. Prohibition Against Gratuities.**

- (1) Vendor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Vendor or any agent, director, or representative of Vendor, to any officer, official, agent, or employee of the Court, in an effort to secure the PO or favorable treatment with respect to any determinations concerning the performance of the PO.
- (2) For any breach or violation of this covenant, the Court has the right to terminate the PO for cause, wither whole or in part. Any loss or damage sustained by the Court in procuring, on the open market, replacement goods or services that Vendor agreed to provide, will be borne and paid for by Vendor. The Court's rights and remedies under this provision are in addition to any other rights and remedies provided by law or under this PO.

**10. Consideration.**

- A. The consideration paid to Vendor is the entire compensation for all Work performed under this PO, including all of Vendor's expenses incurred, such as travel and per diem expenses, unless otherwise expressly provided.
- B. Payment Does Not Imply Acceptance of Work. The Court's payment will not relieve Vendor 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 the requirements of this PO will be rejected, and will be replaced by Vendor, without delay or additional cost to the Court.
- C. Disallowance. If Vendor receives payment from the Court for a service or reimbursement that is later disallowed or rejected by the Court, Vendor will promptly refund the disallowed amount to the Court upon the Court's request. At its option, the Court may offset the amount disallowed from any payment due to Vendor, under this PO or any other PO.
- D. Availability of Funds. The Court's obligation to compensate Vendor is subject to the availability of funds. The Court shall notify Vendor if funds become unavailable or limited during the term of the PO.

**11. Contractor Status.**

- A. Independent Contractor. Vendor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Vendor and the Court. Vendor has no authority to bind or incur any obligation on behalf of the Court. Except as expressly stated in the PO, Vendor has no authority or responsibility to exercise any rights or

power vested in the Court. Vendor, its employees, or anyone working under Vendor, shall not qualify for workers' compensation or other fringe benefits of any kind through the Court. If any governmental entity concludes that Vendor is not an independent contractor, the Court may terminate the PO immediately upon notice. Alternatively, Vendor may agree to a reduction in the Court's financial liability, so that the Court's total costs under the PO do not exceed the PO Amount.

**B. Exclusive Control of Means and Method of Performance.**

- (1) Vendor's employees will be entirely and exclusively under the direction, supervision, and control of Vendor. 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 Vendor.
- (2) Vendor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Vendor's employees, consultants, and independent contractors.
- (3) If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Vendor's independent status with respect to the Court, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) the 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) Vendor will indemnify, defend, and hold the Court harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between the Court and any Vendor or Subcontractor personnel.
- (5) Vendor will determine the method, details, and means of performing or supplying the Work under this PO. Vendor will be responsible to the Court only for the requirements and results specified in this PO and more particularly as set forth the PO, and will not be subjected to the Court's control with respect to the physical action or activities of Vendor in fulfillment of this PO. Vendor will have the "right to control" and bear the sole responsibility for the job site conditions and safety.

**C. Permits, Laws, and Regulations.**

- (1) Vendor must observe and comply with all applicable laws, rules, and regulations affecting the Work. During the term of this PO, Vendor will obtain and keep in full force and effect, all permits and licenses necessary to accomplish the Work, and ensure that all subcontractors performing Work under this PO comply with the same. Such permits and licenses will be made available to the Court, upon request.
- (2) Vendor will promptly provide Notice to the Court of any conflict discovered between the PO and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Vendor proceeds with the Work in question without resolution of the conflict, Vendor will be solely liable for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

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

**13. Default and Remedies.**

- A. Default. Unless otherwise provided, a default exists under this PO if:

- (1) Vendor fails or is unable to meet or perform any of Vendor's duties under this PO, or furnishes nonconforming Goods or Services, 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) Vendor or Vendor's creditors file a petition as to Vendor's bankruptcy or insolvency, or Vendor 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) Vendor makes or has made under this PO any representation or warranty that is or was incorrect, inaccurate, or misleading; or
- (4) Any act, condition, or thing required to be fulfilled or performed by Vendor to (i) enable Vendor lawfully to enter into or perform its obligations under this PO, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make this PO admissible when required is not fulfilled or performed.

B. Notice of Default. Vendor shall notify the Court immediately if Vendor defaults, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this PO.

C. Remedies following Vendor Default.

(1) Available Remedies. The Court may do any of the following:

- (a) Withhold all or any portion of a payment otherwise due to Vendor, exercise any other rights of setoff as may be provided in this PO or any other PO between a Court and Vendor, or charge to the Vendor any costs to the Court arising from Vendor's default, including costs to complete or correct the Work;
- (b) Require Vendor to enter into non-binding mediation;
- (c) Exercise, following notice, the Court's right of early termination of this PO as provided below; or
- (d) Seek any other remedy available at law or in equity.

(2) Remedies Cumulative. All remedies provided for in this PO may be exercised individually or in combination with any other available remedy.

**14. Dispute Resolution.** The Court and Vendor will attempt, in good faith, to resolve any disputes informally. Vendor will meet with the 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 above, the aggrieved party will submit a second Notice which will:
  - (a) provide detailed factual information;
  - (b) identify the specific provisions in this PO 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 (15) 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, Vendor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by the Court. Vendor's failure to diligently proceed in accordance with the Court's instructions will be considered a material breach of the PO.

#### **15. Entire Agreement.**

- A. Headings or captions to the provisions of this PO are solely for the convenience of the parties, are not part of this PO, and will not be used to interpret or determine the validity of this PO.
- B. This PO was negotiated between the parties, and neither party "prepared" this PO 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 PO, including all documents incorporated by reference, 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 POs between the parties, whether written or oral, express or implied, relating in any way to the this matter, and is mutually binding on the parties in accordance with its terms.
- D. No agent, representative, employee or officer of either the Court or the Vendor has the authority to make, or has made, any oral statement, agreement or representation, in connection with the PO, which in any way can be deemed to modify, add to and detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the PO. No subsequent PO, invoice, click-through or shrink-wrap PO, or similar document containing conflicting terms and conditions issued by Vendor in conjunction with the performance of any party's duties and/or obligations due under the PO, shall be permitted to modify or contradict any of the terms and conditions of the PO.

#### **16. 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.
- B. 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. Vendor will have no right to additional payment for costs incurred as a result of a Force Majeure event. Any assertion of a Force Majeure event by Subcontractors will be attributed to Vendor.

## **17. Indemnification.**

- A. To the fullest extent permitted by law, Vendor shall indemnify, hold harmless, and defend (with counsel satisfactory to the JBE Office of the General Counsel), the Judicial Branch Entities and Judicial Branch Personnel from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs (including court fees, litigation or settlement costs, attorneys' fees, and attorneys' fees incurred in enforcing this indemnification clause) arising or resulting from, or in connection with, Vendor's performance of, or failure to perform, Work or Vendor's other duties under this PO, or any breach of this PO by Vendor or its officers, employees, agents, representatives, or Subcontractors. Vendor'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.
- B. Vendor's obligation to defend, indemnify, and hold the Judicial Branch Entities and Judicial Branch Personnel harmless is not limited to, or restricted by, any requirement in this PO that Vendor procure and maintain insurance policies.

**18. Infringement Protection.** Vendor shall indemnify, defend (with counsel satisfactory to the Court), and hold the Judicial Branch Entities and Judicial Branch Personnel harmless from liability of any nature or kind, including costs and expenses, for any alleged or actual 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 PO.

## **19. Insurance Requirements. Section 19.1 below applies unless otherwise stated in the PO.**

**19.1 Insurance Requirements – General.** Vendor shall maintain insurance that is sufficient in scope and amount to permit Vendor to pay in the ordinary course of business insurable claims, losses and expenses, including insurable claims, losses and expenses arising or resulting from, or in connection with Vendor's performance or breach of this PO, or be adequately self-insured for all risk, physical damage, and public liability. Vendor shall maintain employer's liability and workers' compensation coverage at California statutory levels covering all employees performing Work under this PO. Upon the Court's request, Vendor shall provide to the Court certificates of insurance and/or complete copies of all insurance policies maintained by Vendor to meet the insurance requirements contained in this paragraph.

### **19.2. Insurance Requirements – Specific Coverages.**

- A. **Minimum Scope and Limits of Coverage.** If Section 19.2 is marked as applicable on the PO, the PO also indicates which of the specific insurance policies, as detailed below, are required under this PO. Vendor shall maintain the required minimum coverages in full force during the term of the PO.
  - (1) **Workers' Compensation or Employer's Liability Insurance.** This policy is required only if Vendor has employees. It must include workers' compensation to meet the minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease.
  - (2) **Commercial General Liability Insurance.** This policy must cover bodily injury, property damage, products (completed operations hazard and liability assumed in a contract), and personal and advertising injury, with minimum limits of \$1 million for each occurrence, combined single limit, and \$2 million aggregate.
  - (3) **Business Automobile Liability Insurance.** This policy is required only if Vendor uses an automobile or other vehicle in the performance of this PO. This policy must cover

bodily injury and property damage liability and be applicable to all vehicles used in the Vendor's performance of the PO whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.

- (4) Professional Liability. This policy must cover liability resulting from errors or omissions committed in Vendor's performance of Services under this PO, at minimum limits of \$1 million per claim.
- (5) Sexual Misconduct Insurance. This policy must cover bodily injury arising out of, resulting from, or in connection with the actual or threatened sexual abuse, molestation, or harassment of any person by Vendor's employees or any other person for whose acts Vendor may be held liable ("Vendor's Agents"), and the negligent employment, investigation, supervision, failure to report, or retention of Vendor's employees or Vendor's agents for the actual or threatened sexual abuse, molestation, or harassment of any person. The minimum liability limit must be \$1 million per occurrence.
- (6) Commercial Crime Insurance. This policy must cover losses of Court Property arising or resulting from, or in connection with:
  - (a) The theft, robbery, burglary, disappearance, damage, or destruction of Court Property, including the cost of check reconstruction;
  - (b) Dishonest or fraudulent acts, including forgery, alteration, or the fraudulent transfer of Court Property;
  - (c) Losses or damage to any building, vehicle, safe, vault, or cash box within the control or possession of Vendor.

The minimum liability limit must be \$1 million per occurrence.

- (7) Umbrella Policies. Vendor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.

**B. Insurance Requirements Applicable to Required Policies.**

- (1) Vendor shall maintain 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-.
- (2) By requiring such minimum insurance, the Court will not be deemed or construed to have assessed the risks applicable to Vendor. Vendor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- (3) For full coverage, each insurance policy shall be written on an "occurrence" form, except for professional liability insurance, which may be made on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Vendor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, for three (3) years, without lapse, from the date of termination or expiration of the Master PO and the Court's acceptance of all Work provided under this PO. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that the Work commences under this PO.
- (4) The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case, the annual aggregate limits of liability must be at least two times the limits

required for each policy, or the aggregate may equal the limits required but must apply separately to this PO.

- (5) If Vendor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:
  - (a) *Separate*. Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
  - (b) *Joint*. Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- (6) Deductibles and Self-Insured Retentions. The deductible and/or self-insured retentions shall not limit or apply to Vendor's liability to the Court and shall be the sole responsibility of Vendor. Vendor shall declare to the Court all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the Court's approval.
- (7) Endorsements; Additional Insureds. All required insurance policies will contain, or be endorsed to contain, the following provisions:
  - (a) Additional Insureds. The Superior Court of California, County of Riverside and its Personnel (including judges, officials, officers, employees, agents, and representatives) shall be covered as additional insureds for liability arising out of activities performed by, or on behalf of, Vendor under the PO.
  - (b) Primary Insurance; Waiver of Subrogation. Vendor's insurance coverage shall be primary and non-contributory with any insurance or risk management programs covering the Court or Court Personnel. Vendor and its insurance carrier waive any and all rights of subrogation against the Court and Court Personnel.
  - (c) Separation of Insureds. Vendor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
  - (d) Notice. All policies required of Vendor shall be endorsed to provide written notice to the Court of cancellation in coverage, non-renewal, or reduction of coverage within thirty (30) days, mailed to the following address:

Superior Court of California, County of Riverside  
P.O. Box 1547  
Riverside, CA 92502

- (8) Specific Wording for Certificate(s) of Insurance.
  - (a) The Certificate Holder name shall be: "The Superior Court of California, County of Riverside, and its Personnel (including judges, officials, officers, employees, agents)."
  - (b) Wording for the Additional Insured Endorsement shall be, in substance:

"The Superior Court of California, County of Riverside ("Court") and its Personnel are named as additional insureds on all above policies except workers' compensation."

“For each of the above policies, the coverage provided is primary and non-contributory with any insurance or risk management programs covering the Court or Court Personnel. Additionally, each of the above policies apply separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer’s liability. The insurer waives any and all rights of subrogation against the Court.”

“The above policies shall not be canceled, non-renewed or reduced in scope of coverage until after 30 days written notice has been given by the insurer to the Court.”

C. Failure to Maintain Insurance / Failure to Provide Certificate(s) of Insurance.

- (1) If Vendor fails to maintain adequate insurance policies conforming to the above requirements, including the appropriate certificate holder/additional insured endorsements, primary/noncontributory and waiver of subrogation clauses, and amounts and extent of coverage, Vendor shall indemnify, defend (with counsel satisfactory to the Court), and hold harmless the Judicial Branch Entities and Judicial Branch Personnel from and be responsible to the Judicial Branch Entities and Judicial Branch Personnel for all claims, damages, losses, judgments, liabilities, expenses, and other costs, including court fees, litigation or settlement costs, attorneys’ fees (including attorneys’ fees incurred in enforcing this indemnification clause), arising or resulting from, or in connection with Vendor’s performance or breach of this PO, notwithstanding any clause or amounts limiting the Vendor’s liability to the Court. Vendor’s failure to maintain adequate insurance policies conforming to the above requirements may be considered a breach of this PO.
- (2) Before Vendor begins Work, Vendor shall give the Court certificates of insurance attesting to the existence of adequate coverage. All certificates of insurance and replacement certificates of insurance are subject to the approval of the Court. Submission of certificates of insurance (or lack thereof) and/or their approval by the Court shall not relieve the Vendor of its obligation to ensure that all required insurance policies conform to all foregoing requirements, and to ensure that any exclusions contained in such policies do not unduly or unfairly restrict the coverages required by the Court. Upon the Court’s request at any time, Vendor shall provide: (1) complete copies of each required policy; and (2) the same evidence of insurance for its subcontractors as the Court requires of Vendor.
- (3) 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, Vendor 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.
- (4) If any of the required policies lapses during the Term, the Court is not required to process invoices after such lapse until Vendor provides evidence of reinstatement that is effective as of the lapse date.

**20. Limitation of Liability.** The Court will not be liable to Vendor, 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 PO, regardless whether the Court was advised of the possibility of such loss or damage. In no event will the Court’s liability for direct damages arising from or related to this PO, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Vendor by the Court under this PO. Neither the Court nor Court Personnel will be personally responsible for liabilities arising under this PO.

- 21. Loss Leader.** Vendor shall not sell or use any article or product as a “loss leader” as defined in section 17030 of the Business and Professions Code.
- 22. Modification.** No modification or change to this PO shall be valid without the written approval of the Court, in the form of an Amendment.
- 23. Non-Exclusivity.** This is a non-exclusive PO. The Court reserves the right to perform, or have others perform the Work for this PO. The Court further reserves the right to bid the Work to others or procure the Work by other means.
- 24. Notices.** Notices under this PO must be in writing. Notices may be delivered in person, via a reputable express carrier, or by registered or certified mail (postage pre-paid). 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 the other Party’s representative as designated in the PO. 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.
- 25. Prior Work.** Prior work, performed by Vendor pursuant to the Court’s authorization, but before execution of this PO, will be considered as having been performed subject to the provisions of this PO.
- 26. Prohibited Bids for End Product of this PO (“Follow-On Contracts”).**
- A. If Vendor or its affiliates provides Consulting and Direction (as defined below), the Vendor and its affiliates: (i) shall not submit a bid or be awarded a subsequent contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Consulting and Direction; and (ii) will not act as consultant to any person or entity that does receive a contract described in sub-section (i).
  - B. “Consulting and Direction” means services for which Vendor received compensation from the Court and includes: (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies; (ii) development or design of test requirements; (iii) evaluation of test data; (iv) direction of or evaluation of another contractor; (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or (vi) provisions of formal recommendations regarding any of the above. For purposes of this section, “affiliates” are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with Vendor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
  - C. To the extent permissible by law, the Court may waive the restrictions set forth in this section by written notice to Vendor if the Court determines their application would not be in the Court’s best interest. Except as prohibited by law, the restrictions of this section will not apply: (i) to follow-on advice given by vendors of commercial off-the-shelf products, including software and hardware, on the operation, integration, repair, or maintenance of such products after sale; (ii) to contractors that were awarded a subcontract of the original consulting service contract that amounted to no more than ten (10) percent of the total monetary value of the original consulting services contract; or (iii) where the Court has entered into a master PO for software or services and the PO at the time of PO execution expressly calls for future recommendations among Vendor’s own products.
  - D. The restrictions set forth in this section are in addition to conflict of interest restrictions imposed on public contractors by California law (“Conflict Laws”). In the event of any inconsistency, such Conflict Laws override the provisions of this section, even if enacted after execution of this PO.

## **27. Public Access to Records and Information.**

- A. Rule 10.500 of the California Rules of Court sets forth comprehensive access provisions applicable to administrative records (which includes, among other things, POs and amendments) maintained by a trial court. The Court will make identifiable administrative records available upon request, unless the records are exempt from disclosure under Rule 10.500. Please be aware that a PO or amendment may be considered a public record and be made available to anyone who requests a copy.
- B. If a PO or amendment contains material noted or marked by the Vendor as “Confidential” and/or “Proprietary” that, under Rule 10.500 would be exempt from public disclosure, then that information will presumptively not be made available to the public. If the Court considers that under Rule 10.500 such material is not exempt from public disclosure, the material may be made available to the public, regardless of the Vendor’s notation or markings. If a Contactor is unsure if its confidential and/or proprietary material would fall within the disclosure exemption requirements of Rule 10.500, then it should carefully consider whether to include such information in a PO or amendment because such information may be disclosed to the public.

**28. Public Contract Code.** 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 provisions in the Public Contract Code that apply to state agencies and departments regarding the procurement of goods and/or 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.

## **29. Scope of Work; Acceptance; Rejection.**

- A. **Scope of Work.** Vendor will perform and complete all Work described in the PO, in compliance with the requirements of this PO, and to the satisfaction of the Court. Vendor shall strictly adhere to the delivery and completion schedules specified in the PO. Time, if stated as a number of days, shall mean calendar days unless otherwise specified.
- B. **Acceptance.** Notwithstanding any prior inspection or payments, all Goods and Services delivered hereunder shall be subject to final inspection and acceptance or rejection by the Court within a reasonable time after delivery to the Court. Until Work is completed and accepted by the Court, the risk of loss or damage to the Work shall remain with Vendor. All items which are not in compliance with the specifications hereof, which are not as warranted or which are shipped late, shipped in excess or insufficient quantities, or substituted for items ordered hereunder may be rejected by the Court and returned or held at Vendor’s expense and risk. No damages or extras will be allowed for unforeseen difficulties or obstructions. Payment shall not constitute an acceptance of the Goods, Services, or Work nor impair the Court’s right to inspect or any of its remedies. Vendor shall immediately refund any payment made in error.
- C. **Rejection.** The Court may reject any Goods, Services, or deliverables that: (i) fail to meet applicable requirements or acceptance criteria; (ii) are not as warranted; or (iii) are performed or delivered late. The Court’s Project Manager may apply any acceptance criteria (including timeliness, completeness, technical accuracy, and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the Work.
  - (1) If the Work is not acceptable, the Court’s Project Manager shall detail Vendor’s failure to meet the acceptance criteria. Vendor shall have ten (10) business days from receipt of the Court’s notification of non-acceptance to correct the failure(s) to conform to the acceptance criteria. Vendor will re-submit the Work and the Court’s 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 Vendor’s receipt of the Court’s written

acceptance of such corrected Work; provided, however, that if the Court rejects any Work on at least two (2) occasions, the Court may terminate that portion of this PO which relates to the rejected Work at no expense to the Court.

- (2) If the Court rejects any Goods, Services, or other deliverables after payment to Vendor, 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 Vendor pursuant to this PO or otherwise; and (iii) requiring Vendor to refund the overpayment within thirty (30) days of the Court's request.

**30. Shipping and Packing Slips.** Time is of the essence to delivery and any other performance required of Vendor. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or any other purpose shall be paid by the Court unless it is expressly included on the face of this PO. Unless stated otherwise, shipping point for all deliveries under this PO shall be FOB "destination", and on "FOB Shipping Point" transactions, Vendor shall arrange for lowest-cost transportation, prepay and add freight to its invoice, and furnish supporting freight bills over \$25. If delivery is to be made by a carrier, an itemized delivery ticket must be attached to the outside of the package. Each container must be marked with the PO number, part number, and quantity. Any itemized packing slip bearing the Court's PO number as shown thereon must be left with the Goods to insure their receipt.

**31. Standard of Performance; Warranties; Personnel Requirements; Background Checks.**

- A. Standard of Performance. Vendor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the PO, and pursuant to the governing rules and regulations of the industry. Vendor acknowledges that the Court relies on the accuracy, competence, and completeness of Vendor's services.
- B. Warranties.
  - (1) For a period of one (1) year, unless the PO or the warranties provided by a third party for Goods or Services procured by Vendor provide for a longer warranty period, Vendor expressly warrants that the Goods and Services covered by the PO are: 1) free of liens or encumbrances; (2) merchantable and good for the ordinary purposes for which they are used; and (3) fit for the particular purpose for which they are intended; (4) free from all defects in materials and workmanship; (5) to the extent not manufactured pursuant to detailed designs furnished by the Court, free from defects in design; and (6) conform to the requirements of this PO. The Court's approval of designs or specifications furnished by Vendor will not relieve Vendor of its obligations under this warranty.
  - (2) Vendor agrees to indemnify, defend, and hold the Court and Court Personnel harmless from liability, loss, damage and expense, including reasonable attorney's fees, incurred or sustained by the Court by reason for the failure of the Goods or Services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industry Safety Act. Such remedies shall be in addition to any other remedies provided by law.
  - (3) Vendor represents and warrants to the Court that it owns, will own, is authorized, or will 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.
  - (4) All warranties will inure to the Court, its successors, assigns, customer agencies, and users of the Work provided hereunder. Vendor shall not take any action, or fail to perform any act

that results in a warranty or representation becoming untrue. Vendor shall promptly notify the Court if any warranty or representation becomes untrue.

- (5) Unless otherwise specified, the warranties set forth in this Section commence after Work has been accepted by the Court.

C. Personnel Requirements.

- (1) Vendor shall use adequate numbers of qualified individuals with sufficient training, education, experience, and skill to successfully perform the Work.
- (2) If the Court is dissatisfied with any of Vendor's personnel for any reason, Vendor shall immediately replace them with qualified personnel upon receipt of the Court's Notice. Otherwise, Vendor shall endeavor to minimize turnover of personnel Vendor assigned to perform the Work under this PO. Vendor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Vendor does not promptly furnish replacement personnel acceptable to the Court, the Court may terminate the PO for cause.

D. Background Checks.

- (1) The Court shall have the right, but not the obligation, to request or conduct backgrounds checks on any of Vendor's personnel, its subcontractors' personnel, or agents performing Work under the PO.
- (2) Vendor shall cooperate with the Court if the Court decides to perform background checks by obtaining, at no additional cost, all releases, waivers, and permissions the Court requires. Vendor shall provide prompt Notice to the Court of: (i) any person refusing to undergo any such background checks; and (ii) the results of any background checks as requested by the Court. Vendor may not assign to perform Work under this PO any personnel or any subcontractor's personnel who refuse to undergo a background check, and shall immediately remove such personnel from performing Work under this PO.
- (3) The Court, in its sole discretion, shall determine whether Vendor's or its subcontractors' personnel or agents have passed the backgrounds checks required by the Court. No background information will be released to the Vendor or its subcontractors.

**32. Stop Work.**

- A. The Court may, at any time, by delivery of a written Stop Work Order to Vendor, require Vendor to stop any or all of the Work, for ninety days after the Stop Work Order is delivered to Vendor, and for any further period to which the Parties may agree.
- B. Upon receipt of the Stop Work Order, Vendor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to the Court during the applicable Stop Work period. Within ninety days after a Stop Work Order is delivered to Vendor, or within any mutually agreed extension of that period, the Court will either cancel the Stop Work Order or terminate the Work, as provided in the Termination provisions.
- C. If a Stop Work Order is cancelled, or the period of the Stop Work Order or any extension thereof expires, Vendor will resume Work. The Court may make an equitable adjustment in the delivery schedule, the PO Amount, or both, if (i) the Stop Work Order increases Vendor's costs or the time required for performance; and (ii) Vendor asserts its right to an equitable adjustment within thirty days after the end of the applicable Stop Work period.

D. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated other than for cause, the Court may allow reasonable costs resulting from the Stop Work Order.

E. The Court will not be liable to Vendor for loss of profits because of any Stop Work Order.

**33. Survival.** Terms that will survive termination or expiration of this PO include those relating to, but are not limited to: assignment, audit rights and retention of records, confidentiality, indemnification, limitation of liability, and warranties.

**34. Termination.**

A. Termination for Cause. The Court may terminate the PO, in whole or in part, for cause, upon thirty (30) days written notice. The Court shall be relieved of any payments, if Vendor fails to perform the requirements of the PO at the time and in the manner agreed. The Court may also cancel delivery immediately of all or any portion of unshipped goods or limit Vendor's Work and, proportionately, Vendor's compensation. The Court may proceed with the Work in any manner deemed proper. All costs to the Court arising from Vendor's default, including costs to complete or correct the Work, will be deducted from any sum due to Vendor. Vendor will not be entitled to recover overhead or profit on the uncompleted portions of the Work.

B. Termination for Convenience. The Court may terminate the PO, in whole or in part, at any time, for any or no reason, upon at least thirty (30) days written notice to Vendor. Upon receipt of notice of termination, Vendor will promptly discontinue Work as specified in the Notice. The Court will pay Vendor for the Work satisfactorily performed prior to the termination. Vendor will not recover overhead or profit on the uncompleted portions of the Work.

C. Termination due to Fund Non-Appropriation and/or Availability.

(1) The Court's obligations under this PO 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 PO. Funding beyond the current Appropriation Year is conditioned upon appropriation of sufficient funds to support the activities described in this PO.

(2) Upon Notice, the Court may terminate this PO in whole or in part, without prejudice to any right or remedy of the Court, for lack of appropriation of funds. Upon termination, the Court will pay Vendor for the fair value of Work satisfactorily performed prior to the termination, not to exceed the total PO Amount.

D. Effect of Termination. Upon the Termination Date:

(1) The Court shall be released from compensating Vendor for Work, other than those Vendor satisfactorily performed before the Termination Date, and for any indirect costs. Without prejudice to the Court, Vendor shall be released from performing Work.

(2) Court will have the right to take possession of any materials, equipment, and other Work including partially completed Work. Vendor shall return to the Court any equipment purchased or built with Court funds, with costs incurred by Vendor being reimbursed by the Court. Unless otherwise provided in this PO, Vendor will immediately assign to the Court all of Vendor's right, title, and interest in and to such Work, related materials, work product, and any and all intellectual property rights.

(3) Upon termination of any kind, the Court may withhold from payment any sum that the Court determines to be owed to the Court by Vendor, or as necessary to protect the Court against loss due to outstanding liens or claims of former lien holders.

**35. Time is of the Essence.** Time is of the essence in the performance of Work by Vendor under this PO.

**36. Travel Rate Guidelines.** Vendor's travel expenses are not reimbursable by the Court, unless the PO expressly indicates that the Court will reimburse such expenses. Unless otherwise specified in the PO, the Court's policies and limits on reimbursable travel-related expenses, consistent with the Administrative Office of the Courts' travel policies, are listed below. Dollar amounts stated in this section may be adjusted unilaterally by the Court from time to time. Vendor should contact the Court with any questions about the current dollar amounts. Vendor shall endeavor to use the most economical mode of travel whenever possible. Original receipts are required for each claimed item. When a receipt cannot be obtained, an explanation must be given, and proof of payment must be submitted. If requested by the Court, Vendor shall complete the Court's reimbursement claim forms as a condition of receiving any reimbursement from the Court. Vendor shall notify the Court of any anticipated travel prior to booking, which must be pre-approved by the Court.

A. Lodging. All lodging reimbursements require a valid receipt from a commercial lodging establishment that caters to the general public. Lodging will not be reimbursed without submission of a valid receipt. Each day of lodging claimed must be listed separately for the actual amount up to the maximum allowed below.

(1) In-state: Actual costs are reimbursable up to a maximum of \$110 per day, plus tax and energy surcharge. When required to conduct official court business and obtain lodging in the counties of Alameda, San Francisco, San Mateo, and Santa Clara, the maximum rate allowed is \$140, plus tax and energy surcharge.

(2) Out-of-state: Actual costs are reimbursable only with the Court's prior approval.

(3) Conference or convention lodging: Lodging reimbursement for conferences and conventions sponsored by the Court shall not be in excess of the in-state rate unless Vendor is staying at the conference site. Only the single occupancy rate may be claimed for reimbursement except when sharing a room with other Vendor personnel also traveling in performance of this PO.

B. Meals. If the cost of a meal is included in airfare, lodging, conference, or convention, no reimbursement shall be claimed for that meal. The Court will not reimburse for alcoholic beverages of any kind.

(1) For continuous travel of more than 24 hours, actual costs for breakfast, lunch, dinner, and incidentals for each 24 hour period are reimbursable up to the maximum rate (which includes tax and tip) as follows:

(a) Breakfast: Up to \$6.

(b) Lunch: Up to \$10.

(c) Dinner: Up to \$18.

(d) Incidentals (e.g., tips for non-meal related expenses such as taxis): Up to \$6.

(2) For continuous travel of less than 24 hours, actual costs up to the above maximum limits are reimbursable in accordance with the following conditions:

(a) Breakfast may be claimed only if travel begins one (1) hour before normal work hours.

(b) Dinner may be claimed only if travel ends one (1) hour after normal work hours.

(c) Neither lunch nor incidentals may be claimed for a trip of less than 24 hours.

C. Transportation. The actual and reasonable 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, and Vendor's "convenience" is not a valid justification for purchasing more expensive tickets. Receipts are required for rental cars and air travel. For ticketless travel, the traveler's itinerary may be submitted in lieu of a receipt.

(1) Airfare. All air travel arrangements should be made through the Court.

- (2) Ground Transportation. The reasonable costs of cab fare, public parking, and tolls are reimbursable.
  - (3) Rental Vehicles. The Court's Purchasing Division and the State Department of General Services have contracted with several rental car agents for daily, weekly, and monthly rates for the lease of vehicle for Court business. Vendor must contact the Court prior to renting any vehicles. Insurance offered by the rental agent is not reimbursable, and all rental vehicles must be refueled prior to their return. Refueling charges at rental car rates are not reimbursable.
  - (4) Mileage. Personal vehicle mileage is reimbursable at the mileage reimbursement rate established by the IRS that corresponds to the date(s) of travel and in accordance with the Court's mileage reimbursement policy. The reimbursement rate includes all costs related to the operation and maintenance of the vehicle, including both liability and comprehensive insurance.
- D. Business Expenses. Reimbursement is allowed for the reasonable costs of fax service, e-mail, telegrams, and business telephone calls. Telephone charges must be itemized by day with location, phone number, and person(s) called.
- E. Cancellation of Travel or Missed Travel. Vendor shall be responsible for all expenses or charges incurred as a result of Vendor's cancellation of travel or Vendor's failure to make a scheduled travel, regardless of whether travel was booked by Vendor or the Court, unless the cancellation or failure to make such travel was due to an emergency as determined in the Court's sole discretion.

**37. Waiver; Severability.**

- A. Waiver of Rights. The Court's action, inaction, or failure to enforce any right or provision of this PO is not a waiver of its rights, and will not prevent the Court from enforcing such rights on any future occasion. A Court-specific waiver does not constitute a waiver by the Court of any earlier, concurrent, or later breach or default.
- B. Severability. The provisions of this PO are separate and severable. If any part of the PO is held invalid or unenforceable, all other parts remain valid or enforceable, unless prohibited by applicable state and federal law.
- C. Waiver of Jury Trial. To the extent enforceable under California law, each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding, or counterclaim brought by any party hereto against the other (and/or against its judges, subordinate judicial officers, officers, administrators, agents, representatives, and employees) on or with regard to any matters whatsoever arising out of or in any way connected with the PO and/or any other claim of injury or damage.

**38. Work Site.** With respect to Work delivered and/or performed on the Court's premises, Vendor has the responsibility to inform itself fully and shall assume the risk as to the physical conditions at the worksite, including as applicable: (1) the availability, location, and extent of construction and storage areas and other facilities or structures above and below ground, but not limited to gas, water, sewer, electrical, and communication utilities; (2) necessary safety precautions and safeguards; (3) work to be performed by Vendor or others; (4) rules, regulations, and requirements to be observed by Vendor in the conduct of the Work. Lack of knowledge of existing conditions will not be accepted as an excuse for failure to perform the specified Work, nor shall such excuse be accepted as a basis for claims or additional compensation. Vendor shall conform to any specific safety requirements as required by law or regulation. Vendor shall take any additional precautions as the Court may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of the PO.

### 39. Miscellaneous Provisions Applicable to Specific Contracting Situations.

- A. POs providing for Compensation of \$50,000 or More; Union Activities Restrictions. As required under Government Code §§ 16645-16649, if this PO provides for total Compensation of \$50,000 or more to Vendor, then the covenants in this subsection apply to Vendor's activities.
- (1) Vendor shall not:
- (a) Assist, promote, or deter union organizing by employees performing work under state or judicial branch contracts;
  - (b) Use the state's or the Court's funds received under this PO to assist, promote or deter union organizing; or
  - (c) For any business conducted under this PO, use any property of the state or the 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.
- (2) If Vendor incurs costs, or makes expenditures to assist, promote, or deter union organizing, Vendor shall maintain records sufficient to show that no reimbursement from the state's and the Court's funds has been sought for these costs, and provide those records to the Attorney General upon request.
- B. Provisions Applicable to Certain Services with Compensation Over \$200,000. If this is a PO for services, other than consulting services, with total compensation over \$200,000, Vendor shall give priority consideration in filling vacancies in positions funded by this PO to qualified recipients of aid under Welfare and Institutions Code § 11200 in accordance with Public Contract Code § 10353.
- C. Provisions Applicable to DVBE Participation Certification. If Vendor made a commitment to achieve disabled veterans business enterprise participation, Vendor shall within 60 days of receiving final payment under this PO (or within such other time period as may be specified elsewhere in this PO) certify in a report to the Court: (1) the total amount the prime Vendor received under the PO; (2) the name and address of any disabled veterans business enterprises (DVBE) that participated in the performance of this PO; (3) the amount each DVBE received from the Vendor; (4) that all payments under this PO 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.
- D. Provisions Applicable to Court-Purchased or Court-Financed Equipment.
- (1) If this PO provides Compensation to Vendor 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 Vendor 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 Vendor in accordance with the Court's written instructions. Vendor must await specific written instructions from the Project Manager regarding any transfer of title or disposition.
- (2) If Compensation under this PO is not through grant funding and this PO 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, Vendor is responsible for loss or damage to the equipment to the extent it results from the negligent act or omission of Vendor or its directors, officers, employees, or agents, and Vendor shall make all necessary or appropriate repairs and adjustments.

- (3) Vendor shall maintain an inventory record for each piece of equipment purchased or built with Court funds provided under the PO, except for a piece of equipment that (i) has a normal life expectancy of less than one (1) year, or (ii) costs less than \$5,000 and is not easy to steal. The inventory record must include the date acquired, total cost, serial number, model identification, and any other information or description necessary to identify the piece of equipment. Upon request by the Court, Vendor shall submit to the Court a copy of the inventory record.
  - (4) Upon the expiration of termination of the PO, or as otherwise directed by the Court, Vendor shall return such property to the Court in good condition, reasonable wear and tear expected, unless such property was not utilized, and in such case, shall be returned new and unopened from its original packaging.
- E. Provisions Applicable to Competitively Bid Contracts; Antitrust Claims. If Work under the PO was obtained by means of a competitive bid, Vendor shall comply with the requirements of Government Code sections set out below.
- (1) The Government Code chapter on antitrust claims contains the following definitions:
    - (a) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of § 16750 of the Business and Professions Code.
    - (b) "Public purchasing body" means the state or the subdivision or agency making a public purchase. See Government Code § 4550.
  - (2) Vendor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under § 4 of the Clayton Act (15 U.S.C. § 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 Vendor 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 Vendor. See Government Code § 4552.
  - (3) If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Vendor 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 Vendor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. See Government Code § 4553.
  - (4) Upon demand in writing by the Vendor, the Court shall, within one year from such demand, reassign the cause of action assigned under this part if the Vendor has been or may have been injured by the violation of law for which the cause of action arose and (i) the Court has not been injured thereby, or (ii) the Court declines to file a court action for the cause of action. See Government Code § 4554.
- F. Provisions Applicable to Federal or Federally-Assisted Contracts.
- (1) Funding. If this PO is funded in whole or in part by the federal government, then:

- (a) It is mutually understood between the parties that the PO may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
  - (b) This contract is valid and enforceable only if sufficient funds are made available to the Court by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, the PO is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
  - (c) The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which the PO is intended to be paid, the PO shall be deemed amended without any further action of the parties to reflect any reduction in funds.
- G. Provisions Applicable to Federal or Federally Assisted Contracts; Prevailing Wages. This subsection applies only to federal and federally assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.
- (1) Vendor shall comply with all requirements of the Davis Bacon Act and all Related Acts (40 USC 276(a); 29 CFR 1, 3, 5, 6 & 7) and all related state, county, city and local acts, rules and regulations mandated prevailing wage requirements (e.g. Labor Code §§ 1720-1861; California Code of Regulations, Title 8, §§ 16000-16403). These citations are provided as reference only and not to be interpreted as all-inclusive. Vendor is responsible for complying with all applicable federal, state and local prevailing wage requirements whether referenced or not.
  - (2) The David Bacon Act requires that all contractors and subcontractors performing on federal contracts (and contractor and subcontractors performing on federally assisted contracts under the related Acts) in excess of \$2,000.00 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits (as determined by the Labor Department) for corresponding classes of laborers and mechanics employed on similar projects in the area. Prevailing Wage rates as determined by the Department of Industrial Relations for corresponding classes of laborers and mechanics employed on similar projects in the area are available on the website of the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD).
  - (3) Apprentices and trainees may be employed at less than predetermined rates. Apprentices must be employed to an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department. Trainees must be employed pursuant to a training program certified by the Department.
  - (4) Covered contractors and subcontractors are also required to pay employees weekly and to submit weekly certified payroll records to the contracting agency.
  - (5) Contractors and subcontractors on prime contracts in excess of \$100,000 are also required, pursuant to the Contract Work Hours and Safety Standard Act, to pay employees one and one-half times their basic rates of pay for all hours over 40 worked on a covered contract work in a workweek.
- H. Provisions Applicable to Mined Mineral POs. If this PO involves the purchase of mined minerals, Vendor shall not supply through this PO any sand, gravel, aggregates, or other minerals a Court may not purchase under Public Contract Code § 10295.5.

- I. Provisions Applicable to Rental POs. If this PO provides for the rental of personal property, the Court shall have no responsibility for loss or damage to the rented equipment arising from causes beyond the Court's control. The Court is responsible for repairs and liability for damage or loss only to the extent they become necessary and result from a negligent act or omission of the Court or any Court Personnel. If this PO provides for the rental of equipment or other personal property and the Court has not expressly elected through this PO to maintain the equipment or other personal property, Vendor shall keep the equipment in good working order and make all necessary or appropriate repairs and adjustments without qualification.
- J. Provisions Regarding Material Safety Data Sheets. If some or all of the Goods provided by Vendor under this PO are on CAL OSHA's "Hazardous Substances List," Vendor shall forward a completed Material Safety Data Sheet (MSDS) to the Court.
- K. Provisions Regarding Recycled Goods. Unless otherwise provided in the PO, pursuant to Public Contract Code § 12203(d), Vendor shall use or sell only recycled products under this PO to the maximum extent economically feasible, but only if the fitness and quality of such recycled products are equal to non-recycled products.
  - (1) If this PO provides for the purchase and sale of goods specified in Public Contract Code § 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), and the percentage of Vendor's postconsumer material in these goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or vendor website:
    - (a) Vendor shall deliver a declaration to the Court specifying the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code § 12200 in Goods offered or sold to the Court, regardless of whether the Goods meet the requirements of Public Contract Code § 12209.1;
    - (b) UNDER PENALTY OF PERJURY, the declaration shall be true and correct and will remain so until Vendor delivers any amendment of a the current declaration to the Court, in which case the current declaration as amended will be true and correct; and
    - (c) If Vendor sells under this PO any printer or duplication cartridges that comply with Public Contract Code § 12209, Vendor shall so specify in the declaration required under this section.

## PART C: ADDITIONAL INFORMATION TECHNOLOGY (IT) DEFINITIONS

1. **Cost to Cover:** The cost, properly mitigated, of procuring Goods of equivalent capability, function, and performance.
2. **Enhancement:** Includes any modifications, revisions, adjustments, or updates to hardware or software to correct inefficiencies or residual errors, to enhance functionality or operability, to customize user preferences, to promote compatibility among any systems of which the hardware or software is a part, and to effect any other minor changes.
3. **Equipment:** An all-inclusive term referring to the hardware and/or software to be provided under this PO.
4. **Hardware:** Usually refers to computer machines, electrical or mechanical devices, or parts thereof, and is contrasted with Software.
5. **Hardware Product:** Hardware furnished by Vendor as a distinct unit.
6. **IT:** Information technology, which includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.
7. **Software:** An all-inclusive term which refers to any computer programs, routines, or subroutines, including operating software, programming aids, application programs, and program products.
8. **Software Product:** Software furnished by Vendor as a distinct unit.

## **PART D: ADDITIONAL INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

### **1. Enhancements; Upgrades; Losses.**

- A. Enhancements. During the term of this PO, unless otherwise provided in the PO, as soon as any Enhancement applicable to any of the Goods or Services provided under this PO is reasonably reduced to practice, such Enhancement shall be included as part of the license granted, and Vendor shall accordingly incorporate such Enhancement in the Goods or Services provided under this PO; provided that such Enhancement is compatible with the Court's existing hardware or software configuration as verified by Vendor and such Enhancement is approved by the Court prior to their incorporation. Such incorporation shall be performed by Vendor without additional charge to the Court.
- B. Upgrades. Unless otherwise provided in the PO, for any improved or upgraded versions of any Goods or Services under this PO that are developed by Vendor and are made available to other licensees, such versions will be made available to the Court at the Court's option, provided such versions are compatible with the Court's existing hardware or software configuration as verified by Vendor, at a price no greater than the difference between (i) the price established by the Vendor for the later version; and (ii) the prevailing price or the price specified under this PO, whichever is greater, of the version provided by Vendor under this PO.
- C. Losses. Vendor shall endeavor to ensure that there is no material loss of functionality and/or performance of the Goods or Services due to any Enhancements or Upgrades made by Vendor, and the Enhancements or Upgrades are incorporated in such a way as not to cause any material fault or malfunction in the Goods or Services. If there is any loss in functionality, performance, fault or malfunction, then at the Court's option and at no cost to the Court, Vendor shall roll back the Goods or Services to the state it was in before the Enhancement or Upgrade was incorporated.

### **2. License; Title to Equipment.**

- A. Unless otherwise provided in the PO:
  - (1) Vendor grants to the Court and the Court accepts from Vendor, subject to the terms and conditions of the PO, a royalty-free, non-exclusive, non-transferable, worldwide license to use the Goods or Services listed in the PO.
  - (2) Vendor may own or hold a license to use and/or sublicense various hardware or software in existence prior to the start date of this PO ("Vendor's Materials"). Vendor's Materials may include designs, utilities, and all related materials, as well as programming, consulting, creative and marketing ideas, development tools, routines, sub-routines, algorithms, software, engines, source code, object code, and other programs, data and materials, and any modifications, enhancements, and derivative works thereto. Vendor may, at its option, include Vendor's Materials in the Work performed under this PO. If so, Vendor retains all right, title, and interest to all copyrights, patent rights, and trade secret rights in Vendor's Materials; provided that Vendor grants and the Court hereby accepts from Vendor, a royalty-free, non-exclusive, non-transferable, worldwide license to use any of Vendor's Materials incorporated into the Work performed by Vendor under this PO.
- B. The Court, and any division thereof, may use the Goods or Services in the conduct of its own business.
- C. With respect to Software Products furnished by Vendor as listed in the PO, the license above authorizes the Court to use such Software Products in machine-readable form on any Court computer or computer system; provided however, that no more than the number of machine-

readable copies of the Software Products if specified in the PO will be in existence at any one time without Vendor's prior written consent, not to be unreasonably withheld.

- D. Title to Software or Hardware Product furnished by Vendor shall also pass to the Court upon the Court's acceptance of the same, unless the PO expressly provides that the Hardware or Goods are rented, leased, or licensed to the Court such that title thereto will remain with Vendor. Title to special features installed on a Hardware Product and for which only a single installation charge was paid shall pass to the Court at no additional charge, together with title to the Hardware Product on which it was installed.

### **3. Liquidated Damages.**

- A. In the event that Vendor fails to complete Work in accordance with the PO within the time parameters as specified therein, and fails to provide suitable substitutions of Work acceptable to the Court, the Parties agree that the delay will interfere with the proper implementation of the Court's operations or programs to the loss and damage of the Court. From the nature of the case, it may be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The Court and Vendor, therefore, presume that in the event of any such delay, the amount of damage which will be sustained from such delay and payable to the Court as liquidated damages and not as a penalty shall be \$500 for each and every day's delay in excess of the allotted time parameters set forth in the PO. In the event Vendor fails to pay such liquidated damages, the Court may deduct the amount from any money payable to Vendor under this PO.
- B. If Vendor is delayed by reason of force majeure events, change orders or stop orders, or additional Work requested by the Court, or delays directly caused by the Court, the time of Vendor's performance may be extended commensurately by written PO by the Court's Project Manager, and Vendor shall be relieved of paying liquidated damages for the period of such extension.
- C. Although the Court, at its option, may waive the payment of liquidated damages, nothing herein shall be construed as affording Vendor any additional time for performance. The Court shall notify Vendor in writing of any claim for liquidated damages pursuant to this section on or before the date the Court deducts such sums from money payable to Vendor.

### **4. Manuals and Printed Materials.**

- A. Vendor agrees to provide to the Court, at no charge, all nonproprietary or proprietary manuals and other printed materials, and updated versions thereof, which are necessary or useful to the Court in its use of the Goods or Services provided hereunder. If additional copies of such manuals or printed materials are requested by the Court, Vendor will provide such additional materials at prices not in excess of prices charged by Vendor to its best customers for similar materials.
- B. If Vendor is unable to perform maintenance or the Court obtains Vendor's consent to perform its own maintenance on Equipment under this PO, then upon written notice by the Court, Vendor will provide adequate and reasonable assistance including relevant documentation to allow the Court to maintain the Equipment based on Vendor's methodology. Vendor agrees that the Court may reproduce such documentation for its own use in maintaining the Equipment. If Vendor is unable to perform maintenance, Vendor agrees to license any other contractor that the Court may hire to maintain the Equipment to use the above noted documentation. The Court shall not remove, alter, cover, or obliterate any copyright notices on any such documentation reproduced.

### **5. Patents, Copyrights, and Trade Secrets.**

- A. Vendor warrants that the Goods or Services, and any component thereof, furnished by Vendor under this PO shall not infringe upon the intellectual property rights of the Court or any third party. Vendor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this PO.
- B. Vendor further warrants that (i) any Hardware or Software Product as modified by Vendor under this PO will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party; and (ii) Vendor has the appropriate systems and controls in place to ensure that Court funds will not be used to acquire, operate, maintain, or modify any Hardware or Software Product in violation of any U.S. intellectual property right or law.

**6. Patent, Copyright, and Trade Secret Indemnity.**

- A. Vendor will indemnify, defend (with counsel satisfactory to the JBE Office of General Counsel), and save harmless the Court and Court Personnel, from any and all third party claims, damages, penalties, expenses, costs (including attorneys' fees), and losses arising or resulting from, or in connection with any alleged or actual infringement, misappropriation, or violation of any U.S. intellectual property right or proprietary right of any third party in any Goods or Services, or component thereof, furnished by Vendor in connection with this PO.
- B. Should either party become aware of a legal action related to, or affecting, the Work furnished under this PO, that party shall notify the other party of the action, and the Court shall tender the defense thereof within a reasonable time. Vendor shall have control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that: (i) Vendor shall confer and cooperate with the Court in such defense; (ii) the Court, at its option, may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); and (iii) the Court will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed. Vendor may be required to furnish a bond to the Court against any and all loss, damage, costs, expenses, claims, and liability for any alleged or actual infringement, misappropriation, or violation of any U.S. intellectual property right or proprietary right of a third party.
- C. With respect to claims arising from hardware or software manufactured by a third party and sold by Vendor as a reseller, Vendor will pass through to the Court such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Vendor will provide the Court with indemnity protection at least equal to that called for by the Third Party Obligation, or at the Court's option, the indemnity protection provided above in this PO.
- D. Should any of the Goods or Services, or any component thereof, become, or in Vendor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. intellectual property right, Vendor shall provide written notice to the Court. The Court shall permit Vendor at its option and expense either to procure for the Court the right to continue using the Goods or Services, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Goods or Services by the Court shall be prevented by injunction, Vendor agrees to take back such Goods or Services and make every reasonable effort to assist the Court in procuring substitute Goods or Services. If, in the sole opinion of the Court, the return of such infringing Goods or Services makes the retention of other hardware or software acquired from Vendor impractical, the Court shall then have the option of terminating this PO, or applicable portions thereof, without penalty or termination charge. Vendor

agrees to take back such Goods or Services and refund any sums the Court has paid Vendor less any reasonable amount for use or damage.

**7. Return of Confidential Information.** Upon cancellation, expiration, or termination of this PO, or at any other time upon the Court's request, Vendor shall promptly return to the Court any Confidential Information belonging to the Court remaining in Vendor's possession. Confidential Information shall be clearly marked and submitted separately, and not embedded in any of Vendor's Work Product. Vendor shall, at the Court's option, destroy all materials in Vendor's possession containing such Confidential Information.

**8. Rights in Data; Right to Copy or Modify.**

A. **Rights in Data.** All electronic files, input or output data, the media upon which such files and data are located (e.g., cards, tapes, discs, and other storage mediums), and all Software Products and packages (together with related documentation, source codes, object codes, upgrades, revisions, and modifications thereto), which are utilized, prepared, or developed for and paid for by the Court and delivered to the Court shall be property of the Court. Vendor may not distribute or otherwise disclose to third parties any data inputted or uploaded by the Court in its use of any Software or Hardware Product.

B. **Right to Copy or Modify.** Any Software Product provided by Vendor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the Court to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the PO will be in existence at any one time without Vendor's prior written consent, not be unreasonably withheld. The Court may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material; provided that nothing in this subsection will be construed to contradict the terms of any separately applicable third party license PO.

**9. Rights in Work Product.**

A. Unless otherwise provided in the PO, Vendor shall be deemed the sole author and patent and/or copyright owner of all inventions, discoveries, intellectual property, or technical communications originated or prepared solely by Vendor pursuant to this PO including papers, reports, charts, computer programs, and other documentation or improvements thereto (collectively, the "Work Product").

B. Software and other materials developed or otherwise obtained by or for Vendor or its affiliates independently of this PO ("Pre-Existing Materials") do not constitute Work Product. If Vendor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this PO constitute Work Product, but other elements do not. Nothing in this section will be construed to interfere with Vendor's or its affiliates' ownership of Pre-Existing Materials.

C. Vendor grants and the Court hereby accepts Government Purpose Rights to the Work Product as furnished to the Court hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the Court for any Court or government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any Court or government purpose. Such recipients of the Work Product may include, without limitation, the Court's contractors, California state and local governments, the U.S. federal government, and the Court's Personnel. Government Purpose Rights do not include any rights to

use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

- D. All inventions, discoveries, intellectual property, technical communications, ideas, concepts, know-how, techniques relating to data processing, and records developed, originated, or prepared during the course of this PO jointly by Vendor and the Court may be used by either party without obligation of notice or accounting.

#### **10. Training; Technical Support.**

- A. Training. Unless otherwise provided in the PO or in an implementation plan schedule agreed upon by the parties, Vendor shall provide technical and/or end user training (e.g., non-technical or functional) to enable Court Personnel to productively use the Goods or Services furnished under this PO. Vendor shall provide overview training prior to placing any Goods or Services into operational use and comprehensive user training upon installation and start-up in accordance with the PO or implementation plan schedule. All training shall be conducted by qualified Vendor personnel during regular business hours at Court locations or at mutually agreed-upon locations.
- B. Technical Support. Unless otherwise provided in the PO, Vendor shall also maintain and provide for the Court's unlimited use, a live "Helpdesk" that is available online or by phone for immediate troubleshooting, training, and/or diagnostics on issues affecting the Goods or Services. If the issue requires an on-site technician for repair, the Helpdesk shall gather the necessary information to promptly dispatch a qualified technician who is equipped to train and/or customize the system to the Court's needs.
- C. Unless otherwise provided in the PO, all costs, including travel expenses, associated with the provision of such training or technical support are embedded in the total PO Amount.

#### **11. Warranties (IT).**

- A. General Warranty. Vendor warrants that the Work furnished hereunder will (i) substantially conform to the requirements of this PO (including without limitation all descriptions, specifications, and drawings identified); and (ii) be free from material defects in materials and workmanship. Vendor further warrants that Work shall be performed in a professional manner, in accordance with the highest applicable professional standards, using qualified personnel having a level of skill and experience in the area commensurate with the requirements of the PO, and in accordance with industry standards.
- B. Pass Through of Warranties. Where Vendor resells hardware or software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Vendor will pass through any such warranties to the Court and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Vendor from, Vendor's warranty obligations set forth in this PO.
- C. Scope of Warranties.
  - (1) All warranties, including special warranties specified elsewhere herein, shall inure to the Court, its successors, assigns, customer agencies, court users, and governmental users of the Goods or Services.
  - (2) Unless otherwise specified in the PO, the warranties in this section begin upon acceptance of the Work and end one (1) year thereafter.
- D. Special Warranty Provisions Relating to Software.

- (1) In addition to the other warranties set forth herein, where the PO involves the furnishing of software (regardless of whether such software is installed on the Court's systems or accessible via an online interface), Vendor warrants that such software (i) is free of harmful code (e.g., viruses, worms) and will run without material interruption; (ii) will perform in accordance with its license and accompanying documentation; and (iii) will not cause any material fault, loss, or malfunction in the Court's existing systems. The Court's approval of designs or specifications furnished by Vendor shall not relieve the Vendor of its obligations under this warranty.
- (2) Vendor warrants that Vendor will not cause any unplanned interruption in the operations of, or accessibility to, any software furnished under this PO or any portion thereof through any device, method, or means including, without limitation, the use of any virus, worm, "lockup," "time bomb," or "key lock" device or program, or other disabling code, which (i) has the potential or capability of causing any unplanned interruption in the operations of, or accessibility of any Goods or Services or any portion thereof; (ii) could alter, destroy, or inhibit use of any Goods or Services or any portion thereof; or (iii) which could block access to or prevent use of any Goods or Services or any portion thereof by the Court or its users (collectively, "Disabling Device(s)"). Vendor further represents and warrants that it has not purposely placed, nor is it aware of, any Disabling Device on any portion of the Goods or Services furnished to the Court under this PO, nor shall Vendor knowingly permit any subsequently delivered portion of the Goods or Services to contain any Disabling Device. Without limiting the foregoing, if the Court believes that harmful code may be present in any software delivered hereunder, Vendor will, upon the Court's request, provide a master copy of the software for comparison and correction.

E. Other Warranties.

- (1) Vendor warrants that it has the full right and authority to grant all licenses, including perpetual licenses, set forth in this PO.
- (2) Additional warranties by Vendor are specified in other provisions of this PO.

F. Remedies.

- (1) Vendor shall indemnify, defend (with counsel satisfactory to the Court), and hold harmless the Court and Court Personnel from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs, including court fees, litigation or settlement costs, and attorneys' fees, arising or resulting from or in connection with Vendor's breach of the warranties set forth in this PO.
- (2) If, during the warranty period, the Court discovers that the Work performed by Vendor under this PO has not been performed in accordance with the warranties herein and notifies the Vendor in writing of such faulty Work, then at the Court's option: (i) Vendor shall, without cost to the Court, perform any services necessary to correct the fault therein, including the repair or replacement of any nonconforming Goods or Services; or (ii) Vendor shall refund all amounts paid by the Court for the nonconforming Goods or Services and pay to the Court any amounts necessary to equal the Court's Cost to Cover.
- (3) The rights and remedies in the above warranty clauses are in addition to any other rights or remedies, provided in law, equity or under this PO.

**12. Miscellaneous Provisions Applicable to Specific Contracting Situations.**

A. IT Maintenance Agreements.

- (1) Contractor shall keep Equipment in good operating condition and shall always be responsive

to the maintenance requirements of the Court.

(2) Unless otherwise provided in the Agreement:

- (a) Maintenance services shall include scheduled preventative maintenance and unscheduled, on-call remedial maintenance. Preventative maintenance shall be performed on a schedule which is mutually acceptable to the Court and Contractor, which is consistent with the Court's operating requirements, and which is based upon the specific needs of the Equipment as determined by the manufacturer of the Equipment. Remedial maintenance shall be commenced promptly after notification by the Court that the Equipment and/or software is inoperative or otherwise in need of maintenance.
- (b) Maintenance parts shall be furnished by Contractor and shall be equivalent to new in performance when properly used. Replacement maintenance parts shall become property of the Court.
- (c) Contractor shall not charge the Court for any travel expenses associated with the provision of maintenance services.
- (d) Contractor shall grant a proportionate maintenance credit or a pro-rata refund of the Compensation paid under the Agreement on any Equipment that is inoperative for consecutive scheduled work periods totaling 24 hours from the time the Court notifies the Contractor the Equipment was inoperative or otherwise in need of maintenance, provided (i) the Equipment became inoperative or is in need of maintenance through no fault of the Court; and (ii) the breakdown was attributable to equipment failure.
- (e) In the event the Equipment maintained under this Agreement is moved to another location within the County of Riverside, Contractor shall continue to maintain the Equipment at the new location(s) at no additional cost to the Court, with the exception of additional mileage expenses, which the Court will reimburse at rates that are mutually acceptable to both Parties. The Court may request Contractor to dismantle, pack, and re-install the Equipment at the new location(s) at rates that are mutually acceptable to both Parties.

**END OF PURCHASE ORDER TERMS AND CONDITIONS**