

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
AGREEMENT WITH (INSERT CONTRACTOR'S NAME)**

**Agreement
No. 41-12-D0_____**

Contractor Name and Address:

Telephone:

(Insert name of owner or president of company and title HERE)

It is agreed between the **Superior Court of California, County of San Mateo**, hereinafter called "**Court**" and **XXXXXX**, hereinafter called "**Contractor**", as follows:

Background

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, COURT requires XXXX to ;

NOW, THEREFORE, pursuant to the representations and agreements contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually covenant and agree as follows:

1. Services to be performed by Contractor.

In consideration of the payments hereinafter set forth, Contractor shall perform services for the Court in accordance with the terms, conditions and specifications set forth herein and in Exhibits "A", "B", "C", "D", "E", "F" and "G" attached hereto and incorporated herein by reference. Contractor shall ensure compliance with all state, federal and local laws or rules applicable to performance of the work required under this contract.

2. Term and Effective Date of Agreement.

This Agreement shall be effective from March XX, 2012 through December 31, 2014 unless otherwise terminated. The Court reserves the right to extend this contract for additional one year terms prior to the end of the original term or subsequent extensions. The Court's exercise of this option must be provided in writing to the Contractor and the parties will execute an amendment regarding the extension. This Agreement is of no force or effect until signed by both parties. Contractor shall not perform any of its obligations under this Agreement, until this Agreement is fully executed.

3. Contract Amount

A. Payment and Liability

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibits "A" and "C", the Court shall make payment to Contractor in the manner specified herein and in Exhibit "B". The Court reserves the right to withhold payment if the Court determines that the quantity or quality of the work performed is unacceptable. In no event shall the Court's total fiscal obligation under this Agreement exceed *XXXX Thousand Dollars (\$XXXXXX.00)*.

B. Availability of Funds.

Payment for services provided pursuant to this Agreement is contingent upon the availability of Court, County, State, and Federal funds to finance this project. In the event that any of the entities listed above do not appropriate the necessary funds as part of their budgets, the Court shall not be liable for any payment whatsoever; including, but not limited to, payments that are based on Court funds. The Court may terminate this agreement for unavailability of Federal, State, County or Court funds at anytime. The Court reserves the right to withhold payment if the Court determines that the quantity or quality of the work performed is unacceptable.

4. Contract Documents

Incorporated into this Agreement are the following Exhibits (collectively, “the Contract Documents”):

- a. General Provisions
- b. Exhibit A – Statement of Work and Services
- c. Exhibit B - Schedule of Fees and Method of Payment
- d. Exhibit C – General Terms and Conditions
- e. Exhibit D – Special Provisions
- f. Exhibit E – Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, As Amended
- g. Exhibit F – Contractor Certification Form
- h. Exhibit G - Darfur Contracting Act Certification

In the event of a conflict between the terms of the Contract Documents, the following order of precedence shall govern and shall determine which terms will prevail: The General Provisions, Exhibit A - Statement of Work and Exhibit B – Schedule of Fees and Method of Payment, and Exhibits “C” and “D”-General Terms and Conditions and Special Provisions. Any Amendments to this Agreement, starting with the most recent, shall take precedence over the existing Contract Documents. In the event of a conflict between an Amendment and the terms of any other Contract Document, the terms of the Amendment shall prevail.

5. Representatives:

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

COURT:	CONTRACTOR:
Jill Selvaggio	
Court Services Manager	
400 County Center, 2nd Floor	
Redwood City, California 94063	
Telephone:650- 599-1519	Telephone:

SIGNATURES

The undersigned, representing their respective parties to this Agreement, acknowledge and certify that they have the proper authority to do so.

Superior Court of California, County of San Mateo	
<i>Signature:</i> _____	<i>Signature:</i> _____
Name: _____	Name: _____
Title: Presiding Judge _____	Title: _____ _____
Date: _____	Date: _____

ACKNOWLEDGEMENT:

I hereby certify that the services requested are necessary, the selection process documentation is accurate, all applicable insurance certificates are on file in this office, that Risk Management has approved any reductions in contractor's insurance limits below \$1,000,000, and that no work will commence until this document is signed by the Court Executive Officer.

<i>Signature:</i> _____ Deputy Court Executive Officer	Date: _____
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Received and Processed:

<i>Signature:</i> _____ Court Finance Director	Date: _____
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Distribution: Original signed copy: Finance Director Copy to: Contractor, Contracts Administrator, Project Manager and Court Accounting Revised 03/2007

EXHIBIT "A"
STATEMENT OF WORK OR SERVICES

In consideration for payment of the compensation by Court as specified in Exhibit "B" contractor will provide services, materials and labor as follows:

[Specifics of the Statement of Work and Services will be inserted in this section once agreed to by the parties]

EXHIBIT "B"
SCHEDULE OF FEES AND METHOD OF PAYMENT

1. In consideration for the services provided by Contractor as specified in Exhibit A, Court agrees to pay Contractor upon receipt and approval of invoices submitted by Contractor for services provided and according to the payment schedule in paragraph 3 below. Said invoice from Contractor shall include with specificity the work that was performed; the date the work was performed; the amount of time the work took; and the total amount of the invoice. The invoice shall be submitted within 5 business days after the end of the month within which the work was performed and shall be submitted to:

Superior Court of California, County of San Mateo
400 County Center, 2nd floor
Redwood City, CA 94063
Attn: Jill Selvaggio, Court Services Manager

2. The maximum amount that the Court is obligated to pay, as specified in Section 3. A. of the Contract for Services attached is inclusive of all related expenses (transportation) incurred by Contractor. In no event shall the Court pay for any expenses not covered herein without the prior written consent of the Court Executive Officer or designee.
3. **Invoicing and Payment Schedule**
 - 3.1 Contractor shall submit invoices on a monthly basis, subject to service performed to the satisfaction of the Court.
 - 3.2 An invoice shall contain a detail of services rendered, materials provided, the Court's contract number and shall be signed by the contractor.

EXHIBIT "C"
GENERAL TERMS AND CONDITIONS

1. Contractor Certification Clauses

1.1 Representations and Warranties. Contractor certifies that the following representations and warranties are true:

- (A) *Authority.* Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and 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 section 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 this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- (E) *No Conflict of Interest.* Contractor has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100, et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- (F) *No Interference with Other Contracts.* To the best of Contractor's knowledge, this 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 this

Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse effect on Contractor's business, the validity or enforceability of this Agreement, or Contractor's ability to perform this Agreement.

- (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 this 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 sections 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 this 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 sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.

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

(N) *Special Provisions regarding Compliance with National Labor Relations Board Orders.* If this Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from the Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

(O) *Special Provisions regarding Compliance with the Child Support Compliance Act.* If Contractor is a private entity, and this Agreement provides for Compensation of \$100,000 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.

(P) *Electronic Waste Recycling Act.* If this Agreement provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code sections 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable

access to its records and documents that evidence compliance.

(Q) *Jury Duty.* For actual jury service, Contractor's regular employees receive the amount of their regular pay and benefits for no fewer than five days annually, except to the extent Contractor's policies on jury service provide for that amount to be reduced (i) by any juror fees and costs actually reimbursed, and (ii) pro rata for employees who work less than on a full-time basis.

1.2 **Covenant as to Representations and Warranties.**

Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the COURT if any representation and warranty becomes untrue.

2. **Indemnity**

Contractor shall indemnify and defend (with counsel satisfactory to the COURT's Office of the General Counsel) Judicial Branch Entities and Judicial Branch Personnel against all claims, damages, losses, and expenses, including attorney fees and costs, founded upon (i) Contractor's performance of, or failure to perform, the Services or Contractor's other duties under this Agreement, or (ii) any other breach by Contractor of this Agreement. 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.

3. **Insurance**

3.1 Basic Coverage. Contractor shall provide and maintain at Contractor's expense the following insurance during the Term:

- A. *Workers Compensation and Employer's Liability.* The policy is required only if Contractor have employees. It must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;
- B. *Commercial General Liability.* The policy must cover bodily injury and property damage liability, including coverage for the products – completed operations hazard and liability assumed in a contract, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit; and
- C. *Professional Liability.* The policy must cover liability resulting from errors or omissions committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1 million per claim.

D. Commercial Automobile Liability. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.

3.2 “Claims Made” Coverage. If any required insurance is written on a “claims made” form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the COURT’s acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any “claims made” policy must be no later than the date that Services commence under this Agreement.

3.3 Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.

3.4 Aggregate Limits of Liability. The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

3.5 Deductibles and Self-Insured Retentions. 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. Deductibles and self-insured retentions do not limit Contractor’s liability.

3.6 Additional Insured Status. Contractor shall require Contractor’s commercial general liability insurer, Contractor’s commercial automobile liability insurer, and, if applicable, Contractor’s commercial umbrella liability insurer to name Judicial Branch Entities and Judicial Branch Personnel as additional insureds with respect to liability arising out of Contractor’s Services under this Agreement.

3.7 Certificates of Insurance. Before Contractor begin performing Services, Contractor shall give the COURT certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 or more days’ prior written notice to the COURT. Any replacement certificates of insurance are subject to the approval of the COURT, and, without prejudice to the COURT, Contractor shall not perform work before the COURT approves the certificates.

3.8 Qualifying Insurers. For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating

of A - or better that is approved to do business in the State of California.

3.9 Required Policy Provisions. Each policy must provide, as follows:

A. Insurance Primary; Waiver of Subrogation. The basic coverage provided is primary and non-contributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; and

B. Separation of Insureds. The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer’s liability.

3.10 Partnerships. 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.

3.11 Consequences of Lapse. If required insurance lapses during the Term, the COURT is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

4. Default and Remedies

4.1 Default. A default exists under this Agreement if:

A. Contractor fails or is unable to meet or perform any of Contractor’s duties under this Agreement, and this failure is not cured within ten (10) days’ following notice of default or is not capable of being cured within this cure period;

B. 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;

C. Contractor makes or has made under this Agreement any representation or warranty that is or was incorrect, inaccurate, or misleading;

D. Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its

obligations under this Agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make this Agreement admissible when required is not fulfilled or performed.

4.2 Notice. Contractor shall notify the COURT immediately if Contractor defaults, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement.

4.3 Remedies.

A. Available Remedies. The COURT may do any of the following:

- (1) Withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor;
- (2) Require Contractor to enter into non-binding mediation;
- (3) Exercise, following notice, the COURT's right of early termination of this Agreement as provided below; and
- (4) Seek any other remedy available at law or in equity.

B. Remedies Cumulative. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

5. Termination and Cancellation; Effect of Expiration or Termination

5.1 Early Termination and Cancellation Rights.

A. The COURT may terminate this entire Agreement immediately "for cause" if Contractor is in default;

B. The COURT may also cancel delivery immediately of all or any portion of unshipped Goods or limit Contractor's Services, and, proportionately, Contractor's compensation except to reimburse Contractor for its actual costs incurred before expenses arising out of early termination by the COURT, and any direct and indirect expenses incurred by cancellation of Goods in process that are custom made for the COURT), if:

- (1) the COURT determines that having Contractor provide the Services has become infeasible due to changes in applicable laws or regulations; or
- (2) expected or actual funding to compensate Contractor is withdrawn, reduced, or limited.

C. The COURT may terminate this entire Agreement, with or without cause, by giving Contractor 30 days' notice.

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

5.2 Effect of Expiration and Early Termination; Survival.

A. Upon the Termination Date:

- (1) The COURT shall be released from compensating Contractor for Services, other than those Contractor satisfactorily performed before the Termination Date, and for any indirect costs.
- (2) Without prejudice to the COURT, Contractor shall be released from performing Services.

B. All provisions of this Exhibit "C" will survive the expiration or termination of this Agreement, except for section 1 and promises regarding the maintenance of insurance in section 3 (other than section 3.2, which will also survive).

6. Assignment and Subcontracting; Successors

6.1 Permitted Assignments and Subcontracts.

A. Neither party may assign or subcontract its rights or duties under this Agreement, except as follows:

- (1) The COURT may assign the COURT's rights and duties to any Judicial Branch Entity. The COURT shall notify Contractor in writing within 30 days following the assignment.
- (2) Either party may assign its rights and duties or subcontract portions of this Agreement to a third party if the non-assigning party gives advance written consent to the assigning party. Consent may be withheld for any reason or no reason. If a non-assigning party does consent, the consent will take effect only if there is a written agreement between the assigning or subcontracting party and all assignees and subcontractors, stating the assignees and subcontractors:
 - (a) are jointly and severally liable to the non-assigning party for performing the duties in this Agreement of the assigning/subcontracting party;
 - (b) affirm the rights granted in this Agreement to the non-assigning party;

- (c) make the representations and warranties made by the assigning/subcontracting party in this Agreement; and
- (d) appoint the non-assigning party an intended third party beneficiary under the written agreement with the assigning/subcontracting party.

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

6.2 Successors. This Agreement binds the parties as well as their heirs, successors, and assignees.

7. Notices

Notices under this 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 individuals as specified in Section 5 of the Contract for Services above.

8. Miscellaneous Provisions; Interpretation

8.1 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.

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

8.3 Audit and Records

A. *Audit.* Contractor shall allow the COURT's designees and the COURT to review and audit Contractor's documents and records relating to this Agreement, subject only to a lawyer's duty of confidentiality owed to a represented party. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit.

B. *Ownership.* The COURT is the exclusive owner of all materials collected and produced in connection with the Services. Upon the Termination Date (subject to any mutually agreed period of continuation of Services), or upon the COURT's notice at any time, and subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the COURT or to another party at the COURT's direction. Contractor shall maintain all other materials in an accessible location and condition for a period of not less than four years after the later of:

- (1) Contractor's receipt of final payment under this Agreement; and
- (2) The COURT's resolution with Contractor of the findings of any final audit.

C. *Copies.* Contractor may retain copies of any original documents Contractor provides to the COURT.

8.4 Special Provisions regarding Ownership of Results.

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

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

8.5 Confidential Information; Publicity.

A. *Confidential Information.* Contractor agrees to hold in confidence the following confidential information Contractor receives in connection with this Agreement:

- (1) All written information that is marked confidential;
- (2) All non-public information in electronic form to which Contractor has access; and
- (3) All verbal information the COURT later confirms in writing is confidential.

The COURT owns the confidential information, and the COURT authorizes Contractor to use it only for purposes of performing this Agreement. For example, Contractor may give confidential information on a “need-to-know” basis to Contractor’s professional services providers, employees and subcontractors who have also executed confidentiality agreements that protect the COURT’s confidential information to the same extent as this section 3.8. Contractor may also disclose the COURT’s confidential information to the extent necessary to comply with law, provided Contractor gives the COURT advance notice.

B. *Publicity.* Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the COURT’s Business Services Manager.

C. *Specific Performance.* Contractor understands a default under this section 3.8(D) 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.

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

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

B. If the COURT receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for

actual legal costs incurred and may, upon demand, recover from the COURT any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the COURT as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)

C. Upon demand in writing by the Contractor, the COURT shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (1) the COURT has not been injured thereby, or (2) the COURT declines to file a court action for the cause of action. (GC 4554)

8.7 Choice of Law and Jurisdiction. California law, without regard to its choice-of-law provisions, governs this Agreement. Jurisdiction for any legal action arising from this agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.

8.8 Negotiated Agreement. This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code §1654.

8.9 Amendment and Waiver. No amendment to this Agreement will be effective unless in writing. A party’s waiver of enforcement of any of this Agreement’s terms or conditions is effective only if in writing. A party’s specific waiver does not constitute a waiver by that party of any earlier, concurrent, or later breach or default.

8.10 Authority and Binding Effect. Each party warrants it has the authority to enter into this Agreement, it may perform the services provided for in this Agreement, and its representative who signs this Agreement has the authority to do so. Each party warrants this Agreement constitutes a valid and binding obligation of the party, enforceable in accordance with its terms.

8.11 Severability. If any part of this Agreement is held unenforceable, all other parts remain enforceable.

8.12 Headings. All headings are for reference purposes only and do not affect the interpretation of this Agreement.

8.13 Time of the Essence. Time is of the essence of the Contractor’s performance of Services under this Agreement.

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

Defined Terms

As used in this Agreement, the following terms have the indicated meanings:

“Agreement” means this Standard Agreement as defined on the Coversheet.

“Contractor” means the person or entity defined on the Coversheet.

“Compensation” means all remuneration owed to Contractor in respect of Services, including Contractor’s professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.

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

- (1) Are of an advisory nature;
- (2) Provide a recommended course of action or personal expertise;
- (3) Have an end product that is basically a transmittal 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, section 2211, to subvene federal funds for which no matching state funds are required.

“Coversheet” refers to the first sheet of this Agreement.

“DVBE” is an acronym for disabled veterans’ business enterprise.

“Effective Date” has the meaning defined on the coversheet of this Agreement.

“Expiration Date” is the last day of the Term, unless the Initial Term is extended by exercise of an option. In that event, the Expiration Date will instead refer to the date specified as the expiration date in the notice of exercise of the option.

“Initial Term” is the period commencing on the Effective Date and expiring on the Expiration Date set forth on the coversheet of this Agreement.

“COURT” has the meaning defined on the coversheet of this Agreement.

“Judicial Branch Entity” means any California superior or appellate court, the Judicial Council of California, the Administrative Office of Courts, and the Habeas Corpus Resource Center; these entities comprise the “Judicial Branch.”

“Judicial Branch Personnel” means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.

“Loss,” as used in the indemnity provisions of this Agreement includes any actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorneys’ fees.

“Option Period” means the period, if any, through which this Agreement may be extended by a party.

“Services” are Contractor’s duties as defined in Appendix A.

“Term” comprises the Initial Term and any Option Period.

“Termination Date” has the same meaning as “Expiration Date” unless this Agreement is validly terminated before the applicable Expiration Date, in which case Termination Date means the effective date this Agreement is validly terminated.

EXHIBIT “D” SPECIAL PROVISIONS

This Exhibit “D” is effective upon the Effective Date as noted on the signature coversheet. In the event of any conflict between this Exhibit “D” and the other terms of this Agreement, the terms in Exhibit “D” will prevail. Except as otherwise specifically defined in this Exhibit, all capitalized terms will have the meanings ascribed to them in the other portions of this Agreement.

1. **Contractor Certification Clauses**

1.1 Representations and Warranties. Contractor certifies that the following representations and warranties are true:

- (A) Authority. Contractor has the authority to enter into and perform its obligations under this Agreement, and Contractor’s signatory has the authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and 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 section 10286.1, and is eligible to contract with the State.
- (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 this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. “Judicial Branch Personnel” means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity. “Judicial Branch Entity” means any California superior or appellate court, the Judicial Council of California, the Administrative Office of Courts, and the Habeas Corpus Resource Center; these entities comprise the “Judicial Branch.”
- (E) No Conflict of Interest. Contractor has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- (F) No Interference with Other Contracts. To the best of Contractor’s knowledge, this Agreement does not create a 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 this Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse affect on Contractor’s business, the validity or enforceability of this Agreement, or Contractor’s ability to perform this Agreement.
- (H) Compliance with Laws Generally. Contractor complies 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 this 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 sections 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 this 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 sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.
- (M) Special Provisions regarding Domestic Partners, Spouses, and Gender Discrimination. If this Agreement provides for total Compensation of more than \$100,000, Contractor is in compliance with Public Contract Code section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees. As used in this Addendum, "Compensation" means all remuneration owed to Contractor in respect of Contractor's services, including Contractor's professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.
- (N) Special Provisions regarding Compliance with National Labor Relations Board Orders. If this Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from the Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
- (O) Special Provisions regarding Compliance with the Child Support Compliance Act. If Contractor is a private entity, and this Agreement provides for Compensation of \$100,000 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.
- (P) Special Provisions regarding Discharge Violations. If Contractor is a private entity, Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

1.2 Covenant as to Representations and Warranties. Contractor shall cause its representations and warranties to remain true during the term of this Agreement. Contractor shall promptly notify the State if any representation and warranty becomes untrue.

2. **Miscellaneous**

- 2.1 Special Provisions for Agreements Providing for Compensation of \$50,000 or more; Union Activities Restrictions. As required under Government Code sections 16645-16649, if this Agreement provides for total Compensation of \$50,000 or more to Contractor, then the requirements of this section apply to Contractor's activities. Contractor shall include with any request for cost reimbursement from the State's funds a certification that the Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing.

Contractor shall not:

- A. Assist, promote, or deter union organizing by employees performing work under state or judicial branch contracts;
- B. Use the State of California's or State's funds received under this Agreement to assist, promote or deter union organizing; or
- C. For any business conducted under this Agreement, use any property of the State of California or State to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state or judicial branch property is equally available to the general public for holding meetings.

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

- 2.2 Special Provisions Applicable to Competitively Bid Contracts; Antitrust Claims. If Work under this Agreement was obtained by means of a competitive bid, Contractor shall comply with the requirements of Government Code sections set out below.

- (A) Contractor shall assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the State pursuant to the bid. Such assignment shall be made and become effective at the time the State tenders final payment to the Contractor. (GC 4552)
- (B) If the State 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 State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)
- (C) Upon demand in writing by the Contractor, the State shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (1) the State has not been injured thereby, or (2) the State declines to file a court action for the cause of action. (GC 4554)

EXHIBIT "E"

**ASSURANCE OF COMPLIANCE WITH
SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED**

The undersigned (hereinafter called the "Contractor") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation and all guidelines and interpretations issued pursuant thereto.

The Contractor gives this assurance in consideration for the purpose of obtaining contracts after the date of this assurance. The Contractor recognizes and agrees that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor.

The Contractor:

_____ employs fewer than 15 persons

_____ employs 15 or more persons and, pursuant to section 84.7(a) of the regulation (45 C.F.R. 84.7(a)), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 person:

Name of Contractor:

I certify that the above information is complete and correct to the best of my knowledge.

Dated: _____

Signature and Title of Authorized Official

* Exception: DHHS regulations state that:
"If a recipient with fewer than 15 employees finds that, after consultation with a handicapped person seeking its services, there is no method of complying with (the facility accessibility regulations)... other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

EXHIBIT "F"
CONTRACTOR CERTIFICATION FORM

I certify that neither _____ (Proposer) nor any of its proposed subcontractors are currently under suspension or debarment by any state or federal government agency, and that neither Proposer nor any of its proposed subcontractors are tax delinquent with the State of California. I have listed all contracts with courts, government or other governmental agencies during the two years preceding submission of this Proposal.

I acknowledge that if Proposer or any of its subcontractors subsequently are placed under suspension or debarment by a local, state or federal government entity, or if Proposer or any of its subcontractors subsequently become delinquent in California taxes, our Proposal may be disqualified.

Signature

Printed Name

Title

Date

EXHIBIT "G"
DARFUR CONTRACTING ACT CERTIFICATION

Public Contract Code sections 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. For such a bidder or proposer to submit a bid/proposal to the Court, the bidder or proposer must certify that it is either (a) not a scrutinized company (see Public Contract Code § 10476 attached); or (b) a scrutinized company that has been granted permission by the Court to submit a bid/proposal.

If the bidder or proposer has not had any business activities or other operations outside of the United States within the previous three years, the bidder or proposer does not need to complete this form.

OPTION #1 - CERTIFICATION

Please insert the bidder's or proposer's name and Federal ID Number and complete the certification below.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that (a) the company named below is **not** a scrutinized company per Public Contract Code section 10476; and (b) I am duly authorized to legally bind the company named below. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>	

OPTION #2 – WRITTEN PERMISSION FROM THE COURT

The Court may permit a scrutinized company, on a case-by-case basis, to propose/bid on a contract with the Court for goods or services, if it is in the best interests of the Court. If the bidder or proposer is a scrutinized company that has obtained written permission from the Court to submit a bid or proposal, complete the information below.

The bidder/proposer identified below is a scrutinized company as defined in Public Contract Code section 10476, and it has received written permission from the Court to submit a bid or proposal. A copy of the written permission from the Court is included with its bid or proposal.

<i>Company Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>	

California Public Contract Code, § 10476. (Operative term contingent) "Scrutinized company"

As used in this article, the following definition applies:

"Scrutinized company" means a company in Sudan that is involved in power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, but excludes a company that can demonstrate any of the following:

- (a) Its business operations are conducted under contract directly and exclusively with the regional government of southern Sudan.
- (b) Its business operations are conducted under a license from the Office of Foreign Assets Control, or are expressly exempted under federal law from the requirement to be conducted under such a license.
- (c) Its business operations consist of providing goods or services to marginalized populations of Sudan.
- (d) Its business operations exclusively consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization.
- (e) Its business operations consist of providing goods or services that are used only to promote health or education.
- (f) Its business operations with the Government of Sudan will be voluntarily suspended for the entire duration of the contract for goods or services for which they have bid on, or submitted a proposal for, a contract with a state agency.
- (g) It has adopted, publicized, and is implementing a formal plan to cease business operations within one year and to refrain from conducting any new business operations.