

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
STANDARD BUSINESS DEFINITIONS, TERMS, AND CONDITIONS 3.3**

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PART A: BUSINESS DEFINITIONS

1. **Administrative Office of the Courts (AOC):** Former name of the staff agency to the Judicial Council of California, the policy-making body of the California Court system. The staff agency is now referred to simply as the Judicial Council.
2. **Agreement:** Entire integrated agreement, including all Contract Documents, Exhibits, referenced Attachments, and Amendments incorporated therein, signed by the Court and Contractor, for performance of the Work.
3. **Agreement Amount:** Total dollar amount of the Agreement.
4. **Amendment:** Written contract document issued by the Court, and signed by both Contractor and the Court, modifying the Agreement and identifying any of the following: (1) change in the Work; (2) change in Agreement Amount; (3) change in schedule for delivery and performance of Work; or (4) any change to other terms and conditions.
5. **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.
6. **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).
7. **Certificate of Insurance:** A document that provides evidence that an insurance policy has been underwritten and that includes a statement of the policy coverage.
8. **Compensation:** All remuneration owed to Contractor in respect of Work, including Contractor's professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.
9. **Confidential Information:** (i) Any financial, statistical, personal, technical, or other data or information that is designated confidential by a party to the Agreement; (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 Contractor 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 the Agreement; (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.
10. **Consulting Services:** Refers to the services performed under "Consulting Services Agreements," which are defined in Public Contract Code § 10335.5, substantially, as contracts that: (1) are of an advisory nature; (2) provide a recommended course of action or personal expertise; (3) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (4) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type. The end product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract. "Consulting Services Agreements" do not include: (1) Contracts between a state agency and the federal government; or (2) Contracts with local agencies,

as defined in Revenue and Taxation Code § 2211, to subvene federal funds for which no matching state funds are required.

11. **Contractor:** The person or entity entering into an Agreement with the Court.
12. **Court:** The Superior Court of California, County of Riverside.
13. **Court Personnel:** Members, justices, judges, subordinate judicial officers, employees, and agents of the Court.
14. **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.
15. **Data:** Information, including, but not limited to, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
16. **Deliverable:** Hardware, software, firmware, documentation, services or other items, specified in the Agreement, that Contractor shall complete and deliver or submit to the Court.
17. **DVBE:** An acronym for Disabled Veterans Business Enterprise.
18. **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.
19. **Initial Term:** The period commencing on the Effective Date and expiring on the Expiration Date set forth on the coversheet of the Agreement.
20. **Goods:** Goods to be furnished and/or serviced by Contractor as described in Exhibit A.
21. **Judicial Branch Contract Law (JBCL):** Public Contract Code §§ 19201-19210.
22. **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.
23. **Judicial Branch Personnel:** Members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.
24. **Loss:** As used in the indemnity provisions of the Agreement, includes any actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorneys' fees.
25. **Material:** All types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication hardware and software.
26. **Notice:** Written document signed by an authorized representative of either party to the Agreement, providing formal notification and sent by either:
 - (1) depositing in the U. S. Mail or commercial express mail, prepaid, to the address of the authorized representative of the other party. Notice will be effective on the date of receipt; or
 - (2) hand-delivery to the other party's authorized representative, as set forth in the Agreement. This Notice shall be effective on the date of receipt.
27. **Option Period:** The period, if any, through which the Agreement may be extended by a party.
28. **Progress Payment:** Partial payment following the completion of a deliverable, milestone, or stage of progress under the Agreement.
29. **Project Lead:** Contractor's representative who will operate as the main interface with the Court regarding the Work to be performed under the Agreement.
30. **Project Manager:** Court representative who will operate as the main interface between Contractor and the Court regarding the Work to be performed under the Agreement.
31. **Proposal:** Response to a Request for Proposal that describes the offeror's approach, statement of work, schedule and cost to provide goods or services, as well as the ability to meet other relevant criteria established by the Court.
32. **Services:** Services to be performed by Contractor as described in Exhibit A.

- 33. Statement of Work (SOW):** Detailed description or reference to the object of a contract (e.g., goods, services, information technology).
- 34. Stop Work Order:** Written notice to Contractor from the Court, directing Contractor to stop performance of Work for a period of ninety (90) days following delivery of the order to Contractor, or for a longer period by mutual agreement of the parties.
- 35. Subcontractor:** The person or entity that has a contract (as an "independent contractor" and not an employee) with Contractor to provide some portion of the Work of the Agreement.
- 36. Term:** Comprises the Initial Term and any Option Period.
- 37. Termination Date:** Has the same meaning as Expiration Date unless the Agreement is validly terminated before the applicable Expiration Date, in which case Termination Date means the effective date the Agreement is validly terminated.
- 38. Third Party:** Any individual or entity not a party to the Agreement.
- 39. Work:** Any or all labor, goods, services, Deliverables, equipment, supplies, Materials, tasks, and any other items or activities to be furnished under the Agreement or are necessary for the performance and completion of Contractor's obligations in compliance with the requirements of the Agreement. Work may also include Tasks, Deliverables, and/or submittals required by individual work order(s).

PART B: TERMS AND CONDITIONS

- 1. Accounting.** Contractor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (U.S. GAAP).
- 2. Amendment.** No modifications, alterations, changes, or waiver to the Agreement 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 Agreement into the written amendment.
- 3. Assignment; Subcontracting; Successors.**
 - A. Assignment.
 - (1) Court may assign its rights and duties (or subcontract portions of the Agreement) to any other public entity. Court shall notify Contractor in writing within 30 days following the assignment.
 - (2) In addition, either party may assign its rights and duties or subcontract portions of the Agreement 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 agreement 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 Agreement of the assigning/subcontracting party;
 - (b) affirm the rights granted in the Agreement to the non-assigning party;
 - (c) make the representations and warranties made by the assigning/subcontracting party in the Agreement; and
 - (d) appoint the non-assigning party an intended third party beneficiary under the written agreement with the assigning/subcontracting party.
 - (3) No assignment or subcontract will release either party of its duties under the Agreement.
 - B. Subcontracting. Contractor 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 Agreement. Subcontractors will be subject to the same terms and conditions applicable to the Contractor under the Agreement and shall incorporate the Agreement into any subcontracting relationship. Contractor shall be liable for all subcontractor acts or omissions, including indemnity obligations.
 - C. Successors. The Agreement binds the parties as well as their heirs, successors, executors, administrators, and assignees.
- 4. Audit; Ownership of Results; Retention of Records.**
 - A. Audit. Upon reasonable notice, Contractor will provide to Court, to any federal or state entity with monitoring or reviewing authority, or to Court's authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under the Agreement, 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**. Contractor agrees to provide Court with all relevant information requested, and will permit access to its premises at reasonable times, for the purpose of interviewing employees and inspecting and copying any relevant records. Unless otherwise agreed, Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit.

- B. **Ownership.** Unless otherwise provided in the Agreement, 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, Contractor shall give original materials to the Court or to another party at the Court's direction.
- C. **Copies.** Contractor may retain copies of any original documents Contractor provides to the Court.
- D. **Retention of Records.** Contractor will maintain all financial data, supporting documents, and all other records relating to performance and billing under the Agreement for a period in accordance with state and federal law. The minimum retention period will be four (4) years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.

5. Background Checks; Fingerprinting; Personnel Requirements.

A. Background Checks / Fingerprinting.

- (1) The Court shall have the right, but not the obligation, to request or conduct background checks on any of Contractor's personnel, its subcontractors' personnel, or agents performing Work under the Agreement.
- (2) Contractor 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. Contractor 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. Contractor may not assign to perform Work under the Agreement any personnel or any subcontractor's personnel who refuse to undergo a background check, and shall immediately remove such personnel from performing Work under the Agreement.
- (3) The Court, in its sole discretion, shall determine whether Contractor's or its subcontractors' personnel or agents have passed the backgrounds checks required by the Court. No background information will be released to the Contractor or its subcontractors.
- (4) The Court will require background checks based on the following criteria:

RISK LEVEL	COURT REQUIRED CLEARANCE	CLEARANCE CRITERIA
Working at Court locations escorted during Court hours. (Court staff escort and Sheriff Court Services on site; no risk of access to CLETS or confidential files)	None Required	N/A
Working at Court locations unescorted during Court hours. (Court staff and Sheriff Court Services on site; minimal risk of access to CLETS or confidential files)	Moderate Level	DOB and DL# required. Court staff search local Criminal database for records. Court decides if individuals eligible to work in Court facilities.
Working at Court locations escorted after hours by Court staff; no Sheriff Court Services present. (No risk of access to CLETS or confidential files)	Moderate Level	DOB and DL# required. Court staff search local Criminal database for records. Court decides if individuals eligible to work in Court facilities.
Working at Court locations unescorted full key/keycard access after Court hours. (Highest risk for potential access to CLETS or confidential files)	High Level	Live Scan fingerprint check is required, which includes Dept. of Justice (DOJ) and Federal Bureau of Investigation (FBI) criminal records check. Note that Court will receive subsequent arrest notifications from DOJ and FBI. Live Scan results, and subsequent convictions, which will result in disqualification from ability to work in Court facilities, include any felony convictions; or misdemeanor convictions that involve moral turpitude, dishonesty, or fraud, and/or that bear on the personnel's ability to perform his/her duties or responsibilities. Additionally, within the full discretion of the Court, any other arrests or convictions that demonstrate a lack of honesty or credibility, or that pose a serious question or issue as to the individual's trustworthiness may result in disqualification.

B. Personnel Requirements.

- (1) Contractor 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 Contractor's personnel for any reason, Contractor shall immediately replace them with qualified personnel upon receipt of the Court's Notice. Otherwise, Contractor shall endeavor to minimize turnover of personnel Contractor assigned to perform the Work under the Agreement. Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Contractor does not promptly furnish replacement personnel acceptable to the Court, the Court may terminate the Agreement for cause.

6. Change Orders; Additional Goods and/or Services.

A. Change Orders.

- (1) Due to the nature of the work to be accomplished by the Agreement, the specific goods, services, and timing needed may not be known until performance is underway. Therefore, the Court reserves the right to require Contractor to make changes in the Work that are within the scope of the Agreement. Such changes may include modifications to the Work, or changes in the timing or level of effort for the Work, as delineated in the Statement of Work.
- (2) The Change Order documents the changes to be made, which may include: a) a description of the proposed change and the reasons for the change; b) a summary of the total compensation to be paid Contractor with a breakdown of tasks and costs, including any reduction in work or costs resulting from the change; and c) statement of the expected impact on the Work.
- (3) Contractor should not proceed with any change until Contractor receives a Change Order from the Court. All costs for changes performed by Contractor without the Court's prior written approval will be at Contractor's sole risk and expense.

- B. 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 Statement of Work, the Court reserves the right to require Contractor to provide additional Goods and/or Services up to ten percent (10%) in quantity or ten percent (10%) of the value of the Agreement Amount, with payment to Contractor commensurate with the rates established in the Statement of Work, or if none, as mutually agreed upon.

7. Choice of Law; Jurisdiction and Venue. California law governs the Agreement. Jurisdiction and venue for any legal action arising from, or connected with the Agreement 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 Agreement, Contractor 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 Contractor nor its subcontractors acquires any right or title to the Confidential Information, and Contractor and its subcontractors agree not to disclose any Confidential Information to any third party. All Confidential Information disclosed to Contractor or its subcontractor will be held in strict confidence and used only in performance of Work under the Agreement. If the Court requests additional security measures to protect Confidential Information from disclosure, Contractor shall not unreasonably refuse or delay to adopt the same. In the event of any unauthorized disclosure or loss of Confidential Information, Contractor will immediately provide notice to the Court, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.
- B. Permissible Disclosures.** Contractor may disclose the Court's Confidential Information only on a "need to know" basis to Contractor's employees and subcontractors and any representatives of the Court who are working on the project and who have also executed confidentiality agreements that protect the Court's confidential information. Additionally, Contractor may disclose the

Confidential Information, to the extent necessary to comply with any applicable law, rule, regulation, or ruling, provided Contractor gives advance notice to the Court.

- C. **Publicity.** Contractor shall not make any public announcement or press release about the Agreement without the prior written approval of the Court.
- D. **Specific Performance.** Contractor 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) Contractor 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 the Agreement. Contractor 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) Contractor 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 Contractor, its Subcontractors, or their employees, principals, partners, family members, or organizations have a financial interest in the outcome of the proceedings.
- (3) Contractor 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 the Work or Agreement;
 - (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) Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Contractor or any agent, director, or representative of Contractor, to any officer, official, agent, or employee of the Court, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement.
- (2) For any breach or violation of this covenant, the Court has the right to terminate the Agreement 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 Contractor agreed to provide, will be borne and paid for by Contractor. The Court's rights and remedies under this provision are in addition to any other rights and remedies provided by law or under the Agreement.

10. Consideration.

- A. The consideration paid to Contractor is the entire compensation for all Work performed under the Agreement, including all of Contractor'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 Contractor from its obligation to replace unsatisfactory Work, even if the unsatisfactory character of such Work may have been apparent or detected at the time such payment was made. Work, Data, or components that do not conform to the requirements of the Agreement will be rejected, and will be replaced by Contractor, without delay or additional cost to the Court.
- C. **Disallowance.** If Contractor receives payment from the Court for a service or reimbursement that is later disallowed or rejected by the Court, Contractor 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 Contractor, under the Agreement or any other agreement.
- D. **Availability of Funds.** The Court's obligation to compensate Contractor is subject to the availability of funds. The Court shall notify Contractor if funds become unavailable or limited during the term of the Agreement.

11. Contractor Certification Clauses. Contractor certifies that the representations below are true and will remain true throughout the term of the Agreement. Contractor shall have an affirmative duty to promptly notify the Court if any of these representations are not or are no longer true:

- A. **Authority.** Contractor has authority to enter into and perform its obligations under the Agreement, and Contractor's signatory has authority to bind Contractor to the Agreement. The Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. If (1) Contractor is a corporation, limited liability company, or limited partnership, and (2) the contract will be performed in California, Contractor is qualified to do business and in good standing in the State of California.
- B. **Not an Expatriate Corporation.** Contractor 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.** Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.
- D. **No Gratuities.** Contractor 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 the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement.
- E. **No Conflict of Interest.** Contractor 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 Contractor's knowledge, the Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- G. No Litigation. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform the Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse effect on Contractor's business, the validity or enforceability of the Agreement, or Contractor's ability to perform the Agreement.
- H. Compliance with Laws Generally. Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.
- I. Work Eligibility. All personnel assigned to perform the Agreement are able to work legally in the United States and possess valid proof of work eligibility.
- J. Drug Free Workplace. Contractor provides a drug-free workplace as required by California Government Code §§ 8355 through 8357.
- K. No Harassment. Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of the Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- L. Non-discrimination. Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and California's Fair Employment and Housing Act (Government Code §§ 12990 et seq.) and associated regulations (Code of Regulations, title 2, §§ 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.
- M. Prohibition Against Hiring Court Employees. Contractor certifies and will require all Subcontractors to certify to the following: "Former Court employees will not be offered employment position for two years from the date of separation, if that employee participated in the decision-making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed Agreement, within the prior twelve-month period of Court employment."
- N. Provisions regarding Domestic Partners, Spouses, and Gender Discrimination. If the Agreement provides for total Compensation of more than \$100,000, Contractor 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 the Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from the Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears UNDER PENALTY OF PERJURY that this representation is true.
- P. Provisions regarding Compliance with the Sweatfree Code of Conduct. If the Agreement 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 the Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares UNDER PENALTY OF PERJURY that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code § 6108.
 - (2) Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (1) and shall provide the same rights of access to the Court.
- Q. Provisions regarding Compliance with the Child Support Compliance Act. If Contractor is a private entity, and the Agreement provides for Compensation of \$100,000 or more:
- (1) Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - (2) Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

- R. Provisions regarding Discharge Violations. If Contractor is a private entity, Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.
- S. Provisions regarding the Electronic Waste Recycling Act. If the Agreement provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code §§ 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.
- 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. Contractor 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 Agreement. Contractor 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 Agreement.
- V. Provisions Regarding Parts Cleaning. If the Agreement involves parts cleaning, Contractor shall use recycled solvents, to the maximum extent economically feasible, in the performance of Work under the Agreement. Contractor further certifies, UNDER PENALTY OF PERJURY, that any post-consumer or secondary materials provided or used in the Work by Contractor meet all California minimum post-consumer content requirements.
- W. Provisions Regarding Document Printing Agreements. If the Agreement is for printing documents, Contractor shall use recycled products, to the maximum extent economically feasible, in the performance of Work under the Agreement. Contractor further certifies, UNDER PENALTY OF PERJURY, that any recycled products provided or used in the Work by Contractor meet all California minimum post-consumer content requirements.
- X. Provisions Regarding Iran Contracting Act. If the Agreement is for the purchase of goods or services of \$1,000,000 or more, Contractor further certifies, UNDER PENALTY OF PERJURY, that it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services pursuant to California Public Contract Code section 2203(b).

- Y. Provisions Regarding Conflict Minerals. If the Agreement is for the purchase of goods or services related to or involving “conflict minerals” (columbite-tantalite, cassiterite, wolframite, or gold), Contractor further certifies, UNDER PENALTY OF PERJURY, that it is not a “scrutinized company,” as defined by California Public Contract Code section 10490(b).
- Z. Provisions Regarding Delinquent Taxpayers. If the Agreement is for non-IT goods or services, Contractor further certifies, UNDER PENALTY OF PERJURY, that it is not a person or entity identified by the Franchise Tax Board or the Board of Equalization as one of the 500 largest tax delinquents.

12. Contractor Status.

- A. Independent Contractor. Contractor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Court. Contractor has no authority to bind or incur any obligation on behalf of the Court. Except as expressly stated, Contractor has no authority or responsibility to exercise any rights or power vested in the Court. Contractor, its employees, or anyone working under Contractor, including subcontractors’ employees, shall not qualify for workers’ compensation or other fringe benefits of any kind through the Court. If any legally binding determination concludes that Contractor is not an independent contractor, the Court may terminate the Agreement immediately upon notice. Alternatively, Contractor may agree to a reduction in the Court’s financial liability, so that the Court’s total costs under the Agreement do not exceed the Agreement Amount.
- B. Exclusive Control of Means and Method of Performance.
 - (1) Contractor’s employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor.
 - (2) Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor’s employees, consultants, and independent contractors.
 - (3) If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor’s independent status with respect to 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) Contractor 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 Contractor or Subcontractor personnel.
 - (5) Contractor will determine the method, details, and means of performing or supplying the Work under the Agreement. Contractor will be responsible to the Court only for the requirements and results specified in the Agreement, and will not be subjected to the Court’s control with respect to the physical action or activities of Contractor in fulfillment of the

Agreement. Contractor will have the “right to control” and bear the sole responsibility for the job site conditions and safety.

C. Permits, Laws, and Regulations.

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

13. Default and Remedies.

A. Default. Unless otherwise provided, a default exists under the Agreement if:

- (1) Contractor fails or is unable to meet or perform any of Contractor’s duties under the Agreement, 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) Contractor or Contractor’s creditors file a petition as to Contractor’s bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business;
- (3) Contractor makes or has made under the Agreement 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 Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under the Agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make the Agreement admissible when required is not fulfilled or performed.

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

C. Remedies following Contractor Default.

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

- (a) Withhold all or any portion of a payment otherwise due to Contractor, exercise any other rights of setoff as may be provided in the Agreement or any other agreement between a Court and Contractor, or charge to the Contractor any costs to the Court arising from Contractor's default, including costs to complete or correct the Work;
 - (b) Exercise, following notice, the Court's right of early termination of the Agreement as provided below; or
 - (c) Seek any other remedy available at law or in equity.
- (2) Remedies Cumulative. All remedies provided for in the Agreement may be exercised individually or in combination with any other available remedy.

14. Dispute Resolution. The Court and Contractor will attempt, in good faith, to resolve any disputes informally. Contractor 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 the Agreement on which any demand is based;
 - (c) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and
 - (d) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment. Notice will be signed by an authorized representative of the aggrieved party.
- (3) Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen (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, Contractor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by the Court. Contractor's failure to diligently proceed in accordance with the Court's instructions will be considered a material breach of the Agreement.

15. Entire Agreement.

- A. Headings or captions to the provisions of the Agreement are solely for the convenience of the parties, are not part of the Agreement, and will not be used to interpret or determine the validity of the Agreement.
- B. The Agreement was negotiated between the parties, and neither party “prepared” the Agreement for purposes of California Civil Code § 1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.
- C. The Agreement, including all documents incorporated by reference, constitutes the entire and final understanding of the parties regarding the matter, and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to the this matter, 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 Contractor has the authority to make, or has made, any oral statement, agreement or representation, in connection with the Agreement, 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 Agreement. No subsequent purchase order, invoice, click-through or shrink-wrap agreement, or similar document containing conflicting terms and conditions issued by Contractor in conjunction with the performance of any party’s duties and/or obligations due under the Agreement, shall be permitted to modify or contradict any of the terms and conditions of the Agreement.

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. Contractor 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 Contractor.

17. Indemnification.

- A. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless, and defend (with counsel satisfactory to the Court), 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, attorneys’ fees, and attorneys’ fees incurred in enforcing this indemnification clause) arising or resulting from, or in connection with, Contractor’s performance

of, or failure to perform, Work or Contractor's other duties under the Agreement, or any breach of the Agreement by Contractor or its officers, employees, agents, representatives, or Subcontractors. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

- B. Contractor's obligation to defend, indemnify, and hold the Court and Court Personnel harmless is not limited to, or restricted by, any requirement in the Agreement that Contractor procure and maintain insurance policies.

18. Infringement Protection. Contractor shall indemnify, defend (with counsel satisfactory to the Court), and hold the Court and Court 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 the Agreement.

19. Insurance Requirements. The Agreement shall specify whether the insurance requirements of Section 19.1, Section 19.2, or Section 19.3 apply. Unless the Agreement calls for specific coverage(s) set forth in Section 19.2 or Section 19.3, the insurance requirements of Section 19.1 shall apply.

19.1 Insurance Requirements – General. Contractor shall maintain insurance that is sufficient in scope and amount to permit Contractor 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 Contractor's performance or breach of the Agreement, or be adequately self-insured for all risk, physical damage, and public liability. Contractor shall maintain employer's liability and workers' compensation coverage at California statutory levels covering all employees performing Work under the Agreement. Should the Court make such a request, Contractor shall provide to the Court certificates of insurance and/or complete copies of all insurance policies maintained by Contractor to meet the insurance requirements contained in this paragraph.

- OR -

19.2. Insurance Requirements – Specific Coverages.

- A. Minimum Scope and Limits of Coverage. When required by the Agreement, Contractor shall maintain the following insurance coverages during the term of the Agreement.

- (1) Workers' Compensation and Employer's Liability Insurance. This policy must include workers' compensation to meet the minimum requirements of the California Labor Code, and it must provide employer's liability coverage for bodily injury and property damage 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 must cover bodily injury and property damage liability and be applicable to all vehicles used in the Contractor's performance of the Agreement 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 Contractor's performance of Services under the Agreement, 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 Contractor's employees or any other person for whose acts Contractor may be held liable ("Contractor's Agents"), and the negligent employment, investigation, supervision, failure to report, or retention of Contractor's employees or Contractor'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 Contractor.

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

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

B. Insurance Requirements Applicable to Required Policies.

- (1) Contractor 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 Contractor. Contractor 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, Contractor

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 Agreement and the Court's acceptance of all Work provided under the Agreement. 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 the Agreement.

- (4) If Contractor 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.
- (5) Deductibles and Self-Insured Retentions. The deductible and/or self-insured retentions shall not limit or apply to Contractor's liability to the Court and shall be the sole responsibility of Contractor. Contractor 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.
- (6) 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 shall be covered as additional insureds for liability arising out of activities performed by, or on behalf of, Contractor under the Agreement.
 - (b) Primary Insurance; Waiver of Subrogation. Contractor's insurance coverage shall be primary and non-contributory with any insurance or risk management programs covering the Court or Court Personnel. Contractor and its insurance carrier waive any and all rights of subrogation against the Court and Court Personnel.
 - (c) Separation of Insureds. Contractor'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 Contractor shall be endorsed to provide written notice to the Court of cancellation in coverage, non-renewal, or reduction of coverage within 15 days.

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

- (1) If Contractor 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, Contractor 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 Contractor's performance or breach of the Agreement, notwithstanding any clause or amounts limiting the Contractor's liability to the Court. Contractor's failure to maintain adequate insurance policies conforming to the above requirements may be considered a breach of the Agreement.

- (2) Before Contractor begins Work, Contractor 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. Certificate(s) of insurance shall be submitted to the Court's insurance tracking service via one of the following methods:
- E-mail to: riversidecourt@ebix.com (preferred method);
 - Fax to: (770) 325-2082;
 - Mailing Address:
Superior Court of California, County of Riverside
Insurance Compliance
PO Box 12010 - RV
Hemet, CA 92546-8010

*Please use only **ONE** of these methods. Duplicate submission may cause delay.*

Submission of certificates of insurance (or lack thereof) and/or their approval by the Court shall not relieve the Contractor 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, Contractor shall provide: (1) complete copies of each required policy; and (2) the same evidence of insurance for its subcontractors as the Court requires of Contractor.

- (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, Contractor shall, upon written notice from the Court, promptly obtain a new policy, and submit the same to the Court, with the appropriate certificates and endorsements.
- (4) If any of the required policies lapses during the Term, the Court is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

- OR -

19.3 Insurance Requirements – Facility Contracts.

A. Contractor Insurance Requirements. Each Contractor is required to maintain, at its own expense and for the duration of its contract, the following insurance provided on an occurrence basis by an insurance company or companies that are rated "A-,VII" or higher by A.M. Best's key rating guide and are authorized to do business in the State of California. This insurance must be maintained to protect the contractor from project-related exposures. The limits of liability shown below are minimum limits and are not intended to limit the contractors' liability under the terms and conditions of its Contract.

B. Workers' Compensation and Employers Liability. Workers Compensation insurance for all of the contractor's employees engaged in the performance of work associated with the performance of work with limits of not less than:

Part One – Workers' Compensation	Statutory Limit
Part Two – Employers' Liability	
Bodily Injury by Accident, each accident	\$1,000,000
Bodily Injury by Disease, each employee	\$1,000,000
Bodily Injury by Disease, policy limit	\$1,000,000

C. Commercial General Liability. Commercial General Liability Insurance, which shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract, for the contractor's premises and operations liability resulting from its performance of the work including Products Liability for any product manufactured, assembled or otherwise worked upon away from the project site, with limits not less than:

Each Occurrence Limit	\$1,000,000
Personal Liability and Advertising Liability Limit	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000

D. Umbrella/Excess Liability. Umbrella/Excess Liability Insurance, insuring against bodily injury and property damage, personal and advertising injury, products and completed operations, and all other coverage as specified above (Employers' Liability and Commercial General Liability). The limits of liability of not less than the amounts indicated below and shall include underlying Employers' Liability and Commercial General Liability follow-form wording:

Each Occurrence Limit	\$5,000,000
General Aggregate	\$5,000,000

E. Business Automobile Liability. This policy must cover bodily injury and property damage liability and be applicable to all vehicles used in the Contractor's performance of the Agreement whether owned, non-owned, leased, or hired, with limits not less than:

Each Occurrence Limit	\$1,000,000
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F. Contractor's Equipment. All contractors shall provide coverage for their own tools, materials, machinery and equipment.

G. Insurance will be provided on an occurrence basis and shall be endorsed to include:

- (1) the General Contractor, the State of California, the Judicial Council of California, the County of Riverside, and the Superior Court of California, County of Riverside, and their respective elected and appointed officials, judges, officers, employees and agents, and other entities as Additional Insureds for all contracted operations of the

contractor and issued under Additional Insured Endorsement Form ISO CG 2010 07/04, or its equivalent;

- (2) a waiver of subrogation endorsement in favor of the State of California, Judicial Council of California, the County of Riverside, and the Superior Court of California, County of Riverside, and their respective elected and appointed officials, judges, officers, employees and agents, and other entities (A copy of the Waiver of Subrogation endorsement must be attached to the contractors' Certificate of Insurance.);
- (3) the policy shall be endorsed to provide Products and Completed Operations coverage for three (3) years after substantial completion of the contractor's work at the project site;
- (4) the policy shall be endorsed to be primary and non-contributory with any insurance or self-insurance maintained by the State of California, the Judicial Council of California, the County of Riverside, or the Superior Court of California, County of Riverside;
- (5) any deductibles or self-insured retentions shall be the sole responsibility of the contractor with respect to all contracted operations.

H. Certificates of Insurance.

- (1) All contractors shall maintain the required insurance without interruption from the date of commencement of work at the project site until termination of its work under its contract. All contractors shall provide the Superior Court of California, County of Riverside with Certificates of Insurance evidencing the coverage, limits, and endorsements to the insurance policies required under the contract are in full force and effect prior to commencement of work. Contractors must provide the Superior Court of California, County of Riverside with updated Certificates of Insurance and associated endorsements when policies are renewed or are replaced.
- (2) All certificates of insurance and replacement certificates of insurance are subject to the approval of the Court. Certificate(s) of insurance shall be submitted to the Court's insurance tracking service via one of the following methods:
 - E-mail to: riversidecourt@ebix.com (preferred method);
 - Fax to: (770) 325-2082;
 - Mail to:
Superior Court of California, County of Riverside
Insurance Compliance
PO Box 12010 - RV
Hemet, CA 92546-8010

Please use only ONE of these methods. Duplicate submission may cause delay. Submission of certificates of insurance and/or their approval by the Court shall not relieve the Contractor 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, Contractor shall provide: (1) complete copies of each required policy; and (2) the same evidence of insurance for its subcontractors as the Court requires of Contractor.

- I. Notice of Cancellation. The required insurance policies shall specifically provide a written thirty (30) day notice of cancellation, non-renewal or material change to the Superior Court of California, County of Riverside The Certificate of Insurance need not provide evidence of this 30 day notice; however, the contractor must notify the Superior Court of California, County of Riverside of any cancellation, non-renewal or material change to the contractor's insurance policies.
- J. Survival. The insurance requirements described in contract are not intended to, and shall not in any way limit or quantify the liabilities and obligations each contractor assumes pursuant to its contract. The insurance requirements set out in this document are a restatement and explanation of the requirements set forth in the contract under which the contractor will perform work.
- K. Failure to Maintain Insurance / Failure to Provide Certificate(s) of Insurance.
 - (1) If Contractor 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, Contractor shall indemnify, defend (with counsel satisfactory to the Court), and hold harmless the State of California, the Judicial Council of California, the County of Riverside, and the Superior Court of California, County of Riverside, and their respective elected and appointed officials, judges, officers, employees and agents 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 Contractor's performance or breach of the Agreement, notwithstanding any clause or amounts limiting the Contractor's liability to the Court. Contractor's failure to maintain adequate insurance policies conforming to the above requirements may be considered a breach of the Agreement.
 - (2) If at any time, the foregoing policies become unsatisfactory to the Court, as to form or substance, or if a company issuing any such policy becomes unsatisfactory to the Court, Contractor shall, upon written notice from the Court, promptly obtain a new policy, and submit the same to the Court, with the appropriate certificates and endorsements. If any of the required policies lapses during the Term, the Court is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

20. Limitation of Liability. The Court will not be liable to Contractor, its officers, employees, Subcontractors, or Third Parties for any indirect, special, or consequential damages, including lost profits or revenue, arising from or relating to the Agreement, 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 the Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Contractor by the Court under the Agreement. Neither the Court nor Court Personnel will be personally responsible for liabilities arising under the Agreement.

21. Loss Leader. Contractor 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 the Agreement, including any changes to Exhibit A (Statement of Work), shall be valid without the written approval of the Court, in the form of an Amendment.

23. Non-Exclusivity. The Agreement is non-exclusive. The Court reserves the right to perform, or have others perform the Work for the Agreement. The Court further reserves the right to bid the Work to others or procure the Work by other means.

24. Notices. Notices under the Agreement 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 Contract Representative as designated in the Standard Agreement Cover Sheet. 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. Prevailing Wages / Public Works. If this is an Agreement for a Public Work (as defined by California Labor Code §§ 1720 & 1771), Contractor is subject to the Prevailing Wage rules and regulations imposed by the California Labor Code, Division 2, Part 7, Chapters 1-2 (§§ 1720-1815); and the California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapters 3-6 (8 CCR §§ 16000-17264). Contractor is responsible for registering with the Department of Industrial Relations, paying its workmen at least the Prevailing Rates of Wages, maintaining certified payrolls for inspection by the Division of Labor Standards Enforcement of the Department of Industrial Relations, and compiling with all other applicable rules and regulations governing Public Works and Prevailing Wages. Contractor's failure to do so may subject it to fines, penalties, and civil suit; Contractor may be banned from bidding on future Public Works projects; and Contractor may be guilty of a misdemeanor. Contractor is responsible for complying with any other applicable federal, state, and local Prevailing Wage requirements whether referenced or not.

Prevailing Wage rates, as determined by the Department of Industrial Relations, can be found at: <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>

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

27. Prohibited Bids for End Product of the Agreement ("Follow-On Contracts").

A. If Contractor or its affiliates provides Consulting and Direction (as defined below), the Contractor 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 Contractor 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 Contractor. 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 Contractor 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 agreement for software or services and the statement of work at the time of Agreement execution expressly calls for future recommendations among Contractor'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 the Agreement.

28. 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, agreements 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 an agreement or amendment may be considered a public record and be made available to anyone who requests a copy.
- B. If an agreement or amendment contains material noted or marked by the Contractor 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 Contractor's notation or markings. If a Contractor 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 an agreement or amendment because such information may be disclosed to the public.

29. 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.

30. Scope of Work; Acceptance; Rejection.

- A. Scope of Work. Contractor will perform and complete all Work in compliance with the requirements of the Agreement, and to the satisfaction of the Court. Contractor shall strictly adhere to the delivery and completion schedules specified in the Statement of Work. 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 Contractor. 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 Contractor'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. Contractor 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 set forth in the Agreement (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 Contractor's failure to meet the acceptance criteria. Contractor 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. Contractor 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 Contractor'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 the Agreement 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 Contractor, the Court may exercise all contractual and other legal remedies, including: (i) setting off the overpayment against future invoices payable by the Court; (ii) setting off the overpayment against any other amount payable for the benefit of Contractor pursuant to the Agreement or otherwise; and (iii) requiring Contractor to refund the overpayment within thirty (30) days of the Court's request.

31. Shipping and Packing Slips. Time is of the essence to delivery and any other performance required of Contractor. 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 the Agreement. Unless stated otherwise, shipping point for all deliveries under the Agreement shall be FOB "destination", and on "FOB Shipping Point" transactions, Contractor 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 Agreement number, part number, and quantity. Any itemized packing slip bearing the Court's Agreement number as shown thereon must be left with the Goods to insure their receipt.

32. Signatures; Counterparts.

- A. The signatures required for execution of the Agreement may be made by manual signature, or by digital signature that conforms to California Government Code § 16.5 and all California regulations promulgated thereunder (including California Code of Regulations, title 2, division 7, chapter 10), or by any other commercially acceptable signature method.
- B. The parties give the same validity, force, and effect to a scanned, faxed, photocopied, or other accurately reproduced signature as to an original signature.
- C. The Agreement may be executed in counterparts, each of which is considered an original.

33. Standard of Performance; Warranties.

- A. Standard of Performance. Contractor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Agreement, and pursuant to the governing rules and regulations of the industry. Contractor acknowledges that the Court relies on the accuracy, competence, and completeness of Contractor's services.
- B. Warranties.
 - (1) For a period of one (1) year, unless the Agreement or the warranties provided by a third party for Goods or Services procured by Contractor provide for a longer warranty period, Contractor expressly warrants that the Goods and Services covered by the Agreement 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 the Agreement. The Court's approval of designs or specifications furnished by Contractor will not relieve Contractor of its obligations under this warranty.
 - (2) Contractor 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) Contractor 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. Contractor shall not take any action, or fail to perform any act that results in a warranty or representation becoming untrue. Contractor 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.

34. Stop Work.

- A. The Court may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the Work, for ninety days after the Stop Work Order is delivered to Contractor, and for any further period to which the Parties may agree.
- B. Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to the Court during the applicable Stop Work period. Within ninety days after a Stop Work Order is delivered to Contractor, or within any mutually agreed extension of that period, 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, Contractor will resume Work. The Court may make an equitable adjustment in the delivery schedule, the Agreement Amount, or both, if (i) the Stop Work Order increases Contractor's costs or the time required for performance; and (ii) Contractor 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 Contractor for loss of profits because of any Stop Work Order.

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

36. Termination.

- A. Termination for Cause. The Court may terminate the Agreement, in whole or in part, for cause, upon written notice. The Court shall be relieved of any payments, if Contractor fails to perform the requirements of the Agreement 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 Contractor's Work and, proportionately, Contractor's compensation. The Court may proceed with the Work in any manner deemed proper. All costs to the Court arising from Contractor's default, including costs to complete or correct the Work, will be deducted from any sum due to Contractor. Contractor 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 Agreement, in whole or in part, at any time, for any or no reason, upon written notice to Contractor. Upon receipt of notice of termination, Contractor will promptly discontinue Work as specified in the Notice. The Court will pay Contractor for the Work satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the Work.
- C. Termination due to Fund Non-Appropriation and/or Availability.

- (1) The Court's obligations under the Agreement are subject to the availability of funds authorized for this Work. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of the Agreement. Funding beyond the current Appropriation Year is conditioned upon appropriation of sufficient funds to support the activities described in the Agreement.
- (2) Upon Notice, the Court may terminate the Agreement 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 Contractor for the fair value of Work satisfactorily performed prior to the termination, not to exceed the total Agreement Amount.

D. Effect of Termination. Upon the Termination Date:

- (1) The Court shall be released from compensating Contractor for Work, other than those Contractor satisfactorily performed before the Termination Date, and for any indirect costs. Without prejudice to the Court, Contractor shall be released from performing Work.
- (2) If only a part of the Agreement is terminated by the Court such that Contractor is released from performing a portion of the Work, the Court shall accordingly be released from compensating Contractor for that portion of Work.
- (3) Court will have the right to take possession of any materials, equipment, and other Work including partially completed Work. Contractor shall return to the Court any equipment purchased or built with Court funds, with costs incurred by Contractor being reimbursed by the Court. Unless otherwise provided in the Agreement, Contractor will immediately assign to the Court all of Contractor's right, title, and interest in and to such Work, related materials, work product, and any and all intellectual property rights.
- (4) Upon termination of any kind, the Court may withhold from payment any sum that the Court determines to be owed to the Court by Contractor, or as necessary to protect the Court against loss due to outstanding liens or claims of former lien holders. Unless otherwise specifically provided, any advance payments made by the Court to Contractor shall be refunded to the Court on a pro rata basis.

37. Time is of the Essence. Time is of the essence in the performance of Work by Contractor under the Agreement.

38. Travel Rate Guidelines. Contractor's travel expenses are not reimbursable by the Court, unless the Agreement expressly indicates that the Court will reimburse such expenses. Unless otherwise specified in the Agreement, 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. Contractor should contact the Court with any questions about the current dollar amounts. Contractor 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, Contractor shall complete the Court's reimbursement claim forms as a condition of receiving any reimbursement from the Court. Contractor 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 Mateo, and Santa Clara the maximum rate allowed is \$140, plus tax and energy surcharge; in the County of San Francisco the maximum rate allowed is \$150, plus tax and energy surcharge; in the counties of Monterey and San Diego the maximum rate allowed is \$125, plus tax and energy surcharge; and in the counties of Los Angeles, Orange, and Ventura the maximum rate allowed is \$120, 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 Contractor is staying at the conference site. Only the single occupancy rate may be claimed for reimbursement except when sharing a room with other Contractor personnel also traveling in performance of the Agreement.
- 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 \$8.
 - (b) Lunch: Up to \$12.
 - (c) Dinner: Up to \$20.
 - (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 Contractor'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. Contractor 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. Contractor shall be responsible for all expenses or charges incurred as a result of Contractor's cancellation of travel or Contractor's failure to make a scheduled travel, regardless of whether travel was booked by Contractor 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.

39. Waiver; Severability.

- A. Waiver of Rights. The Court's action, inaction, or failure to enforce any right or provision of the Agreement 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 the Agreement are separate and severable. If any part of the Agreement 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 Agreement and/or any other claim of injury or damage.

40. Work Site. With respect to Work delivered and/or performed on the Court's premises, Contractor 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 Contractor or others; (4) rules, regulations, and requirements to be observed by Contractor 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. Contractor shall conform to any specific safety requirements as required by law or regulation. Contractor 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 Agreement.

41. Miscellaneous Provisions Applicable to Specific Contracting Situations.

- A. Agreements providing for Compensation of \$50,000 or More; Union Activities Restrictions. As required under Government Code §§ 16645-16649, if the Agreement provides for total Compensation of \$50,000 or more to Contractor, then the covenants in this subsection apply to Contractor's activities.
- (1) Contractor 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 the Agreement to assist, promote or deter union organizing; or
 - (c) For any business conducted under the Agreement, 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 Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, Contractor shall maintain records sufficient to show that no reimbursement from the state's 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 an Agreement for services, other than consulting services, with total compensation over \$200,000, Contractor shall give priority consideration in filling vacancies in positions funded by the Agreement 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 Contractor made a commitment to achieve disabled veterans business enterprise participation, Contractor shall within 60 days of receiving final payment under the Agreement (or within such other time period as may be specified elsewhere in the Agreement) certify in a report to the Court: (1) the total amount the prime Contractor received under the Agreement; (2) the name and address of any disabled veterans business enterprises (DVBE) that participated in the performance of the Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
- D. Provisions Applicable to Court-Purchased or Court-Financed Equipment.
- (1) If the Agreement provides Compensation to Contractor for a project funded through a grant, at the conclusion of the Project, title to all expendable and non-expendable personal property with a value of \$500 or more purchased with Court funds shall vest, automatically and without further action of the parties, with the Court. If Contractor provides written certification to the Court that the property will continue to be used for grant-related purposes and the Court approves such certification in writing, the Court may permit title to all such property to remain with Contractor in accordance with the Court's written instructions. Contractor must await

specific written instructions from the Project Manager regarding any transfer of title or disposition.

- (2) If Compensation under the Agreement is not through grant funding and the Agreement provides for the provision of equipment purchased or built with Court funds, title to any equipment purchased or built with Court funds shall vest in the Court immediately upon payment of the purchase price. Before delivery to the Court, Contractor is responsible for loss or damage to the equipment to the extent it results from the negligent act or omission of Contractor or its directors, officers, employees, or agents, and Contractor shall make all necessary or appropriate repairs and adjustments.
- (3) Contractor shall maintain an inventory record for each piece of equipment purchased or built with Court funds provided under the Agreement, 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, Contractor shall submit to the Court a copy of the inventory record.
- (4) Upon the expiration or termination of the Agreement, or as otherwise directed by the Court, Contractor 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 Agreement was obtained by means of a competitive bid, Contractor 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) Contractor 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 Contractor for sale to the Court pursuant to the bid. Such assignment shall be made and become effective at the time the Court tenders final payment to the Contractor. 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 Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. See Government Code § 4553.

- (4) Upon demand in writing by the Contractor, the Court shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (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 the Agreement is funded in whole or in part by the federal government, then:
 - (a) It is mutually understood between the parties that the Agreement 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 Agreement 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 Agreement is intended to be paid, the Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds.

G. Provisions Applicable to Consulting Services.

- (1) If the Agreement provides for the payment of \$1,000 or more for consulting services, Contractor must deliver detailed performance criteria, a schedule for performance, and progress reports to the Court to allow the Court to determine whether Contractor is on the right track and the project is on schedule, to provide communication of interim findings, and to afford opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly.
- (2) If the Agreement provides for the payment of \$5,000 or more for consulting services, Contractor shall attach to the Agreement resumes of each Contractor participant who will exercise a major administrative role or major policy or consultative role. Contractor shall use reasonable efforts to make these participants available to perform Services during the term of the Agreement.

H. Provisions Applicable to Legal Services. If the Agreement provides for the performance of legal services, Contractor shall adhere to any legal cost and billing guidelines, legal budgets, and legal bill or law firm audits as may be required by the Court. If the Agreement does not provide for legal representation to low-income or middle-income persons in civil, criminal, or administrative matters, Contractor shall also adhere to any litigation plans or case phasing of activities as may be required by the Court. If the Agreement does not provide for legal representation to low-income or middle-income persons in civil, criminal, or administrative matters, and also provides for Compensation (other than reimbursement of expenses) over \$50,000, Contractor shall also

comply with the requirements of Business and Professions Code § 6072, which concerns the performance of pro bono legal services.

Under Business and Professions Code § 6072, Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the Agreement equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10 percent of the Agreement. Failure to make a good faith effort may be cause of non-renewal of the Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with the Court for legal services.

- I. Provisions Applicable to Commercial Office Moving Services Agreements. If this is an agreement of more than \$2,500 with a carrier for commercial office moving services, Contractor shall abide by the requirements contained in the State Administrative Manual, section 3810, which requires the Contractor to employ only drivers and supporting personnel who are under a current collective bargaining agreement or who are paid applicable prevailing wages and employed under prevailing standards and conditions of employment.
- J. Provisions Applicable to Elevator Maintenance Agreements. If the Agreement provides for elevator maintenance, the Term of the Agreement shall be for a period of no less than five (5) years even if the Coversheet of the Agreement specifies a shorter term; however, the Agreement may be terminated during the Term in accordance with the Termination provisions contained herein.
- K. Provisions Applicable to Janitorial Services or Building Maintenance Agreements. If the Agreement requires Contractor to perform Services at a new site, Contractor shall retain for 60 days all employees currently employed at that site by any previous contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code §§ 1060 et seq.
- L. Provisions Applicable to Mined Mineral Agreements. If the Agreement involves the purchase of mined minerals, Contractor shall not supply through the Agreement any sand, gravel, aggregates, or other minerals a Court may not purchase under Public Contract Code § 10295.5.
- M. Provisions Applicable to Rental Agreements. If the Agreement 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 the Agreement provides for the rental of equipment or other personal property and the Court has not expressly elected through the Agreement to maintain the equipment or other personal property, Contractor shall keep the equipment in good working order and make all necessary or appropriate repairs and adjustments without qualification.
- N. Provisions Regarding Material Safety Data Sheets. If some or all of the Goods provided by Contractor under the Agreement are on CAL OSHA's "Hazardous Substances List," Contractor shall forward a completed Material Safety Data Sheet (MSDS) to the Court.

- O. Provisions Regarding Recycled Goods. Unless otherwise provided in the Agreement, pursuant to Public Contract Code § 12203(d), Contractor shall use or sell only recycled products under the Agreement to the maximum extent economically feasible, but only if the fitness and quality of such recycled products are equal to non-recycled products.

If the Agreement 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 Contractor'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:

- (1) Contractor 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;
- (2) UNDER PENALTY OF PERJURY, the declaration shall be true and correct and will remain so until Contractor 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
- (3) If Contractor sells under the Agreement any printer or duplication cartridges that comply with Public Contract Code § 12209, Contractor shall so specify in the declaration required under this section.

- P. Provisions Applicable to Small Business Preference Agreements. If Contractor received a small business preference in connection with this Agreement, Contractor must complete and submit the Small Business Contract Report Form. Contractor assumes an express affirmative obligation to promptly notify the Court if any information on the Small Business Contract Report Form becomes inaccurate. Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

- Q. Provisions Applicable to Work by Facilities Contractors.

- (1) **Conduct of Work.** As may be applicable, the Contractor shall maintain the work site and perform the work in a manner that meets all legal requirements for the provision of a safe workplace. The Contractor will ensure that all work is performed in a safe and satisfactory manner, and that all work conforms to all regulatory and industry standards. Upon completion of the work, Contractor shall remove all equipment and unused materials provided for the work, put the buildings and premises in a neat and clean condition, and do all other cleaning and washing as applicable. Further, the Contractor shall comply with safety standards and provisions of applicable laws, building codes, and safety regulations issued by the California Department of Industrial Relations. The Contractor shall be liable for damages arising out of injury to the Court's employees or its contractors during performance of the work, provided that the injury or damage was caused by the fault or negligence of the Contractor, or by its equipment or tools.
- (2) **Liens.** Contractor shall discharge at once, and hold the Court harmless from, liens or stop notices that may be filed in connection with the work. The Court may withhold payment of funds from Contractor in an amount sufficient to discharge delinquent accounts of Contractor

- or any of Contractor's subcontractors for which liens on the Court's or County's property have been or can be filed or for which stop notices have been or can be filed. Contractor must furnish unconditional lien releases to the Court.
- (3) Bonds. The Court may require written evidence of Contractor's ability to obtain from a reputable bond company required bonds. If requested, the Contractor may be asked to supply a fidelity bond covering the dishonest acts of employees or a performance bond covering the completion of work. Bond limits and reimbursement of expenses shall be determined by the Court.
- (4) Inspections.
- (a) Materials Inspections
Court may from time to time, at its sole good faith option, inspect and test certain materials or equipment. Therefore in contracting for the purchase of any material or equipment that Contractor will use in the performance of the Work, Contractor shall obtain for Court from the vendor of such material or equipment the right to inspect all such material and the manufacture and fabrication thereof. Whether or not Court conducts such inspection, Court shall also have the right to reject all materials or equipment that, in the sole good faith discretion of Court, fail to conform to either adequate manufacturing specifications, the specifications under which such materials or equipment were purchased or the specifications required for the performance of the Work.
- (b) Field Inspections
Throughout the performance of the Work, Court shall have the right to designate one or more inspectors or engineers to inspect and test the Work Site and the progress of the Work. Contractor shall cooperate with such inspectors and engineers in order that the Work may be fully inspected and that Court may at all times be fully advised of the progress of the Work and the manner in which it is being performed.
- (c) Inspection Not Acceptance
Contractor expressly understands and agrees that any inspection by Court pursuant to this Agreement shall be for Court's sole benefit and shall not be deemed an acceptance by Court of all or any portion of the materials or Work so inspected. Contractor further understands and agrees that no inspection by Court pursuant to this Agreement or approval or failure to object to any portion of the Work shall relieve or release Contractor from any duties, obligations, or liabilities provided in this Agreement.
- (5) Scheduling Work. All work shall be scheduled with the Court Project Manager or his/her designee before starting the assigned project.
- (6) Safety Devices. Contractor shall furnish and maintain all safety devices, e.g., signs, barricades, cones, etc. required to adequately warn and protect all persons who will be utilizing this facility during the course of the work.
- (7) Contractor-Caused Damage(s). The Contractor shall repair or replace, at the option of the Court's Project Manager(s), all damage to the building, equipment, or furniture caused by its operations within five (5) working days, and preferable sooner.
- (8) Guidelines For Contractor Conduct While Working In Court Buildings
These Guidelines for Contractor Conduct are subject to revision and may be modified by the Court at any time. Contractor will be notified of modifications.
- (a) Work areas are to be free of all tools, trash, material packaging, etc., and any other discarded items at the end of each shift. Contractors should take their trash with them at the end of each shift, rather than disposing of trash in court containers.

- (b) All waste, excess materials, tools, etc. shall be removed from the areas upon completion. The areas shall be thoroughly cleaned.
 - (c) If desk items need to be moved, they must be placed back in the same location (including chairs moved to access under desk space).
 - (d) Vacuum all areas paying special attention to all drywall cutouts and/or ceiling tile debris on floor and around work areas at the end of each shift.
 - (e) Use caution when removing and installing ceiling tiles. Any damage resulting in mis-handled ceiling tiles will be the responsibility of the Contractor to replace.
 - (f) Do not remove any furniture or chairs from any office area.
 - (g) Do not prop open any secure doorways. Access cards will be furnished.
 - (h) Do not modify the adjustments on any chairs, or remove any chairs from any area.
 - (i) Do not use any Court radio, stereo, or TV. (Contractor's crew may furnish their own radio. However, volume must be kept at a low level, as judicial and administrative staff often works after hours).
 - (j) Smoking is prohibited in all Court buildings, including any/all restrooms.
 - (k) Do not use any restrooms in judicial chambers. Only use common area restrooms.
 - (l) Do not leave company items behind once a job is complete (i.e. ladders and tools).
 - (m) Any furniture moves necessary to complete the work must be indicated during the job walk or pre-project planning. No furniture is to be moved without prior notice to the Court Project Manager.
 - (n) For security purposes, do not allow any person(s) into your work area, or into any other Court Building area. Do not open doors to allow person(s) access into your work area, or any other Court Building area. As you go through doors, be sure to securely pull them closed behind you. Don't let person(s) come through a door along with you.
- (9) Drug / Alcohol / Firearms / Operator Qualification Policy and Testing
- (10) Drug / Alcohol / Operator Qualification Program and Testing
Contractor represents and warrants that it has established, maintains, and enforces both a Drug and Alcohol Program and an Operator Qualification Program per industry standards.
- (11) Court Policy Regarding Drugs / Alcohol / Weapons
Contractor agrees to advise its employees and the employees of its subcontractors and agents that it is the policy of Court that:
- (a) The use, possession and/or distribution of illegal or unauthorized drugs, drug-related paraphernalia or weapons on Court's premises, right-of-way, or Job Site is prohibited and the use or possession of alcoholic beverages, except where authorized by Court's management, is also prohibited;
 - (b) Entry onto or presence on Court's premises by any person, including Contractor, Contractor's employees, subcontractors, subcontractors' employees, contract personnel, temporary employees and visitors, constitutes consent to Court to conduct searches, whether announced or unannounced, on Court's premises of the person and his or her

personal effects for such prohibited items, and consent to drug testing at any time while on Court's premises;

- (c) Any person suspected or found in violation of the policy or who refuses to permit a search or drug or alcohol test may be removed and barred from Court's premises, at the sole discretion of Court; and
- (d) Contractor personnel who test positive for illegal drugs or unauthorized alcohol as a result of a test conducted on Court premises, or upon request of Court, will be removed from any further performance or services under this Agreement.

END OF STANDARD BUSINESS DEFINITIONS, TERMS AND, CONDITIONS 3.3