

# REQUEST FOR BID

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

**REGARDING:**

**REQUEST FOR BID 14-104**

**PURCHASE OF NUTANIX HARDWARE, LICENSE AND INSTALLATION SERVICES**

**BIDS DUE:**

December 23, 2014 no later than 3:00 p.m. Pacific time

**[Note: Bid due date extended from the original due date of Dec. 12]**

**1.0 BACKGROUND INFORMATION**

The Superior Court of California, County of San Mateo seeks to procure Nutanix servers, associated licenses and installation configuration services.

**2.0 DESCRIPTION OF GOODS AND SERVICES**

The Court seeks the products and services meeting the specifications as set forth in Attachment A.

**3.0 TIMELINE FOR THIS RFB**

The Court has developed the following list of key events related to this RFB. All dates are subject to change at the discretion of the Court.

EVENT	DATE
RFB issued:	<i>December 8, 2014</i>
Deadline for submitting questions	<i>December 11, 2014 at 3:00 PM (PST)</i>
Latest date and time bids may be submitted	<i>December 23, 2014 at 3:00 PM (PST)</i>
Notice of Intent to Award ( <i>estimate only</i> )	<i>December 30, 2014</i>
Execution of contract ( <i>estimate only</i> )	<i>January 9, 2015</i>

**4.0 RFB ATTACHMENTS**

The following attachments are included as part of this RFB:

ATTACHMENT	DESCRIPTION
Attachment A: :	Statement of products to be purchased and services to be Provided.
Attachment B: Court Standard Terms and Conditions	If selected, the person or entity submitting a bid (“Bidder”) must sign a Contract with the Court that will contain these terms and conditions (the “Terms and Conditions”).

Attachment C: Bidder’s Acceptance of Terms and Conditions	On this form, the Bidder must indicate acceptance of the Terms and Conditions or identify exceptions to the Terms and Conditions.  <b>Note: A material exception to the Terms and Conditions (addition, deletion, or other modification) will render a bid non-responsive.</b>
Attachment D: Darfur Contracting Act Certification	Bidder must complete the Darfur Contracting Act Certification and submit the completed certification with its bid.
Attachment E Contractor Certification	Bidder must complete the Contractor Certification form and submit it with their bid.

**5.0 SUBMISSIONS OF BIDS**

**5.1** Bids should provide straightforward, concise information that satisfies the requirements of the “Bid Contents” section below. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the RFB’s instructions and requirements, and completeness and clarity of content.

**5.2** The Bidder must submit **one (1) original and two (2) copies** of the bids. The original must be signed by an authorized representative of the Bidder. The Bidder must include the RFB title and number on the front of the bid and on the outside envelope.

The Bidder must submit an electronic version of the entire bid. The electronic version can be submitted electronically by sending it to the Court’s website at [rfp@sanmateocourt.org](mailto:rfp@sanmateocourt.org) including in the subject line RFB 2014-104 (Nutanix).

**5.3** Bids must be delivered by the date and time listed on the coversheet of this RFB to:

Submittal Contact: Timothy Gee (650) 261-5040  
Written Proposals shall be sent to:  
Superior Court of California, County of San Mateo  
Attn: Timothy Gee, Court Contracts Analyst  
Finance Division  
400 County Center, 4th Floor  
Redwood City, CA 94063  
tgee@sanmateocourt.org

Project Manager: Joe Carrasco, Information Technology Manager

Contracting Officer: Timothy Gee, Contracts Analyst

Court Executive Officer: John C. Fitton (same address)

**5.4** Late bids will not be accepted.

- 5.5** Only written bids will be accepted. Bids must be sent by registered or certified mail, courier service (e.g. FedEx), or delivered by hand. Bids cannot be transmitted by fax or email (except for the electronic copy required under this RFB).

## **6.0 BID CONTENTS**

- 6.1 Non-Cost Information.** The following must be included in the non-cost information. A bid lacking any of the following may be deemed non-responsive.

- A. Bidder's name, address, telephone and fax numbers, and federal tax identification number. Note that if Bidder is a sole proprietor using his or her social security number, the social security number will be required before finalizing a contract.
- B. Model number(s), specifications, or other description of the goods Bidder proposes to supply to the Court, including warranty information.
- C. Names, addresses, telephone numbers and date service provided of a minimum of five (5) clients for whom the Bidder has provided similar goods with at least one of them a government agency or court. The Court may check references listed by Bidder.
- D. Number of years providing this service.
- E. If subcontractors are proposed for this RFB, describe the vendor's contract management process for subcontractors included in the vendor's bid and provide copies of signed formal contracts (e.g., teaming contracts or any other legally binding document), if any exist, between the vendor and each proposed subcontractor.
- F. Acceptance of the Terms and Conditions.
  - (1) On Attachment C, the Bidder must either indicate acceptance of the Terms and Conditions or clearly identify exceptions to the Terms and Conditions. An "exception" includes any addition, deletion, or other modification.
  - (2) If exceptions are identified, the Bidder must also submit a red-lined version of the Terms and Conditions that clearly tracks proposed changes, and a written explanation or rationale for each exception and/or proposed change.
  - (3) **Note: A material exception to the Terms and Conditions (addition, deletion, or other modification) will render a bid non-responsive.**
- G. Certifications, Attachments, and other requirements.  
Bidder must include the following certifications in its bid:

- (1) Bidder certifies that it has no interest that would constitute a conflict of interest under California Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or rule 10.103 or rule 10.104 of the California Rules of Court, which restrict employees and former employees from contracting with judicial branch entities.

Bidder certifies that either (i) it is not a scrutinized company as defined in PCC 10490(b), or (ii) the goods or services the Bidder would provide to the Court are not related to products or services that are the reason the Bidder must comply with Section 13(p) of the Securities Exchange Act of 1934. (Note: PCC 10490(b) defines a “scrutinized company” as “a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement.”)

- (2) Bidder must submit with its bid, for itself and each of its affiliates that make sales for delivery into California, a copy of either (a) a California seller's permit issued under Revenue and Taxation Code section 6066 et seq. or (b) a certificate of registration issued under Revenue and Taxation Code section 6226.
- (3) Bidder must complete the Darfur Contracting Act Certification (Attachment D) and submit the completed certification with its bid.
- (4) If (i) Bidder is a corporation, limited liability company, or limited partnership, and (ii) the agreement resulting from this RFB will be performed in California, proof that Bidder is in good standing and qualified to conduct business in California.
- (5) Proof of financial solvency or stability (e.g., balance sheets and income statements).

6.2 Cost Information. Provide the line item cost for each of the items listed in the Attachment including all other associated costs.

**NOTE:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

## 1.0 Contact with Court.

Vendors are specifically directed NOT to contact any Court personnel or consultants for meetings, conferences, or discussions that are specifically related to this RFP at any time prior to any award of a contract except for the Court's Submittal Contact. Unauthorized contact with any Court personnel or consultants may be cause for rejection of the Vendor's response.

Any communication with the Court can be sent to: [rfp@sanmateocourt.org](mailto:rfp@sanmateocourt.org), **Subject Line: RFB 2014-104 (Nutanix).**

## 2.0 OFFER PERIOD

A Bidder's bid is an irrevocable offer for ninety (90) days following the bid due date. In the event a final contract has not been awarded within this period, the Court reserves the right to negotiate extensions to this period.

## 3.0 EVALUATION OF BIDS

3.1 The Court will evaluate the bids as follows:

Criteria	Evaluation weight
Pricing	95%
Experience, especially with other courts or government agencies	5%

3.2 Award, if made, will be to the lowest responsible bidder meeting the specifications.

3.3 Quotes that contain false or misleading statements may be rejected if in the Court's opinion the information was intended to mislead the evaluation team regarding a requirement of the RFB.

3.4 All figures entered on the cost information must be clearly legible.

3.5 The Court may conduct interviews with Bidders to clarify aspects of their bids. The interview process may require a demonstration of equivalence if a brand name is included in the specifications. The interviews may be conducted in person or by phone. If conducted in person, interviews will likely be held at the Court's offices. The Court will not reimburse Bidders for any costs incurred in traveling to or from the interview location. The Court will notify eligible Bidders regarding interview arrangements.

3.6 If a contract will be awarded, the Court will post an intent to award notice on its public website for this Procurement at <http://www.sanmateocourt.org> and will send Notice to each bidder by Friday, December 30, 2014.

#### **4.0 QUESTIONS REGARDING THE RFB**

- A. Vendor's question relates to a proprietary aspect of its bid and the question would expose proprietary information if disclosed to competitors, Vendor may submit the question via the RFB Contact, conspicuously marking it as "CONFIDENTIAL." With the question, Vendor must submit a statement explaining why the question is sensitive. If the Court concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the Court does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and Vendor will be notified.
- B. Vendors interested in responding to the RFB may submit questions via the RFB Contact on procedural matters related to the RFB or requests for clarification or modification of the RFB no later than the Deadline for Submitting Questions listed on the RFB form. If Vendor is requesting a change, the request must set forth the recommended change and the Vendor's reasons for proposing the change. Questions or requests submitted after the Deadline for Submitting Questions will not be answered. Without disclosing the source of the question or request, a copy of the questions and the Court's responses will be made available.

#### **5.0 ERRORS IN THE RFB**

- A. If, before the Bid Due Date and Time listed on the RFB form, Vendor discovers any ambiguity, conflict, discrepancy, omission, or error in the RFB, Vendor must immediately notify the Court via the RFB Contact and request modification or clarification of the RFB. Without disclosing the source of the request, the Court may modify the RFB before the Bid Due Date and Time by releasing an addendum to the RFB.
- B. If Vendor fails to notify the Court of an error in the RFB known to Vendor, or an error that reasonably should have been known to Vendor, before the Bid Due Date and Time listed on the RFB form, Vendor submits its bid at its own risk. Furthermore, if Vendor is awarded the contract, Vendor shall not be entitled to additional compensation or time by reason of the error or its later correction.
- C. If Vendor has submitted a bid and discovers an error in the RFB after the Bid Due Date and Time listed on the RFB form but before the award of the contract, Vendor may be allowed to withdraw its bid if Vendor can demonstrate to the Court's satisfaction: (i) an error exists in the RFB, (ii) the error materially affected Vendor's bid, and (iii) Vendor did not discover the error prior to submission of its bid.

#### **6.0 ADDENDA**

- A. The Court may modify the RFB before the Bid Due Date and Time listed on the RFB form by issuing an addendum and providing notice to prospective vendors. It is Vendor's responsibility to inform itself of any addendum prior to its submission of a bid.

- B. If Vendor determines that an addendum unnecessarily restricts its ability to submit a bid, Vendor shall immediately notify the Court via the RFB Contact no later than one day following issuance of the addendum.

## **7.0 WITHDRAWAL AND RESUBMISSION/MODIFICATION OF BIDS**

Vendor may withdraw its bid at any time before the Bid Due Date and Time by notifying the Court in writing of its withdrawal. The notice must be signed by Vendor. Vendor may thereafter submit a new or modified bid, provided that it is received at the Court no later than the Bid Due Date and Time listed on the RFB form. Modifications offered in any other manner, oral or written, will not be considered. Bids cannot be changed or withdrawn after the Bid Due Date and Time listed on the RFB form.

## **8.0 RIGHT TO REJECT BIDS**

- A. Before the Bid Due Date and Time listed on the RFB form, the Court may cancel the RFB for any or no reason. After the Bid Due Date and Time listed, the Court may reject all bids and cancel the RFB if the Court determines that: (i) the bids received are not really competitive; (ii) the cost is not reasonable; (iii) the cost exceeds the amount expected; or (iv) awarding the contract is not in the best interest of the Court.
- B. The Court may or may not waive an immaterial deviation or defect in a bid. The Court's waiver of an immaterial deviation or defect shall in no way modify the RFB or excuse Vendor from full compliance with the RFB requirements. Until a contract resulting from this RFB is awarded, the Court reserves the right to accept or reject any or all of the items in the bid, to award the contract in whole or in part and/or negotiate any or all items with individual vendors if it is deemed in the Court's best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any vendor.
- C. The Court reserves the right to issue similar RFBs in the future. The RFB is in no way an agreement, obligation, or contract and in no way is the Court or the State of California responsible for the cost of preparing the bid.

## **9.0 DISPOSITION OF MATERIALS**

All materials submitted in response to the RFQ will become the property of the Court and will be returned only at the Court's option and at the expense of the vendor submitting the quote.

## **10.0 CONFIDENTIAL OR PROPRIETARY INFORMATION**

One copy of each bid will be retained by the Court for official files and will become a public record. The Public Contract Code requires that bids be publicly opened and made available for public inspection. Accordingly, Bidder should not include confidential or proprietary information in its bid.

### **11.0 DISABLED VETERAN BUSINESS ENTERPRISE INCENTIVE**

Businesses with DGS Certified DVBE will be given considerations similar to Small Business as presented below.

### **12.0 SMALL BUSINESS PREFERENCE**

- A. Small business participation is not mandatory. Failure to qualify for the small business preference will not render a bid non-responsive.
- B. Eligibility for and application of the small business preference is governed by the Court's Small Business Preference Procedures for the Procurement of Information Technology Goods and Services. The Vendor will receive a small business preference if, in the Court's sole determination, the Vendor has met all applicable requirements. If the Vendor receives the small business preference, the score assigned to its bid will be adjusted by the preference pursuant to the guidelines of the California Judicial Branch Contracting Manual. If a DVBE incentive is also offered in connection with this solicitation, additional rules regarding the interaction between the small business preference and the DVBE incentive apply.
- C. To receive the small business preference, the Vendor must be either (i) a Department of General Services ("DGS") certified small business or microbusiness performing a commercially useful function, or (ii) a DGS-certified small business nonprofit veteran service agency.
- D. If the Vendor wishes to seek the small business preference, the Vendor must complete and submit with its bid the Small Business Declaration form included with this RFB. The Vendor must submit with the Small Business Declaration all materials required in the Small Business Declaration.
- E. Failure to complete and submit the Small Business Declaration as required will result in the Vendor not receiving the small business preference. In addition, the Court may request additional written clarifying information. Failure to provide this information as requested will result in the Vendor not receiving the small business preference.
- F. If the Vendor receives the small business preference, (i) the Vendor will be required to complete a post-contract report; and (ii) failure to meet the small business commitment set forth in its bid will constitute a breach of contract.

**FRAUDULENT MISREPRETATION IN CONNECTION WITH THE SMALL BUSINESS PREFERNCE IS UNLAWFUL AND IS PUNISHABLE BY CIVIL PENALTIES. SEE GOVERNMENT CODE SECTION 14842.5.**

### **13.0 AMERICANS WITH DISABILITIES ACT**

The Court complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Vendor should be directed to George Antrea by email: [gantrea@sanmateocourt.org](mailto:gantrea@sanmateocourt.org).

#### **14.0 PROTESTS**

Any protests will be handled in accordance with Chapter 7 of the Judicial Branch Contract Manual (see [www.courts.ca.gov/documents/jbcl-manual.pdf](http://www.courts.ca.gov/documents/jbcl-manual.pdf)). Failure of a Bidder to comply with the protest procedures set forth in that chapter will render a protest inadequate and non-responsive, and will result in rejection of the protest. The deadline for the Court to receive a solicitation specifications protest is June 9, 2014 by 3:00 PM. Protests should be sent to: [rfp@sanmateocourt.org](mailto:rfp@sanmateocourt.org), Subject Line: Records Destruction RFB.

**ATTACHMENT “A”  
STATEMENT OF SERVICES AND MATERIALS TO BE PROVIDED**

The Court requests bids on the following computer hardware, peripherals and installation services as follows:

<b>Product Code</b>	<b>Product Description</b>	<b>Quantity</b>
NX-3451	Nutanix Hardware Platform * 8 x Intel 8-core Xeon E5-2650v2 processor * 6.4TB SSD; 16TB HDD Capacity Nutanix Software * Foundation - Hypervisor Agnostic Installer * Controller VM * Prism Management * Starter License Entitlement	1
C-MEM-256GB-3051	Config: Includes 256GB (16x16GB) on each NX-3051 node	4
NOS-3.5.2	Nutanix Operating System Version 3.5.2	1
LIC-PRO-3051	License, Pro entitlement for NX-3051; Valid for life of device	4
C-CBL-3M-SFP+-SFP+	Cable 3m SFP+ to SFP+	8
CNS-INST-1-NC	OFFERING: Nutanix cluster deployment, per node basis.	4
CNS-T&E-NC	Time and Expense (T&E). Priced per T&E unit. Estimate of unit count by project location and duration.	1
S-PLAT-3451-3YR	3YR PLAT System support for Nutanix NX-3451	1

## **ATTACHMENT B: COURT STANDARD TERMS AND CONDITIONS GENERAL TERMS AND CONDITIONS**

### **1. Work**

- 1.1 Work. Contractor shall provide the Work described in this Agreement, including the Statement of Work and the Specifications. Except as set forth in the Statement of Work, Contractor is responsible for providing all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for delivery of the Work and to meet Contractor's obligations under this Agreement.
- 1.2 Stop Work Orders.
- (a) Effect. The COURT may, at any time, by written stop work order to Contractor, require Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days after the stop work order is delivered to Contractor, and for any further period to which the Parties may agree. Upon receipt of a stop work order, Contractor shall promptly comply with the terms of the stop work order and take all reasonable steps to end the incurrence of any costs, expenses or liabilities allocable to the Work covered by the stop work order during the period of work stoppage. The COURT shall not be liable to Contractor for loss of profits arising out of such stop work order. Within ninety (90) days after a stop work order is delivered to Contractor, or within any extension of that period mutually agreed to by the Parties, the COURT shall either: (i) cancel the stop work order; or (ii) terminate the Work covered by the stop work order.
- (b) Expiration or Cancellation. If a stop work order is canceled by the COURT or the period of the stop work order or any extension thereof expires, Contractor shall promptly resume the Work covered by such stop work order. The COURT shall make an equitable adjustment in the delivery schedule, and the applicable Statement of Work shall be modified, in writing, accordingly, if: (i) the stop work order directly and proximately results in an increase in the time required for the performance of any part of the Statement of Work; and (ii) Contractor asserts its right to such equitable adjustment within thirty (30) days after the end of the period of work stoppage.
- 1.3 Change Orders. From time to time during the term of this Agreement, the Parties may mutually agree on a change to the Work, which may require an extension or reduction in the schedule and/or an increase or decrease in the fees and expenses and/or the Work (each, a "Change"), including: (i) a change to the scope or functionality of the Deliverables; or (ii) a change to the scope of the Work. In the event the Parties agree on a Change, the Parties will seek to mutually agree on a change order identifying the impact and setting forth any applicable adjustments in the Statement of Work and/or payments to Contractor. An authorized representative of each Party shall promptly sign the mutually agreed upon change order to acknowledge the impact and to indicate that Party's agreement to the adjustments.
- 1.4 Third Party or COURT Services. Notwithstanding anything in this Agreement to the contrary, the COURT shall have the right to perform or contract with a Third Party to provide any services or goods within or outside the scope of the Work, including services to augment or supplement the Work or to interface with the IT Infrastructure of the Judicial Branch Entities or COURT Contractors. In the event the COURT performs or contracts with a Third Party to perform any such service, Contractor shall cooperate in good faith with the Judicial Branch Entities and any such Third Party, to the extent reasonably required by the COURT. Such cooperation shall include, without limitation, providing such information as a person with reasonable commercial skills and expertise would find reasonably necessary for the COURT or a Third Party to perform its services relating to the Work.
- 1.5 Data and Security.
- (a) Safety and Security Procedures. Contractor shall maintain and enforce, at the Contractor Work Locations, industry-standard safety and physical security policies and procedures. While at each COURT Work Location, Contractor shall comply with the safety and security policies and procedures in effect at such COURT Work Location.
- (b) Data Security. Contractor shall comply with the Data Safeguards. Contractor personnel and Subcontractors shall not attempt to access, and shall not allow access to the COURT Data and other Confidential Information that is not required for providing the Work by such personnel or Subcontractors. In the event Contractor or a Subcontractor discovers or is notified of a breach or potential breach of security relating to the COURT Data or other Confidential Information, Contractor shall promptly, at its own expense: (i) notify the COURT Project Manager of such breach or potential breach; and (ii) if the applicable COURT Data or other Confidential Information was in the possession of Contractor or Subcontractors at the time of

such breach or potential breach, Contractor shall (1) investigate and cure the breach or potential breach and (2) take measures satisfactory to the COURT to prevent such breach or potential breach from recurring.

(c) Security Assessments. At least once a year, or upon the COURT's request, Contractor shall, at its expense, perform, or cause to have performed an assessment of Contractor's compliance with the safety and security policies set forth in this Agreement or any Statement of Work. Contractor shall provide to the COURT the results, including any findings and recommendations made by Contractor's assessors, of such assessment, and, at its expense, take any corrective actions. The COURT and COURT Contractors may, at the COURT's expense, perform the assessments described in this Section and "snap" assessments (e.g., safety and data/physical security assessments) of the COURT Work Locations.

1.6 Project Staff.

(a) Contractor Project Manager. The Contractor Project Manager shall serve, from the Effective Date, as the Contractor project manager and primary Contractor representative under this Agreement. The Contractor Project Manager shall (i) have overall responsibility for managing and coordinating the performance of Contractor's obligations under this Agreement, including the performance of all Subcontractors; and (ii) be authorized to act for and bind Contractor and Subcontractors in connection with all aspects of this Agreement. The Contractor Project Manager shall respond promptly and fully to all inquiries from the COURT Project Manager.

(b) Contractor Key Personnel. The COURT reserves the right to interview and approve proposed Contractor Key Personnel prior to their assignment to the COURT. Contractor shall not replace or reassign any Contractor Key Personnel unless the COURT consents in advance in writing or such Contractor Key Personnel (i) voluntarily resigns or takes a leave of absence from Contractor, (ii) has his/her employment, professional or other for-hire relationship terminated by Contractor, (iii) fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) dies or is unable to work due to his or her disability. If Contractor needs to replace a Contractor Key Personnel for any of the foregoing reasons, Contractor shall (1) notify the COURT promptly, (2) provide resumes for proposed replacement Contractor Key Personnel within two (2) Business Days after so notifying the COURT, and (3) be responsible for all costs and expenses associated with any replacement of any Contractor Key Personnel member (including, without limitation, any costs and expenses associated with training, project orientation or knowledge transfer reasonably required for replacement personnel to provide the applicable Work).

(c) Subcontractors. Contractor shall not subcontract or delegate any of the obligations under this Agreement except as approved by the COURT in writing in advance. The COURT may withdraw its approval of a subcontractor if the COURT determines in good faith that the subcontractor is, or will be, unable to effectively perform its responsibilities. If the COURT rejects any proposed subcontractor in writing, Contractor will assume the proposed subcontractor's responsibilities. No subcontracting shall release Contractor from its responsibility for performance of its obligations under this Agreement. Contractor shall remain fully responsible for the performance of Subcontractors hereunder, including, without limitation, all work and activities of Subcontractors providing services to Contractor in connection with the Work. Contractor shall be the sole point of contact with Subcontractors under this Agreement, and Contractor shall be solely responsible for Subcontractors, including, without limitation, payment of any and all charges resulting from any subcontract. The COURT's consent to any subcontracting or delegation of Contractor's obligations will take effect only if there is a written agreement with the Subcontractor, stating that the Contractor and Subcontractor: (i) are jointly and severally liable to the COURT for performing the duties in this Agreement; (ii) affirm the rights granted in this Agreement to the COURT; (iii) make the representations and warranties made by the Contractor in this Agreement; (iv) appoint the COURT an intended third party beneficiary under Contractor's written agreement with the Subcontractor; and (v) shall comply with and be subject to the terms of this Agreement, including with respect to Intellectual Property Rights, Confidential Information and Data Safeguards.

(d) Project Staff. Contractor shall appoint to the Project Staff: (i) individuals with suitable training and skills to provide the Work, and (ii) sufficient staffing to adequately provide the Work. Contractor shall make commercially reasonable efforts consistent with sound business practices to honor the specific request of the COURT with regard to assignment of its employees. The COURT may require Contractor to remove any personnel from the Project Staff that interact with any personnel of the Judicial Branch Entities or COURT Contractors (including, without limitation, the Contractor Project Manager) upon providing to Contractor a reason (permitted by law) for such removal. Contractor may, with the COURT's consent, continue to retain

such member of the Project Staff in a role that does not interact with any personnel of the Judicial Branch Entities or COURT Contractors. The Contractor Project Manager and the COURT Project Manager shall work together to mitigate any impact on the schedule as set forth in a Statement of Work caused by any replacement of a Project Staff member. Contractor shall be responsible for all costs and expenses associated with any Project Staff replacement. Contractor shall assure an orderly and prompt succession for any Project Staff member who is replaced. If the Contract Amount is over \$200,000 (excluding Consulting Services), then Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

(e) Conduct of Project Staff

(i) While at the COURT Work Locations, Contractor shall, and shall cause Subcontractors to: (1) comply with the requests, standard rules and regulations and policies and procedures of the Court regarding safety and health, security, personal and professional conduct generally applicable to such COURT Work Locations, and (2) otherwise conduct themselves in a businesslike manner.

(ii) Contractor shall enter into an agreement with each of the members of the Project Staff, which assigns, transfers and conveys to Contractor all of such Project Staff member's right, title and interest in and to any Developed Materials, including all Intellectual Property Rights in and to Developed Materials.

(iii) Contractor shall cooperate with the COURT if the COURT wishes to perform any background checks on Contractor's employees or contractors by obtaining, at no additional cost, all releases, waivers, and permissions the COURT may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the COURT of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the COURT and performed by Contractor. Contractor shall remove from the Project Staff any person refusing to undergo such background checks and any other person whose background check results are unacceptable to Contractor or that, after disclosure to the COURT, the COURT advises are unacceptable to the COURT or the Judicial Branch Entities.

1.7 Licenses and Approvals. Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by Applicable Laws to provide the Work. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any Applicable Law.

1.8 Progress Reports. As directed by the COURT, Contractor must deliver progress reports or meet with COURT personnel on a regular basis to allow: (i) the COURT to determine whether the Contractor is on the right track and the project is on schedule, (ii) communication of interim findings, and (iii) opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly.

## 2 Delivery, Acceptance, and Payment.

2.1 Delivery. Contractor shall deliver to the COURT the Deliverables in accordance with this Agreement, including the Statement of Work. Unless otherwise specified by the COURT, Contractor will deliver all equipment purchased by the COURT "Free on Board Destination Freight Prepaid" to the COURT at the address and location specified by the COURT. Title to all equipment purchased by the COURT vests in the COURT upon payment of the applicable purchase price. Contractor will bear the risk of loss for any Work being delivered until received by the COURT at the proper location.

2.2 Acceptance. All Work is subject to written acceptance by the COURT. The COURT may reject any Work that: (i) fails to meet applicable requirements, Specifications, or acceptance criteria, (ii) are not as warranted, (iii) are performed or delivered late, or not provided in accordance with this Agreement; or (iv) contain Defects. Payment does not imply acceptance of Contractor's invoice or Work. If the COURT provides Contractor a notice of rejection for any Work, Contractor shall modify such rejected Work at no expense to the COURT to correct the relevant deficiencies and shall redeliver such Work to the COURT within ten Business Days after Contractor's receipt of such notice of rejection, unless otherwise agreed in writing by the Parties. 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 (each such COURT written acceptance, an "Acceptance"); provided, however, that if the COURT rejects any Work on at least two occasions, the

COURT may terminate that portion of this Agreement which relates to the rejected Work at no expense to the COURT.

- 2.3 Fees and Payment. Subject to the terms of this Agreement, the Contractor shall invoice the COURT, and the COURT shall compensate Contractor, as set forth in Appendix B. The fees to be paid to Contractor under this Agreement shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the COURT shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature that Contractor incurs.

**3 Representations and Warranties.** Contractor represents and warrants to the COURT as follows:

- 3.1 Authorization/Compliance with Laws. (i) Contractor has full power and authority to enter into this Agreement, to grant the rights and licenses herein and to perform its obligations under this Agreement, and that Contractor's representative who signs this Agreement has the authority to bind Contractor to this Agreement; (ii) the execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action on the part of Contractor; (iii) Contractor shall not and shall cause Subcontractors not to enter into any arrangement with any Third Party which could reasonably be expected to abridge any rights of the Judicial Branch Entities under this Agreement; (iv) this Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms; (v) Contractor is qualified to do business and in good standing in the State of California; (vi) Contractor, its business, and its performance of its obligations under this Agreement comply with all Applicable Laws; and (vii) Contractor pays all undisputed debts when they come due.
- 3.2 No Gratuities or Conflict of Interest. Contractor: (i) 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; and (ii) 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.
- 3.3 No Litigation. No Claim or governmental investigation is pending or threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this Agreement.
- 3.4 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.
- 3.5 No Interference. To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or breach under any of Contractor's other contracts.
- 3.6 Drug Free Workplace. Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.
- 3.7 No Harassment / Non-discrimination. 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. 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.
- 3.8 Domestic Partners, Spouses, and Gender Discrimination. If the Contract Amount is \$100,000 or more, Contractor is in compliance with Public Contract Code section 10295.3, which places limitations on contracts with contractors whose benefits provisions discriminate between employees with spouses and employees with domestic partners.
- 3.9 National Labor Relations Board Orders. 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.

- 3.10 Child Support Compliance Act. If the Contract Amount is \$100,000 or more: (i) 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 (ii) Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 3.11 Intellectual Property. Contractor shall perform its obligations under this Agreement in a manner that the Work (including each Deliverable) and any portion thereof, does not infringe, or constitute an infringement, misappropriation or violation of, any Intellectual Property Right. Contractor has full Intellectual Property Rights and authority to perform all of its obligations under this Agreement, and Contractor is and will be either the owner of, or authorized to use for its own and the Judicial Branch Entities' benefit, all Contractor Materials, Third Party Materials, and Licensed Software used and to be used in connection with the Work.
- 3.12 Work. (i) the Work will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Work; (ii) Contractor will use efficiently the resources or services necessary to provide the Work; and provide the Work in the most cost efficient manner consistent with the required level of quality and performance; (iii) the Work will be provided free and clear of all liens, claims, and encumbrances; (iv) all Work will be free from all defects in materials and workmanship, and will be in accordance with Specifications, Documentation, Applicable Laws, and other requirements of this Agreement; and (v) all equipment purchased by the COURT from Contractor will be new. The foregoing representation and warranty in Section 3.12(iv) shall commence upon the COURT's Acceptance of the applicable Work, and shall continue for a period of one year following such Acceptance. In the event any Work does not conform to the foregoing provisions of this Section 3.12, Contractor shall promptly correct all non-conformities.
- 3.13 Malicious Code. No Work will contain any Malicious Code. Contractor shall immediately provide to the COURT written notice in reasonable detail upon becoming aware of the existence of any Malicious Code. Without limiting the foregoing, Contractor shall use best efforts and all necessary precautions to prevent the introduction and proliferation of any Malicious Code in the Judicial Branch Entities' IT Infrastructure or networks or in the Contractor systems used to provide Work. In the event Contractor or the COURT discovers the existence of any Malicious Code, Contractor shall use its best efforts, in cooperation with the COURT, to effect the prompt removal of the Malicious Code from the Work and the Judicial Branch Entities' IT Infrastructure and the repair of any files or data corrupted thereby, and the expenses associated with the removal of the Malicious Code and restoration of the data shall be borne by Contractor. In no event will Contractor or any Subcontractor invoke any Malicious Code.
- 3.14 Four-Digit Date Compliance. Contractor will provide only Four-Digit Date Compliant Work to the COURT. "Four-Digit Date Compliant" Work can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries.
- 3.15 Conflict Minerals. Contractor certifies either: (i) it is not a "scrutinized company" as defined in PCC 10490(b), or (ii) the goods or services the Contractor will provide to the COURT are not related to products or services that are the reason the Contractor must comply with Section 13(p) of the Securities Exchange Act of 1934
- 3.16 Miscellaneous. The rights and remedies of the COURT provided in this Section 3 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. The representations and warranties that Contractor makes in this Section 3 shall be true and accurate as of the Effective Date, and shall remain true during the term of this Agreement and the Termination Assistance Period. Contractor shall promptly notify the COURT if any representation or warranty becomes untrue.

#### **4 Intellectual Property.**

- 4.1 Contractor/Third Party Materials. Contractor shall set forth in an exhibit to each Statement of Work all Contractor Materials and Third Party Materials that Contractor intends to use in connection with that Statement of Work. The COURT shall have the right to approve in writing the introduction of any Contractor Materials or Third Party Materials into any Work prior to such introduction. Contractor grants to the Judicial

Branch Entities, together with all COURT Contractors, without additional charge, a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, non-exclusive license to use, reproduce, perform, display, transmit, distribute, modify, create derivative works of, make, have made, sell, offer for sale and import Contractor Materials and Third Party Materials (including Source Code) and to sublicense such rights to other entities, in each case for California judicial branch business and operations.

- 4.2 Rights in Developed Materials. Notwithstanding any provision to the contrary, upon their creation the Developed Materials (and all Intellectual Property Rights therein) will be the sole and exclusive property of the COURT. Contractor (for itself, Project Staff and Subcontractors) hereby irrevocably assigns, transfers and conveys to the COURT without further consideration all worldwide right, title and interest in and to the Developed Materials, including all Intellectual Property Rights therein. Contractor further agrees to execute, and shall cause Project Staff and Subcontractors to execute, any documents or take any other actions as may be reasonably necessary or convenient to perfect the COURT's or its designee's ownership of any Developed Materials and to obtain and enforce Intellectual Property Rights in or relating to Developed Materials. Contractor shall promptly notify the COURT upon the completion of the development, creation or reduction to practice of any and all Developed Materials.
- 4.3 Retention of Rights. The COURT retains all rights, title and interest (including all Intellectual Property Rights) in and to the COURT Materials. Subject to rights granted herein, Contractor retains all rights, title and interest (including all Intellectual Property Rights) in and to the Contractor Materials.
- 4.4 Third-Party Rights. Contractor hereby assigns to the Judicial Branch Entities all of Contractor's licenses and other rights (including any representations, warranties, or indemnities that inure to Contractor from third parties) to all Third Party Materials incorporated into the Work. If such licenses and rights cannot be validly assigned to or passed through to Judicial Branch Entities by Contractor without a Third Party's consent, then Contractor will use its best efforts to obtain such consent (at Contractor's expense) and will indemnify and hold harmless the COURT, Judicial Branch Entities and Judicial Branch Personnel against all Claims arising from Contractor's failure to obtain such consent.

## 5 Confidentiality.

- 5.1 General Obligations. During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any Third Party without obtaining the COURT's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to Project Staff (including Subcontractors) with a need to know in order to provide the Work hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this Section 5. The provisions of this Section 5 shall survive beyond the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than reasonable care and industry-standard care. The COURT owns all right, title and interest in the Confidential Information. Contractor will notify the COURT promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the COURT to protect such Confidential Information.
- 5.2 Removal; Return. Contractor will not remove any Confidential Information from Judicial Branch Entities' facilities or premises without the COURT's express prior written consent. Upon the COURT's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the COURT or, if so directed by the COURT, destroy all Confidential Information (in every form and medium), and (b) certify to the COURT in writing that Contractor has fully complied with the foregoing obligations.
- 5.3 Breach of Confidentiality. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations hereunder, that any such breach will likely result in irreparable harm, and therefore, that upon any breach or threatened breach of the confidentiality obligations, the COURT shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

## 6 Indemnification.

- 6.1 General Indemnity. Contractor shall indemnify, defend (with counsel satisfactory to the COURT), and hold

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

- 6.2 Certain Remedies. If any Covered Item provided under this Agreement becomes, or in Contractor's or the COURT's reasonable opinion is likely to become, the subject of any Claim arising from or alleging infringement, misappropriation or other violation of, or in the event of any adjudication that such Covered Item infringes, misappropriates or otherwise violates any Intellectual Property Right of a Third Party, Contractor at its own expense shall take the following actions in the listed order of preference: (a) secure for the Judicial Branch Entities the right to continue using the applicable Covered Item; or (b) if commercially reasonable efforts are unavailing, replace or modify the infringing Covered Item to make it noninfringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Covered Item.

## 7 Insurance.

- 7.1 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 has 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 be written on an occurrence form with limits of not less than \$1 million per occurrence, and a \$1 million annual aggregate. Each policy must include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed in a contract.; and
  - (c) Professional Liability. The policy must cover Contractor's acts, errors and omissions committed or alleged to have been committed which arise out of rendering or failure to render services provided under this Agreement. The policy shall provide limits of not less than \$1 million per occurrence and annual aggregate.
  - (d) Commercial Automobile Liability. If an automobile is used in providing the Work, automobile liability insurance with limits of not less than \$1 million per accident. Such insurance must cover liability arising out of the operation of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with providing the Work.
- 7.2 "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 Work provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that Work commences under this Agreement.
- 7.3 Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of primary, excess or umbrella insurance.
- 7.4 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.

- 7.5 Deductibles and Self-Insured Retentions. Contractor is responsible for and may not recover from the COURT, including Judicial Branch Personnel, any deductible or self-insured retention that is connected to the insurance required under this Section 7.
- 7.6 Additional Insured Status. With respect to commercial general liability and automobile liability insurance, the policies must be endorsed to include the State of California, the Judicial Council of California and the Superior Court of California, County of San Mateo as additional insureds.
- 7.7 Certificates of Insurance. Before Contractor begins providing Work, 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 provide Work before the COURT approves the certificates.
- 7.8 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.
- 7.9 Required Policy Provisions. Each policy must provide, as follows:
- (a) Insurance Primary; Waiver of Recovery. With respect to commercial general liability and automobile liability insurance, the policies must be endorsed to be primary and non-contributory with any insurance or self-insurance programs maintained by Judicial Branch Entities and Judicial Branch Personnel. Contractor waives any right of recovery it may have, and will require that any insurer providing commercial general liability, workers compensation, and automobile liability to also waive any right of recovery it may have against Judicial Branch Entities and Judicial Branch Personnel for liability arising out of the Work; and
- (b) Separation of Insureds. The insurance 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.
- 7.10 Partnerships. If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods: (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 7.11 Consequences of Lapse. If required insurance lapses during the Term, the COURT is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

## **8 Term / Termination.**

8.1 Term. This Agreement shall commence on the Effective Date and continue until the end of the term of this Agreement or otherwise terminated in accordance with the terms of this Agreement.

8.2 Termination for Convenience. The COURT may terminate, in whole or in part, this Agreement and/or any Statement of Work for convenience (without cause) upon thirty (30) days prior written notice. The COURT's notice obligations under the foregoing sentence shall not apply to any stop work orders issued by the COURT under this Agreement or any Statement of Work. After receipt of such notice, and except as otherwise directed by the COURT, Contractor shall immediately: (a) stop Work as specified in the notice; and (b) place no further subcontracts, except as necessary to complete the continued portion of this Agreement.

8.3 Early Termination. The COURT may terminate, in whole or in part, this Agreement or any Statement of Work immediately "for cause" if Contractor is in Default. The COURT may also terminate this Agreement or limit Work (and proportionately, Contractor's fees) upon written notice to Contractor without prejudice to any right or remedy of the Judicial Branch Entities if: (i) expected or actual funding to compensate the Contractor is withdrawn, reduced or limited; or (ii) the COURT determines that Contractor's performance under this Agreement has become infeasible due to changes in Applicable Laws.

#### 8.4 Rights and Remedies of the COURT.

- (a) All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the COURT immediately if Contractor is in Default, or if a Third Party claim or dispute is brought or threatened that alleges facts that would constitute a Default under this Agreement. If Contractor is in Default, the COURT may do any of the following: (i) 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; (ii) require Contractor to enter into non-binding mediation; (iii) exercise, following notice, the COURT's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.
- (b) If the COURT terminates this Agreement or any Statement of Work in whole or in part for cause, the COURT may acquire from third parties, under the terms and in the manner the COURT considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the COURT for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Judicial Branch Entities for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the COURT or Judicial Branch Entities. Contractor shall continue the Work not terminated hereunder.
- (c) In the event of any expiration or termination of this Agreement or the applicable Statement of Work, Contractor shall promptly provide the COURT with all originals and copies of the Deliverables (including: (i) any partially-completed Deliverables and related work product or materials; and (ii) any Contractor Materials, Third Party Materials, and Developed Materials comprising such Deliverables or partially-completed Deliverables), Confidential Information, COURT Data, COURT Materials, and all portions thereof, in its possession, custody, or control. In the event of any termination of this Agreement or a Statement of Work, the COURT shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the COURT's termination is not based on a Default, COURT shall pay any fees due under this Agreement for Deliverables completed and accepted as of the date of the COURT's termination notice.

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

8.6 Survival. Termination of this Agreement shall not affect the rights and/or obligations of the Parties which arose prior to any such termination (unless otherwise provided herein) and such rights and/or obligations shall survive any such expiration or termination. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including Sections 3 through 10 of these General Terms and Conditions, and Appendix E.

## 9 **Special Provisions.**

9.1 Agreements Providing for Compensation of \$50,000 or more; Union Activities Restrictions. As required under Government Code sections 16645-16649, if the Contact Amount is \$50,000 or more, Contractor agrees that no COURT funds received under this agreement will be used to assist, promote or deter union organizing. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no COURT funds were used for those expenditures and no reimbursement from the COURT was sought for these costs. Contractor will provide those records to the Attorney General upon request.

9.2 DVBE Commitment. This section is applicable if Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement. Contractor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE

subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the COURT approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the COURT: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

- 9.3 Competitively Bid Contracts; Antitrust Claims. If this Agreement resulted from a competitive bid, Contractor shall comply with the requirements of the 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)
- 9.4 Iran Contracting Act. If the Contract Amount is \$1,000,000 or more, Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran (“Iran List”) created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the COURT to enter into this Agreement pursuant to PCC 2203(c).
- 9.5 Loss Leader Prohibition. If this Agreement involves the purchase of goods, this section is applicable. 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.
- 9.6 Recycling. If this Agreement provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable. Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
- 9.7 Sweatshop Labor. If this Agreement provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable. Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the COURT under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children

in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and PCC 6108. Contractor agrees to cooperate 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 this section and shall provide the same rights of access to the COURT.

9.8 Federally-funded Agreements. If this Agreement is funded in whole or in part by the federal government, then:

- (a) It is mutually understood between the Parties that this 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 Agreement were executed after that determination was made.
- (b) This Agreement 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, this 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 Agreement in any manner.
- (c) The Parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the Parties to reflect any reduction in funds.
- (d) The Parties may amend the Agreement to reflect any reduction in funds.

9.9 Equipment Purchases. The COURT may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the COURT, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the COURT at no expense to the COURT. If a theft occurs, Contractor must file a police report immediately.

9.10 Small Business Preference Contract Clause. If Contractor received a small business preference in connection with this Agreement then Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the COURT the actual percentage of small/micro business participation that was achieved. 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.

## 10 General.

10.1 Audits. Contractor shall allow the COURT and its designees to review and audit Contractor's documents and records relating to this Agreement, and Contractor shall retain such documents and records for a period of four years following final payment under this Agreement. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit. Contractor shall provide to the Judicial Branch Entities and COURT Contractors, on Contractor's premises (or, if the audit is being performed of a Subcontractor, Subcontractor's premises if necessary), space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office-related equipment and duplicating services as the Judicial Branch Entities or such COURT Contractors may reasonably require to perform the audits described in this Section. Without limiting the foregoing, this Agreement is subject to examinations and audit by the State Auditor for a period three years after final payment.

10.2 References. In this Agreement and the Appendixes: (a) the Appendixes shall be incorporated into and deemed part of this Agreement and all references to this Agreement shall include the Appendixes; (b) the Article and Section headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement; (c) references to and mentions of the word "including" or the phrase "e.g." means "including, without limitation" and (d) unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.

- 10.3 Assignment. This Agreement will not be assignable by Contractor in whole or in part (whether by operation of law or otherwise) without the prior written consent of the COURT. Any assignment made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the Parties and their permitted successors and assigns.
- 10.4 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth below:

<b>If to Contractor:</b>	<b>If to the COURT:</b>
[name, title, address]                      TBD	[name, title, address]                      TBD

Either Party may change its address for notification purposes by giving the other Party written notice of the new address in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) Business Days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

- 10.5 Independent Contractors. Contractor and Subcontractors in the performance of this Agreement shall act in an independent capacity and not as officers or employees or agents of the Judicial Branch Entities or COURT Contractors. Neither the making of this Agreement nor the performance of its provisions shall be construed to constitute either of the Parties hereto as an agent, employee, partner, joint venturer, or legal representative of the other, and the relationship of the Parties under this Agreement is that of independent contractors. Neither Party shall have any right, power or authority, express or implied, to bind the other.
- 10.6 Covenant of Further Assurances. Contractor covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, Contractor shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.
- 10.7 Publicity. News releases and other public disclosures pertaining to this Agreement will not be made by Contractor without prior written approval of the COURT.
- 10.8 Third Party Beneficiaries. Except for the Judicial Branch Entities, each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties.
- 10.9 Governing Law; Jurisdiction; and Venue. This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Contractor hereby irrevocably submits to the exclusive jurisdiction and venue of the Superior Court, County of San Mateo and federal district courts located in California in any legal action concerning or relating to this Agreement.
- 10.10 Follow-On Contracting. Subject to certain exceptions, no person, firm, or subsidiary thereof who has been awarded a Consulting Services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the Consulting Services contract.
- 10.11 Order of Precedence. Any conflict among or between the documents making up this Agreement will be resolved in accordance with the following order of precedence (in descending order of precedence): (i) Appendix C - The General Terms and Conditions and Appendix D – Defined Terms; (ii) the Coversheet; (iii) Appendix B – Pricing and Payment; (iv) Appendix A – Statement of Work; (v) Appendix E – The Licensed Software; (vi) Appendix F – Maintenance and Support Services; and (vii) any exhibits to the Agreement.
- 10.12 Miscellaneous. 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 section 1654. No amendment to this Agreement will be effective unless in writing. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. If any part of this Agreement is held unenforceable, all other parts remain enforceable. A Party’s waiver of enforcement of any

of this Agreement's terms or conditions is effective only if in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Time is of the essence regarding Contractor's performance of the Work. Unless otherwise approved by the COURT in writing in advance, Work may not be performed outside of the United States. The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but taken together, all of which shall constitute one and the same Agreement.

## **ATTACHMENT B-1: DEFINED TERMS**<sup>1</sup>

“Acceptance” is defined in Appendix C, Section 2.2.

“Agreement” means this Standard Agreement as defined on the Coversheet, including the following: Appendix A (Statement of Work), Appendix B (Pricing and Payment), Appendix C (General Provisions), Appendix D (Defined Terms), Appendix E (Licensed Software), and Appendix F (Maintenance and Support Services).

“Applicable Law” means any applicable laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders.

“Business Day” means any day other than Saturday, Sunday or a scheduled COURT holiday.

“Claims” means claims, suits, actions, arbitrations, demands, proceedings, fines, penalties, losses, damages, liabilities, judgments, settlements, costs, and expenses (including reasonable attorneys’ fees and costs), including those based on the injury to or death of any person or damage to property.

“Confidential Information” means: (i) any information related to the business or operations of Judicial Branch Entities, including information relating to Judicial Branch Entities’ personnel and users; (ii) all financial, statistical, personal, technical and other data and information of the Judicial Branch Entities (and proprietary information of third parties provided to Contractor) that is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know is confidential; and (iii) all Deliverables, Developed Materials, COURT Materials and COURT Data. Confidential Information does not include information (that Contractor demonstrates to the COURT’s satisfaction, by written evidence): (a) that Contractor lawfully knew prior to the COURT’s first disclosure to Contractor, (b) that a Third Party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) that is, or through no fault of Contractor has become, generally available to the public.

“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: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) 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 (iv) 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.

“Contract Amount” has the meaning set forth on the Coversheet.

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

“Contractor Project Manager” means the employee identified in a Statement of Work as the Contractor project manager.

“Contractor Work Location(s)” means any location (except for a COURT Work Location) from which Contractor provides Work.

“Contractor Materials” means Materials owned or developed prior to the provision of the Work, or developed by Contractor independently from the provision of the Work and without use of the COURT Materials or Confidential Information.

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

“Data Safeguards” means industry-standard safeguards against the destruction, loss, misuse, unauthorized disclosure, or alteration of the COURT Data or Confidential Information, and such other related safeguards that are set forth in Applicable Laws, a Statement of Work, or pursuant to COURT policies or procedures.

“Default” means if any of the following occurs: (i) Contractor breaches any of Contractor’s obligations under this Agreement, and this breach is not cured within ten (10) days following notice of breach or is not capable of being cured within this cure period; (ii) 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; (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading; or (iv) any act, condition, or item required to be fulfilled or performed by Contractor to (x) enable Contractor lawfully to

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<sup>1</sup> Additional capitalized terms may be defined in the other Appendices to this Agreement

enter into or perform its obligations under this Agreement,(y) ensure that these obligations are legal, valid, and binding, or (z) make this Agreement admissible when required is not fulfilled or performed.

“Defect” means any failure of any portion of the Work to conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation.

“Deliverables” means any Developed Materials, Contractor Materials, Third Party Materials, or any combination thereof (including those identified as “Deliverables” in a Statement of Work, together with all Upgrades thereto), as well as any other items, goods, or equipment provided pursuant to the Work (except the Licensed Software).

“Developed Materials” means Materials created, made, or developed by Contractor or Subcontractors, either solely or jointly with the Judicial Branch Entities or COURT Contractors, in the course of providing the Work under this Agreement, and all Intellectual Property Rights therein and thereto, including, without limitation, (i) all work-in-process, data or information, (ii) all modifications, enhancements and derivative works made to Contractor Materials, and (iii) all Deliverables; provided, however, that Developed Materials do not include Contractor Materials.

“Documentation” means all technical architecture documents, technical manuals, user manuals, flow diagrams, operations guides, file descriptions, training materials and other documentation related to the Work; together with all Upgrades thereto.

“Effective Date” has the meaning set forth on the Coversheet.

“Intellectual Property Rights” means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

“IT Infrastructure” means software and all computers and related equipment, including, as applicable, central processing units and other processors, controllers, modems, servers, communications and telecommunications equipment and other hardware and peripherals.

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

“COURT Contractors” means the agents, subcontractors and other representatives of the Judicial Branch Entities, other than Contractor and Subcontractors.

“COURT Data” means all data and information of the Judicial Branch Entities or COURT Contractors disclosed to or accessed by Contractor or Subcontractors, including all such data and information relating to the Judicial Branch Entities and their respective contractors, agents, employees, technology, operations, facilities, markets, products, capacities, systems, procedures, security practices, court records, court proceedings, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter, patents and other intellectual property and proprietary information.

“COURT Project Manager” means the individual appointed by the COURT to communicate directly with the Contractor Project Manager.

“COURT Work Locations” means any COURT facility at which Contractor provides Work.

“COURT Materials” means Materials owned, licensed, made, conceived, or reduced to practice by a Judicial Branch Entity or a COURT Contractor, any Materials developed or acquired separate from this Agreement, and all modifications, enhancements, derivative works, and Intellectual Property Rights in any of the foregoing.

“Judicial Branch Entity” or “Judicial Branch Entities” means the COURT and 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.

“Licensed Software” means Contractor’s software set forth in Appendix E, including Source Code and object code versions of such software, in whatever form or media, together with all Upgrades and Documentation thereto.

“Malicious Code” means any (i) program routine, device or other feature or hidden file, including any time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm any of the Judicial Branch Entities’ hardware, software, data or other programs, and

(ii) hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.

“Maintenance and Support Services” means the services provided by Contractor under Appendix F.

“Materials” means all inventions (whether patentable or not), discoveries, literary works and other works of authorship (including software), designations, designs, know-how, technology, tools, ideas and information.

“Parties” means the COURT and Contractor, collectively.

“Party” means either the COURT or Contractor, as the case may be.

“Project Staff” means the personnel of Contractor and Subcontractors who provide the Work.

“Source Code” means human-readable program statements written by a programmer or developer in a high-level or assembly language that are not directly readable by a computer and that need to be compiled into object code before they can be executed by a computer.

“Specifications” means with respect to each Deliverable, Licensed Software, service, goods, or other portion of the Work, the detailed provisions and documents setting out the specifications, functionality and requirements.

“Statement of Work” means one or more statements of Work to be provided pursuant to and governed under the terms of this Agreement, substantially in the form attached as Appendix A, as agreed to by the Parties.

“Subcontractor” means the agents, subcontractors and other representatives of Contractor providing Work hereunder who are not employees of Contractor.

“Term” means the term of this Agreement.

“Termination Assistance Period” means the period commencing upon the expiration or termination of this Agreement and each Statement of Work and expiring six (6) months thereafter, as such period may be extended by the Parties.

“Third Party” means any person or entity other than the COURT or Contractor.

“Third Party Materials” means Materials that are licensed or obtained by Contractor from a Third Party.

“Upgrades” means all new versions and releases of, and bug fixes, error corrections, Workarounds, updates, upgrades, modifications, patches for, the Licensed Software, Deliverables, Documentation, or any other portion of the Work.

“Work” means each of the following, individually and collectively: the services (including the Maintenance and Support Services), Deliverables, Licensed Software, goods (including equipment) and materials provided under this Agreement, including those services and Deliverables set forth in a Statement of Work, and any incidental services, items, or responsibilities that are reasonable and customary in the industry and not specifically described in this Agreement (or the Statement of Work), but which are required for the performance of Contractor’s obligations and delivery of services.

“Workaround” means a temporary modification to or change in operating procedures for the Work that: (i) circumvents or effectively mitigates the adverse effects of a Defect so that the Work complies with and performs in accordance with the applicable Specifications and Documentation; (ii) does not require substantial reconfiguration of the Work or any reloading of data; and (iii) does not otherwise impose any requirements that would impede an end user’s efficient use of the Work.

“Work Location(s)” means any COURT Work Location or Contractor Work location.

## ATTACHMENT B-2: THE LICENSED SOFTWARE

1. The Licensed Software. Contractor will provide all on-site services necessary to install the Licensed Software. Contractor will provide the following training for the use and operation of the Licensed Software: **[Description will be inserted]**
  
2. Software License. Contractor grants to the Judicial Branch Entities a fully paid-up, perpetual, irrevocable, worldwide, royalty-free, non-exclusive license to: (i) install, use and host the Licensed Software; (ii) make a reasonable number of copies of the Licensed Software for archival and/or backup purposes, or to the extent reasonably necessary to enable access to and use of the Licensed Software; (iii) modify the Licensed Software for judicial branch purposes and use; and (iv) use the Licensed Software in conjunction with other software developed or acquired by Judicial Branch Entities. The Judicial Branch Entities' rights hereunder shall extend to permit the installation, use, hosting and/or reproduction and copying of the Licensed Software, or portions thereof, to the extent reasonably necessary to enable access to and use of the Licensed Software by: (a) any law enforcement, judicial or other governmental entity for purposes reasonably related to the business or operations of the California judicial branch, (b) any court user or party needing the Licensed Software for the purpose of connecting to, making use of (such as lawyers, litigants, parties and the general public) or supporting the operations of the Judicial Branch Entities, and (c) COURT Contractors, but only in connection with their provision of goods or services to Judicial Branch Entities. The foregoing use and access may be directly enabled or web enabled via Internet or intranet or enabled via any other communication facility. All data created and/or processed by the Licensed Software shall remain the property of the Judicial Branch Entities, nor shall Contractor have any rights in or to such data.
  
3. Escrow
  - (a) Escrow Account. Upon the Effective Date, Contractor agrees to enter into an escrow agreement ("Escrow Agreement") with a third party escrow agent to be mutually agreed upon by the Parties ("Escrow Agent"). Contractor shall be responsible for establishment, administration and cost of the escrow account. Upon execution of the Escrow Agreement, Contractor shall deliver to the Escrow Agent a copy of the Source Code for the Licensed Software, together with all supporting information, tools, notes and other information necessary and sufficient to allow a reasonably qualified person to support, maintain, modify and prepare derivative works of the Licensed Software and other related Deliverables (collectively the "Source Code Materials").
  - (b) Release Conditions. The Escrow Agreement shall provide that release of the Source Code Materials to the COURT shall occur if any of the following occur (each, a "Release Condition"):
    - (i) Contractor materially breaches any of its obligations to provide maintenance and support services for the Licensed Software;
    - (ii) Contractor dissolves, becomes insolvent or ceases to conduct business as a going concern;
    - (iii) Contractor makes a general assignment for the benefit of creditors or commences any case, proceeding or other action seeking to have an order for relief entered on Contractor's behalf as a debtor or to adjudicate Contractor as bankrupt or insolvent, or seeks a reorganization, liquidation, dissolution or composition of Contractor or Contractor's debts under any law relating to bankruptcy, insolvency, or relief of debtors or seeking appointment of a receiver, trustee, custodian or similar official for Contractor or for all or any substantial portion of Contractor's assets; or
    - (iv) any case, proceeding or similar action is brought against Contractor seeking to have an order for relief entered against it to adjudicate it as bankrupt or insolvent, or seeking reorganization, liquidation, dissolution or composition of Contractor or Contractor's debts under any law relating to bankruptcy, insolvency, reorganization or the relief of debtors or seeking appointment of a receiver, trustee, custodian or similar official for Contractor or for all or any substantial portion of Contractor's assets that relate to this Agreement, and such case, proceeding or other action (1) results in the entry of an order for relief against Contractor which is not fully stayed within sixty (60) calendar days after the entry thereof or (2) remains undismissed for a period of sixty (60) calendar days.
  - (c) License. In the event of a Release Condition, Contractor hereby grants to the Judicial Branch Entities a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, fully paid-up, nonexclusive license to use, reproduce, modify and create derivative works of the Licensed Software (in Source Code and object code form) for the purpose of maintaining and supporting the Licensed Software for use in accordance with the terms of this Agreement. Notwithstanding any other provision in this Agreement, COURT Contractors may exercise the foregoing license rights granted to the Judicial Branch Entities for the benefit of the Judicial Branch Entities.

**ATTACHMENT C**  
**VENDOR'S ACCEPTANCE OF TERMS AND CONDITIONS**

Mark the Appropriate Choice, below:

\_\_\_\_\_ Proposer accepts *Attachment B – Proposed Contract Terms and Conditions*, without exception.

*or*

\_\_\_\_\_ Proposer proposes exceptions/modifications to *Attachment B – Proposed Contract Terms and Conditions*. Summarize any and all exceptions below. Enclose both a tracked changes “red-lined” version of *the proposed contract terms* which clearly shows each proposed exception/modification, and provide written documentation to substantiate each proposed exception/modification.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**ATTACHMENT E  
CONTRACTOR CERTIFICATION**

I certify that neither \_\_\_\_\_ (Vendor) nor any of its proposed subcontractors are currently under suspension or debarment by any state or federal government agency, and that neither Vendor 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 Vendor or any of its subcontractors subsequently are placed under suspension or debarment by a local, state or federal government entity, or if Vendor or any of its subcontractors subsequently become delinquent in California taxes, our Proposal may be disqualified.

By (Authorized Signature)	<i>Date:</i>
Printed Name and Title of Person Signing:	

**Please list all contracts with courts or governments or other governmental agencies during the two years preceding submission of this proposal:**

- 1.
- 2.
- 3.