



**MODEL AGREEMENT**

**BETWEEN**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**AND**

**[\_\_\_\_ CONTRACTOR NAME \_\_\_\_]**

**AGREEMENT # \_\_\_\_\_**

**CONTRACT SUM  
(Not-to-exceed amount):**

**GOODS/SERVICES:**

**COMMENCES:**

**TERMINATES:**

**OPTION TERMS:**



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
MODEL AGREEMENT**

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1. In this Agreement, the term "Contractor" refers to **[Contractor name]**, and the term "Court" refers to the Superior Court of California, County of Los Angeles.
2. This Agreement is effective \_\_\_\_ ("Effective Date") through \_\_\_\_ ("Expiration Date"). The Agreement may be extended by mutual consent of the Court and Contractor upon the same terms and conditions set forth herein up to \_\_\_\_ times for \_\_\_\_ periods, through \_\_\_\_ ("Extension Term"), upon the execution of an Amendment. The Agreement may also be extended for a maximum of six (6) months, in any increment, by mutual consent of the Court and Contractor ("Monthly Term"), upon the execution of an Amendment.
3. The maximum amount the Court shall pay Contractor under this Agreement is not to exceed \_\_\_\_.
4. The purpose of this Agreement is: \_\_\_\_.  
*(The purpose listed here is for administrative reference only and is not intended to define or limit the scope or extent of this Agreement.)*
5. Contractor was selected through a competitive procurement process for the provision of the described goods and/or services. (Name of solicitation document)
6. The parties agree that this Agreement, made up of this Standard Agreement and the Exhibits listed below and any referenced attachments ("Contract Documents"), contains the parties' entire understanding related to the subject matter of this Agreement and is mutually binding on the parties in accordance with its terms.

Exhibit A or A1 – Statement of Work

Exhibit A2 – Selected Portions of Contractor's Proposal

Exhibit B – Payment Provisions and Invoicing Procedures

Exhibit C – Standard Business Terms and Conditions

Exhibit D – IT Terms and Conditions

It is the intention of both parties that all Contract Documents be read and construed as a unified whole whenever possible. However, in the event of a conflict between the terms of the Contract Documents, the following order of precedence shall govern and determine which terms prevail:

1. Standard Agreement
2. Exhibit A or A1 – Statement of Work
3. Exhibit B – Payment Provisions and Invoicing Procedures
4. Exhibit C – Standard Business Terms and Conditions
5. Exhibit D – IT Terms and Conditions
6. Exhibit A2 – Selected Portions of Contractor's Proposal

Any Amendments to this Agreement, starting with the most recent, shall take precedence over

existing Contract Documents. In the event of a conflict between an Amendment and the terms of any other Contract Document, the terms of the Amendment shall prevail.

7. Insurance. Contractor must procure and maintain the insurance coverage as specified below. Exhibit C (Court Standard Business Terms and Conditions), Sections 23.1 and 23.2 describe the Court's specific insurance requirements.

- ☐ **Exhibit C, Section 23.1 Insurance Requirements – General Coverage**
- ☐ **Exhibit C, Section 23.2 Insurance Requirements – Specific Coverages**
  - ☐ Workers Compensation/Employer's Liability
  - ☐ Commercial General Liability
    - ☐ \$1 million per occurrence and \$2 million annual aggregate
    - ☐ \$2 million per occurrence and \$4 million annual aggregate
    - ☐ \$5 million per occurrence and \$5 million annual aggregate
  - ☐ Commercial Automobile Liability
  - ☐ Professional Liability
    - ☐ \$1 million per occurrence and \$2 million annual aggregate
    - ☐ \$2 million per occurrence and \$4 million annual aggregate
  - ☐ Sexual Misconduct
  - ☐ Commercial Crime
  - ☐ Contractor's Pollution Liability
  - ☐ Cyber Liability
  - ☐ Technology Professional Liability Error & Omissions
  - ☐ Builders Risk/Installation
  - ☐ Contractor's Equipment

Insurance certificates shall be provided to Ebix, the Court's insurance compliance and tracking provider, by using one of the methods listed below:

- By email to [lacourt@ebix.com](mailto:lacourt@ebix.com); or
- By fax to (770) 325-2046

## 8. CONTRACT ADMINISTRATION

**PROJECT DIRECTORS:** See Exhibit C, Section 11 for roles and responsibilities of Project Directors.

<b>COURT:</b>	<b>CONTRACTOR:</b>
Name, Title	Name, Title
Address	Address
City, State, ZIP	City, State, ZIP
Phone #	Phone #
E-Mail	E-Mail

**PROJECT MANAGERS:** See Exhibit C, Section 11 for roles and responsibilities of Project Managers.

<b>COURT:</b>	<b>CONTRACTOR:</b>
Name, Title	Name, Title
Address	Address
City, State, ZIP	City, State, ZIP
Phone #	Phone #
E-Mail	E-Mail

**COURT'S CONTRACT ANALYST:** See Exhibit C, Section 11 for role and responsibilities of Court's Contract Analyst:

<b>COURT:</b>
Name, Title
Address
City, State, ZIP
Phone #
E-Mail

9. **NOTICES:** All contract specific correspondence, notices or demands required or permitted to be given or made under this Agreement shall be in writing, submitted by email, or by registered mail, or certified mail and shall be addressed to the Court and Contractor Project Directors, Project Managers, and Contract Analyst listed above, unless otherwise provided.
10. **Public Works / Prevailing Wages.** This Agreement is for a Public Work. Contractor, and all its subcontractors, must comply with all applicable Prevailing Wage rules and regulations. Please see Exhibit C, Section 26.
11. Contractors performing work that impacts building materials assumed to contain asbestos or lead and/or work that may compromise the fire rating of walls and/or doors including, but not limited to, the installation or modification of electrical, low voltage wiring/cabling, conduit, equipment/hardware devices, electric strikes/door hardware, and security/audio/visual equipment shall comply with the following terms and conditions:
- Potential Asbestos and Lead Work.** Contractor shall not commence any work impacting building material assumed to contain asbestos or lead until an Asbestos and Lead Work Permit (ALWP-1) is completed by the contractor and submitted as part of an Asbestos and Lead Management Plan. The Asbestos and Lead Management Plan will need to be approved by the Judicial Council of California (JCC), building proprietor and/or the Court. Contractor is responsible for ensuring that all contractor employees, workers, and sub-contractors perform all work in alignment with the approved Asbestos and Lead Management Plan while adhering to all Local, State, and Federal laws and guidelines.
  - Potential Fire Rating Work.** Contractor shall not commence any work impacting any surface assumed to be fire rated until approval is received from the JCC, building proprietor and/or the Court. Such approval may require, among other things, submission of detailed plans, fire blocking assembly cut sheets and the State Fire Marshal approval of desired scope of work.

12. Contractors awarded a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) shall, before commencement of work, give a payment bond to and approved by the Court.

13. Cooperative Agreement (“Piggybacking”):

This Agreement is the result of an open, competitive procurement (#\_\_\_\_\_) process conducted in accordance with the California Judicial Branch Contract Law and Contracting Manual. The provisions and pricing of this Agreement may be extended to other California government agencies. A government agency wishing to utilize the provisions and pricing of this Agreement will be responsible for issuing its own purchase documents and making any and all payments relative to its agreement. Any participating government agency is responsible for obtaining its own certificates of insurance and any required performance bonds. The Court makes no guarantee to other government agencies that may utilize the provisions or pricing of this Agreement. By utilizing the provisions or pricing of this Agreement, the participating government agency agrees to hold the Court harmless from all claims, demands, or actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the utilization of the provisions or pricing of this Agreement. The Court makes no guarantee to Contractor that any other government agency will make use of the provisions or pricing of this Agreement.

## AUTHORIZATION PAGE

IN WITNESS THEREOF, the Superior Court of California, County of Los Angeles has caused this Agreement to be subscribed by its Executive Officer/Clerk of Court or authorized designee, the seal of said Court is hereto affixed, and **Contractor Name** has caused this Agreement to be subscribed on its behalf by its duly authorized officer.

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF LOS ANGELES



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

DAVID W. SLAYTON  
Executive Officer/Clerk of Court

**(CONTRACTOR NAME)**

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

**(CONTRACTOR'S PRINCIPAL)**  
**(Title)**

**EXHIBIT A  
STATEMENT OF WORK**

*The Statement of Work from the Bid/RFP will be included here.*

*Selected portions of the awarded vendor's proposal  
may also be included in the Statement of Work.*

**END OF EXHIBIT A**

**EXHIBIT B**  
**PAYMENT PROVISIONS AND INVOICING PROCEDURES**

**1. Compensation**

A. Contract Sum

- (1) The Contract Sum shall be the maximum total monetary amount payable by the Court to Contractor for supplying all the tasks, deliverables, services, and other work specified under this Agreement. The total Contract Sum for the initial term of the Agreement shall not exceed **\$ Total Contract Value**. The total annual Contract Sum shall not exceed **\$ Annual Contract Value** and shall be paid as set forth in this Exhibit B.
- (2) Fees. Contractor shall provide all goods and services at the rates set forth in Subsection B (Pricing and Billing Schedule) of this Exhibit. The Court shall have no obligation for payment of fees for any goods or services provided by Contractor except for those which are satisfactorily completed and expressly authorized pursuant to this Agreement.
- (3) The total amount that Court may reimburse Contractor for travel related expenses shall not exceed **\$ XXX.00**.

B. Pricing and Billing Schedule

*\*\*\* Specific pricing information to be included here \*\*\**

**2. Miscellaneous Provisions**

A. Compensation for Allowable Business-Related Travel Expenses

- (1) Contractor travel expenses are reimbursable only if this Agreement specifically provides for the reimbursement of travel-related expenses and prior written approval of such expenses by the Court's Project Director or Manager is obtained. The Court's policies and limits on reimbursable expenses, set forth in the Judicial Branch Travel Guidelines, shall apply. Contractor shall be reimbursed only for



actual expenses not to exceed the limits set forth in the Judicial Branch Travel Guidelines.

- (2) The Travel Guidelines can be found on the following web page:

<https://www.lacourt.ca.gov/pages/lp/procurement/cp/additional-resources-and-information>

- (3) Invoicing Requirements for Travel Reimbursement: Contractor must provide copies of receipts and invoices for reimbursement of approved travel expenses. The Court will not pay travel expenses that have not been authorized in writing.

- B. The Court shall not reimburse any Contractor expenses for staff time or overtime spent performing services or for any time spent to provide information for Court audits or billing inquiries.

### 3. Invoices and Payments

#### A. Submitting Invoices

- (1) Contractor shall invoice the Court at the rates set forth in this Exhibit B.
- (2) Contractor shall bill the Court within the first twenty-five (25) calendar days of the month for goods and services provided the preceding month.
- (3) All invoices shall be subject to the Court's written approval. Contractor shall prepare invoices, in the detail specified below in Subsection 3.B.(5) using mutually agreeable formats, for charges owed to Contractor by the Court as provided in this Exhibit B.
- (4) **Contractor shall submit all invoices for approval to the Court's Project Director.**
- (5) Immediately upon approving Contractor's invoice(s), the Court's Project Director shall forward all such invoice(s) for review and processing for payment to:

Financial Services Administration – Accounts Payable  
Superior Court of California  
County of Los Angeles  
312 North Spring Street, Room 910  
Los Angeles, California 90012  
[askaccounts payable@lacourt.org](mailto:askaccounts payable@lacourt.org)

#### B. Payment Conditions

- (1) The Court shall pay Contractor as per this Exhibit B within thirty (30) days of receiving a correct and proper invoice from Contractor, provided that Contractor is not in violation of or default under any provision of the Agreement and has submitted a complete, accurate, and approved invoice.

- (2) Payment for services rendered shall be made upon the Court's approval of invoices submitted and may be reduced at the Court's sole discretion for Contractor's failure to provide services as specified in the Agreement. The Court may deduct up to ten percent (10%) from invoice amount for each month a failure incurs and until such errors are satisfactorily corrected.

The aggregate of all amounts withheld pursuant to Subsection 3.B.(2) shall be paid to Contractor by the Court in one lump sum payment the earlier of 1) the parties' agreed upon resolution of the matter(s) for which withholding was prompted or 2) within sixty (60) days from the termination date of this Agreement, upon completion of all corrective measures required.

- (3) Only if this Agreement specifically provides for the making of progress payments to Contractor, the Court shall make the progress payments in arrears not more frequently than monthly and at the successful completion of the clearly identifiable project milestones, which Contractor must successfully achieve as indicated in the Agreement. An amount no less than 10 percent of the amount of each installment may be withheld from each progress payment pending final completion of the work, or, if the Agreement consists of the performance of separate and distinct tasks as distinct from milestones, upon completion of that task.
- (4) The cumulative total of such invoices shall not exceed the Contract Sum stated in Section 1 (Compensation) of this Exhibit.
- (5) Invoice Detail

Each invoice submitted by Contractor shall include the following information:

- a. The Contract number and/or Purchase Order number.
- b. The deliverables and associated tasks, subtasks, goods, services, or other work (as described in Exhibit A) for which payment is claimed.
- c. Indication of any applicable withhold amount for payments claimed.
- d. Indication of any applicable credits due to the Court.

**END OF EXHIBIT B**

## **EXHIBIT C**

### **STANDARD BUSINESS TERMS AND CONDITIONS 5.0**

The Court's "Standard Business Terms and Conditions 5.0" which are posted at: <https://www.lacourt.ca.gov/pages/lp/procurement/cp/doing-business-with-the-court> are hereby incorporated by this reference as though fully set forth herein.

### **END OF EXHIBIT C**

### **NOTE FOR MODEL AGREEMENT:**

**Exhibit C in the final Agreement will link to the Court Standard Business Terms and Conditions 5.0 on the Court's website.**

**For purposes of this MODEL AGREEMENT only, the full set of Court Standard Business Terms and Conditions are attached on the pages that follow for ease of reference.**



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
STANDARD BUSINESS TERMS AND CONDITIONS 5.0**

1. Accounting.
2. Amendment.
3. Assignment; Subcontracting; Successors.
4. Audits; Retention of Records; Ownership of Results.
5. Background Checks; Court Approval of Contractor's Staff.
6. Changes in Work.
7. Choice of Law; Jurisdiction and Venue.
8. Confidential Information; Publicity.
9. Compensation.
10. Consumer Price Index.
11. Contract and Project Administration.
12. Contractor Certification Clauses.
13. Contractor Status.
14. Default and Remedies.
15. Dispute Resolution.
16. Economic Sanctions.
17. Entire Agreement.
18. Fair Labor Standards Act.
19. Force Majeure.
20. Generative Artificial Intelligence (GenAI).
21. Generative AI (GenAI) Special Provisions.
22. Indemnification.
23. Insurance Requirements.
  - 23.1 General Coverage; or
  - 23.2 Specific Coverages
24. Limitation of Liability.
25. Loss Leader.
26. Minimum Age, Language Skills, and Legal Status of Contractor Personnel at Facility.
27. Modification.
28. Non-Exclusivity.
29. Notices.
30. Prevailing Wages / Public Works.
31. Prior Work.
32. Prohibited Bids for End Product of the Agreement ("Follow-On Contracts").
33. Public Access to Records and Information.
34. Public Contract Code.
35. Recovery of Court Costs Incurred Due to Poor Performance or Non-Performance.
36. Scope of Work; Acceptance; Rejection.
37. Shipping and Packing Slips.
38. Signatures; Counterparts.
39. Standard of Performance; Warranties.
40. Stop Work.
41. Survival.
42. Termination.
43. Time is of the Essence.
44. Waiver; Severability.
45. Work Site.
46. Miscellaneous Provisions Applicable to Specific Contracting Situations.

### **1. Accounting.**

Contractor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (U.S. GAAP).

### **2. Amendment.**

No modifications, alterations, changes, or waiver to the Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment, signed by both parties, that specifically references and incorporates the terms of the Agreement into the written amendment.

### **3. Assignment; Subcontracting; Successors.**

#### **A. Assignment.**

- (1) The Court may assign its rights and duties (or subcontract portions of the Agreement) to any other public entity. The Court shall notify Contractor in writing within 30 days following the assignment.
- (2) In addition, either party may assign its rights and duties or subcontract portions of the Agreement to a third party, but only if the non-assigning party gives prior written consent to the assigning party. Consent may be withheld for any reason or no reason. If a non-assigning party does consent, the consent will take effect only if there is a written agreement between the assigning/subcontracting party and all assignees/subcontractors, stating that the assignees/subcontractors:
  - 1) are jointly and severally liable to the non-assigning party for performing the duties in the Agreement of the assigning/subcontracting party;
  - 2) affirm the rights granted in the Agreement to the non-assigning party;
  - 3) make the representations and warranties made by the assigning/subcontracting party in the Agreement; and
  - 4) appoint the non-assigning party an intended third party beneficiary under the written agreement with the assigning/subcontracting party.
- (3) No assignment or subcontract will release either party of its duties under the Agreement.

**B. Subcontracting.** Contractor may engage a subcontractor to perform any portion of the work, but only with the prior written consent of the Court. Any subcontracting without the Court's written consent is a material breach of the Agreement. Subcontractors will be subject to the same terms and conditions applicable to Contractor under the Agreement and shall incorporate the Agreement into any subcontracting relationship. Contractor shall be liable for all subcontractor acts or omissions, including indemnity obligations.

**C. Successors.** The Agreement binds the parties as well as their heirs, successors, executors, administrators, and assignees.

### **4. Audits; Retention of Records; Ownership of Results.**

- A. General Audit and Records Provisions.** Contractor must allow the Court or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the Court five percent (5%) or more during the time period subject to audit, Contractor must reimburse the Court in an amount equal to the cost of such audit.
- B. State Audit.** This Agreement is subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.

- C. Ownership. Unless otherwise provided in the Agreement, the Court is the exclusive owner of all materials collected and produced in connection with the work. Upon the Termination Date (subject to any mutually agreed period of continuation of work), or upon the Court's notice at any time, and subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the Court or to another party at the Court's direction.
- D. Copies. Contractor may retain copies of any original documents Contractor provides to the Court.
- E. Retention of Records. Contractor will maintain all financial data, supporting documents, and all other records relating to performance and billing under the Agreement for a period in accordance with state and federal law. The minimum retention period will be four (4) years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.

## **5. Background Checks; Court Approval of Contractor's Staff.**

### **A. Background Checks.**

- (1) Each of Contractor's staff performing services on or at court locations or have access to sensitive, confidential court information under this contract shall undergo and pass a background investigation to the satisfaction of the Court as a condition of beginning and continuing to perform services under this contract. Such background investigation must be obtained through fingerprints submitted to the California Department of Justice to include State, local, and federal-level review, which may include, but shall not be limited to, criminal conviction information. The fees associated with the background investigation of up to forty (40) dollars per person shall be at the expense of Contractor, regardless of whether the member of Contractor's staff passes or fails the background investigation.
- (2) Contractor shall notify the Court within 72 hours of any known arrests or other changes to the criminal record of any staff performing services under this Agreement. The Court may, in its sole discretion, require that any staff reported to have an arrest or other change in his or her criminal record subsequent to passing an initial background investigation be replaced by Contractor at no additional cost to the Court.

### **B. Court Approval of Contractor's Staff.**

#### **(1) Contractor's Staff.**

- (a) The Court has the reasonable right to approve, which approval shall not be unreasonably withheld, members of Contractor's Representatives during the performance of the work hereunder and prior to any proposed changes in Contractor's Representatives. Contractor shall provide the Court's Project Director with résumés of all proposed changes to Contractor's Representatives and shall make such staff available for interview by the Court upon request of the Court's Project Director. By execution hereof, the Court has approved the current Contractor's Project Director and Project Manager.
- (b) Contractor shall cooperate with the Court if the Court reasonably requests the removal of a member of Contractor's staff from performing work hereunder, where such individual's performance is deemed unsatisfactory by the Court or such individual fails to comply with any provision set forth in this Agreement or any established rule or regulation.

## **6. Changes in Work.**

- A. The Court reserves the right to require Contractor to make changes in the work, which may include additions, deletions, or modifications to the work, or changes in the timing or level of effort for the work.
  - (1) For any change proposed by the Court or Contractor, Contractor will submit in writing:
    - (a) A description of the proposed change and the reasons for the change;
    - (b) A summary of the total compensation to be paid Contractor with a breakdown of tasks and costs, including any reduction in work or costs resulting from the change; and

(c) A statement of the expected impact on schedule.

B. If the Court and Contractor agree on a change, the Court will issue an Amendment documenting the change, for the parties' execution.

- (1) If the parties cannot agree to the terms of a change, Contractor will proceed diligently with work unless otherwise directed by the Court, and any continuing disagreement will follow the process set forth in the provisions entitled "Dispute Resolution." Contractor should not proceed with any change prior to receiving an executed Amendment from the Court. All costs for changes performed by Contractor without the Court's prior written approval will be at Contractor's sole risk and expense.

## **7. Choice of Law; Jurisdiction and Venue.**

California law governs the Agreement. Jurisdiction and venue for any legal action arising from, or connected with the Agreement shall exclusively reside in Los Angeles, California, and the parties hereby consent to the jurisdiction and venue of such courts.

## **8. Confidential Information; Publicity.**

A. Confidential Information.

- (1) During the term of this Agreement 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 its employees or contractors who need to know that information in order to perform services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive 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 the greater of reasonable care and industry-standard care. The Court owns all rights, 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. 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.
- (2) "Confidential Information" means: (i) any information related to the business or operations of the Court, including information relating to the Court's personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Court (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the Court's satisfaction that: (a) Contractor lawfully knew prior to the Court's first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.
- (3) Permissible Disclosures. Contractor may disclose the Court's Confidential Information only on a "need to know" basis to Contractor's employees and subcontractors and any representatives of the Court who are working on the project and who have also executed confidentiality agreements that protect the Court's confidential information. Additionally, Contractor may disclose the Confidential Information, to the extent necessary to comply with any applicable law, rule, regulation, or ruling, provided Contractor gives advance notice to the Court.

**B. Publicity.**

Contractor shall not publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the Court or any images of the Court, the Court's seal, or the Court's logo without the prior written consent of the Court, which may be denied for any or no reason.

**9. Compensation.**

- A. The Contract Sum shall be the maximum total monetary amount payable by the Court to Contractor for supplying all the tasks, deliverables, services, and other work specified under this Agreement. All work completed by Contractor must be deemed acceptable to, and approved in writing by, the Court's Project Manager which approval shall not be unreasonably withheld.
- B. Any additional work requested by the Court that exceeds the scope of Exhibit A (Statement of Work), must be approved in advance, and in writing, by the Executive Officer/Clerk of Court, in the form of an Amendment. Any change in the Contract Sum must be approved in advance, and in writing, by the Executive Officer/Clerk of Court, in the form of an Amendment.
- C. If Contractor provides any task, deliverable, good, service, and/or other consideration to the Court other than those specified in this Agreement, or if Contractor provides such items requiring the Court's prior written approval without first having obtained such written approval, the same shall be deemed to be a gratuitous effort on the part of Contractor, and Contractor shall have no claim whatsoever against the Court therefor.
- D. The Court's payment will not relieve Contractor from its obligation to replace unsatisfactory work, even if the unsatisfactory character of such work may have been apparent or detected at the time such payment was made. Work, data, or components that do not conform to the requirements of the Agreement will be rejected, and will be replaced by Contractor, without delay or additional cost to the Court.
- E. If Contractor receives payment from the Court for a service or reimbursement that is later disallowed or rejected by the Court, Contractor will promptly refund the disallowed amount to the Court upon the Court's request. At its option, the Court may offset the amount disallowed from any payment due to Contractor, under the Agreement or any other agreement.
- F. Taxes. Contractor shall collect and remit any sales and use taxes as and to the extent required under the Revenue and Taxation Code.
- G. Salaries and Employee Benefits. Contractor will be solely responsible for providing to its employees all legally required employee benefits, and the Court shall not be held liable for the direct payment of any salaries, wages, or other compensation to any personnel provided by Contractor.

**10. Consumer Price Index.**

Consumer Price Index (CPI) adjustments are not ordinarily granted in the normal course of a vendor's contractual relationship with the Court, except for certain cost or time and materials type of contract, where forecasting would be impractical. It is prudent that vendors calculate and forecast appropriate escalation rate in original proposals. In the event that this Agreement is extended under an option to renew or otherwise continued, and no pricing for the extension or extra time period is set forth in the Agreement or amendments, any request for price increase shall not exceed the percentage increase in the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange Counties, for the previous 12-month period. CPI adjustments are not automatic, and the Court maintains the sole discretion to review CPI adjustments request, which must be made in writing to the contract analyst on record.



## 11. Contract and Project Administration.

### A. Key Personnel.

The Court and Contractor shall each designate a Project Director (in the Agreement document) who shall have full authority to act on all daily operational matters concerning Contractor's performance under this Agreement. Parties shall be notified in writing of any change to the name or address of Key Personnel.

### B. Contractor's Representatives.

#### (1) Contractor's Project Director.

- (a) Contractor's Project Director shall be responsible for confirming that the objectives of this Agreement are met by Contractor.
- (b) Contractor's Project Director shall provide direction to the Court in the areas relating to Contractor's policies, information requirements, and procedural requirements.
- (c) Contractor's Project Director shall be responsible for determining whether the technical standards and requirements of this Agreement are met by Contractor and for evaluating Contractor's performance under this Agreement.
- (d) Contractor's Project Director shall plan and coordinate Contractor's efforts with the Court.
- (e) Contractor's Project Director shall be available by telephone during regular business hours.

#### (2) Contractor's Project Manager.

- (a) Contractor shall provide a Project Manager to represent Contractor and to oversee day-to-day operation of each site.
- (b) Contractor's Project Manager shall be responsible for reporting to the Court as specified in this Agreement and as may be required by the Court from time to time.
- (c) Contractor's Project Manager shall communicate with the Court's Project Director on an on-going basis concerning any problems, modification, and contractual obligation, and shall be available during regular business hours for problem resolution.
- (d) Contractor's Project Manager shall inform the Court's Project Director of any change in production or in Contractor's personnel assigned to provide goods and/or services to the Court.
- (e) Contractor's Project Manager shall provide the Court with monthly accounting reports as required under this Agreement.
- (f) Contractor's Project Manager shall provide the Court's Project Director with the names, position titles and telephone numbers of Contractor's local staff assigned to provide goods and/or services to the Court under this Agreement.

### C. Court's Representatives.

#### (1) Court Personnel.

Unless stated otherwise in this Agreement, all Court personnel assigned to this Agreement shall be under the exclusive supervision of the Court. Contractor understands and agrees that all such Court personnel are assigned only for the convenience of the Court. Contractor hereby represents that its price, project schedule, and performance hereunder are based solely on the work of Contractor's personnel, except as otherwise expressly provided in this Agreement.

(2) Court's Project Director.

- (a) The Court's Project Director shall be responsible for confirming that the objectives of this Agreement are met by Contractor.
- (b) The Court's Project Director is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate the Court.
- (c) The Court's Project Director shall provide direction to Contractor in the areas relating to Court policy, information requirements, and procedural requirements.
- (d) The Court's Project Director shall have the right at all times to inspect any and all tasks, deliverables, goods, services, or other work provided by or on behalf of Contractor.
- (e) The Court's Project Director may request a change of Contractor's Project Director if the objectives of this Agreement are not being met as determined in the sole judgment of the Court's Project Director.
- (f) The Court's Project Director shall be responsible for determining whether the technical standards and requirements of this Agreement are met by Contractor and for evaluating Contractor's performance under this Agreement.
- (g) The Court's Project Director shall plan and coordinate Contractor's efforts with the Court.

(3) Court's Project Manager.

- (a) The Court's Project Manager shall monitor and evaluate Contractor's performance.
- (b) The Court's Project Manager is not authorized to make any changes in any terms and conditions of this Agreement, and is not authorized to further obligate the Court in any respect whatsoever.

(4) Court's Contract Analyst.

- (a) Contract Analyst shall be responsible for resolving contractual issues relating to terms and conditions of this Agreement.
- (b) Contract Analyst shall be responsible for preparing amendments, extensions and addendums to this Agreement.

**12. Contractor Certification Clauses.**

Contractor certifies that the representations below are true and will remain true throughout the term of the Agreement. Contractor shall have an affirmative duty to promptly notify the Court if any of these representations become false during the duration of the Agreement:

- A. Authority. Contractor has authority to enter into and perform its obligations under the Agreement, and Contractor's signatory has authority to bind Contractor to the Agreement.
- B. Binding. The Agreement constitutes a valid and binding obligation of Contractor, and its permitted successors and assigns, enforceable in accordance with its terms.
- C. Child Support Compliance Act. If Contractor is a private entity, and the Agreement provides for Compensation of \$100,000 or more:
  - (1) Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code § 5200 et seq.; and
  - (2) Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

- D. Compliance with the Law. Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services. Contractor shall obtain and keep current throughout the term of this Agreement all necessary licenses, approvals, permits, registrations 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.
- E. Conflict Minerals. If the Agreement is for the purchase of goods or services related to or involving "conflict minerals" (columbite-tantalite, cassiterite, wolframite, or gold), Contractor further certifies, UNDER PENALTY OF PERJURY, that it is not a "scrutinized company," as defined by California Public Contract Code § 10490(b).
- F. No Conflict of Interest. Contractor has no interest, and will not engage in any interest, that would constitute a conflict of interest under Public Contract Code § 10365.5, which, in general, limits entering into follow-on contracts with a consultant who would benefit thereby from the consultant's advice provided under the first contract, § 10410, which, in general, prohibits state officers and employees from receiving compensation from or having a financial interest in a state contract, or § 10411, which, in general, provides limits on former state officers and employees from entering into a contract in which he or she negotiated or participated in the decision-making relevant to the contract while employed by a state agency; Government Code §§ 1090 et seq. or §§ 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- G. Darfur Contracting Act Certification. If the Agreement is for non-IT goods or services and Contractor did not provide to Court a Darfur Contracting Act certification as part of the solicitation process, this section applies: Contractor further certifies that either (a) it does not currently, and it has not within the previous three years, business activities or other operations outside of the United States, or (2) it is a "scrutinized company" as defined in Public Contract Code § 10476, but it has received written permission for the Court to submit a bid or proposal pursuant to PCC 10477(b), or (3) it has, or it has had within the previous three years, business activities or other operations outside of the United States, but it is not a "scrutinized company" as defined in Public Contract Code § 10476.
- H. Delinquent Taxpayers. Contractor further certifies, UNDER PENALTY OF PERJURY, that it is not a person or entity identified by the Franchise Tax Board or the Board of Equalization as one of the 500 largest tax delinquents, and there is no reason to believe Contractor will/may be placed on the Delinquent Taxpayer lists. Contractor must provide Notice to the Court immediately if placed on and/or if there is reason to believe Contractor will/may be placed on the Delinquent Taxpayer list(s). Failure to provide such Notice will be determined to mean that Contractor is in breach of contract and will be responsible for all expenses associated with re-contracting, re-bidding and obligations.
- I. Discharge Violations. If Contractor is a private entity, Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued pursuant to Water Code § 13301 for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.
- J. Document Printing Agreements. If the Agreement is for printing documents, Contractor shall use recycled products, to the maximum extent economically feasible, in the performance of work under the Agreement. Contractor further certifies, UNDER PENALTY OF PERJURY, that any recycled products provided or used in the work by Contractor meet all California minimum post-consumer content requirements.
- K. Domestic Partners, Spouses, and Gender and Gender Identity Discrimination. If the Agreement provides for total Compensation of more than \$100,000, Contractor is in compliance with, and throughout the term of this Agreement will remain in compliance with: (i) Public Contract Code § 10295.3, which places limitations on contracts with Contractors who discriminate in the provision of benefits on the basis of marital or domestic

partner status, and (ii) Public Contract Code § 10295.35, which places limitations on contracts and contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.

- L. Drug Free Workplace. Contractor provides a drug-free workplace as required by California Government Code §§ 8355 through 8357.
- M. Electronic Waste Recycling Act. If the Agreement provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code §§ 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.
- N. Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code § 10286.1, and is eligible to contract with the Court.
- O. No Gratuities. Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement.
- P. No Harassment. Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of the Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- Q. No Interference with Other Contracts. To the best of Contractor's knowledge, the Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- R. Iran Contracting Act. If the Agreement is for the purchase of goods or services of \$1,000,000 or more, Contractor further certifies, UNDER PENALTY OF PERJURY, that it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services pursuant to California Public Contract Code § 2203(b).
- S. No Litigation. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform the Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse effect on Contractor's business, the validity or enforceability of the Agreement, or Contractor's ability to perform the Agreement.
- T. Los Angeles County's Jury Service Program. This Agreement is subject to the provisions of the Los Angeles County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.
  - (1) Unless Contractor has demonstrated to the Court's satisfaction either that Contractor is not a "contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy that provides that its employees shall receive from Contractor, on an annual basis, no less than five (5) days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with Contractor or that Contractor deduct from the employee's regular pay the fees received for jury service.
  - (2) If Contractor uses any subcontractor to perform services for the Court under the Agreement, the subcontractor shall also be subject to the provisions of this section. The provisions of this section shall be inserted into any such sub-contract Agreement.

- (3) If Contractor is not required to comply with the Jury Service Program when the Agreement commences, Contractor shall have a continuing obligation to review the applicability of its “exception status” from the Jury Service Program, and Contractor shall immediately notify the Court if Contractor at any time either comes within the Jury Service Program’s definition of “contractor” or if Contractor no longer qualifies for an exception to the Jury Service Program.
- (4) Contractor’s violation of this section of the Agreement may constitute a material breach of the Agreement. In the event of such material breach, the Court may, at its sole discretion, terminate Agreement.
- U. National Labor Relations Board Orders. If the Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears UNDER PENALTY OF PERJURY that this representation is true.
- V. Non-discrimination. Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and California’s Fair Employment and Housing Act (Government Code §§ 12990 et seq.) and associated regulations (Code of Regulations, title 2, §§ 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of non-discrimination.
- W. Parts Cleaning. If the Agreement involves parts cleaning, Contractor shall use recycled solvents, to the maximum extent economically feasible, in the performance of work under the Agreement. Contractor further certifies, UNDER PENALTY OF PERJURY, that any post-consumer or secondary materials provided or used in the work by Contractor meet all California minimum post-consumer content requirements.
- X. Plastic Trash Bag Law. Public Resources Code §§ 42290 et seq., requires any plastic trash bag supplier, manufacturer or wholesaler, or any of its divisions, subsidiaries, or successors, to be compliant with the Recycled Content Plastic Trash Bag Law, regardless of the goods or services being provided under the Agreement. Contractor further certifies, UNDER PENALTY OF PERJURY that it, and its divisions, subdivisions, and successors, comply with the Recycled Content Plastic Trash Bag Law, and shall continue to comply with the same throughout the term of the Agreement.
- Y. Prohibition Against Hiring Court Employees. Contractor hereby certifies and agrees, and will require all subcontractors to certify, to the following: “Former Court employees will not be offered employment position for two years from the date of separation, if that employee participated in the decision-making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed Agreement, within the prior twelve-month period of Court employment.” In addition, Contractor certifies and agrees that, during the term of this Agreement and for a period of one (1) year thereafter, Contractor shall not in any way intentionally induce or persuade any employee of Court to become an employee or agent of Contractor, except in response to a publicly solicited job listing.
- Z. Qualification. If (1) Contractor is a corporation, limited liability company, or limited partnership, and (2) the contract will be performed in California, Contractor is qualified to do business and in good standing in the State of California, and will remain so for the term of the Agreement.
- AA. Sales and Use Tax Collection. Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.

BB. Sweatfree Code of Conduct. If the Agreement provides for the furnishing of equipment, materials, or supplies other than public works, or for the laundering of apparel, garments or corresponding accessories:

- (1) No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Court under the Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further certifies UNDER PENALTY OF PERJURY that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code § 6108.
- (2) 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 paragraph (1) and shall provide the same rights of access to the Court.

CC. Unruh Civil Rights Act and California Fair Employment and Housing Act. If the Agreement provides for total Compensation of more than \$100,000, Contractor is in compliance with the Unruh Civil Rights Act (Civil Code § 51). Contractor is in compliance with the California Fair Employment and Housing Act (Government Code §§ 12960 et seq.). Contractor does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Civil Code § 51) or the California Fair Employment and Housing Act (Government Code §§ 12960 et seq.). Contractor further certifies UNDER PENALTY OF PERJURY that this representation is true.

DD. Work Eligibility. All personnel assigned to perform the Agreement are eligible to work legally in the United States and possess valid proof of work eligibility.

### **13. Contractor Status.**

- A. Independent Contractor. Contractor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Court. Contractor has no authority to bind or incur any obligation on behalf of the Court. Except as expressly stated, Contractor has no authority or responsibility to exercise any rights or power vested in the Court. Contractor, its employees, or anyone working under Contractor, including subcontractors' employees, shall not qualify for workers' compensation or other fringe benefits of any kind through the Court. If any legally binding determination concludes that Contractor is not an independent contractor, the Court may terminate the Agreement immediately upon notice. Alternatively, Contractor may agree to a reduction in the Court's financial liability, so that the Court's total costs under the Agreement do not exceed the Agreement amount.
- B. Exclusive Control of Means and Method of Performance.
  - (1) Contractor's employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor.
  - (2) Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's employees, consultants, and independent contractors.
  - (3) If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor's independent status with respect to the Court, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) the Court will have the right, but not the obligation, to participate in any discussion or negotiation occurring with the federal or state entity, regardless who initiates such discussions or negotiations.

- (4) Contractor will indemnify, defend, and hold the Court harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between the Court and any Contractor or subcontractor personnel.
- (5) Contractor will determine the method, details, and means of performing or supplying the work under the Agreement. Contractor will be responsible to the Court only for the requirements and results specified in the Agreement and will not be subjected to the Court's control with respect to the physical action or activities of Contractor in fulfillment of the Agreement. Contractor will have the "right to control" and bear the sole responsibility for the job site conditions and safety.

C. Permits, Laws, and Regulations.

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

**14. Default and Remedies.**

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

- (1) Contractor fails or is unable to meet or perform any of Contractor's duties under the Agreement, or furnishes nonconforming goods or services, and this failure is not cured within ten (10) days following notice of default or is not capable of being cured within this cure period;
- (2) Contractor fails to provide substitute qualified personnel at no charge within ten (10) days if, as determined in the sole judgment of the Court's Project Director or Project Manager, either:
  - (a) At any time during the period of performance of the Agreement, Contractor's personnel, for any reason, including, but not limited to, resignation, fails to perform under such Agreement; or
  - (b) At any time during the period performance of the Agreement, Contractor's personnel perform unsatisfactorily, and Contractor fails to cure to the satisfaction of the Court's Project Director or Project Manager within ten (10) days of receipt of written or oral notice from the Court's Project Director or Project Manager of the specific nature of the problem.
- (3) 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;
- (4) Contractor makes or has made under the Agreement any representation or warranty that is or was incorrect, inaccurate, or misleading; or
- (5) Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under the Agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make the Agreement admissible when required is not fulfilled or performed.

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

C. Remedies following Contractor Default.

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

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

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

D. Specific Performance for Breach of Confidentiality. Contractor understands that a default of the provisions in the section entitled "Confidential Information; Publicity" will result in irreparable damage for which no adequate remedy will be available. Accordingly, injunctive or other equitable relief is a remedy that the Court will be entitled to seek.

**15. Dispute Resolution.**

The Court and Contractor will attempt, in good faith, to resolve any disputes informally. Such dispute must be submitted in writing within ten (10) calendar days of the earliest incident of dispute. Contractor will meet with the Court's Project Manager or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

A. Escalation.

- (1) If a dispute remains unresolved either party may give Notice requesting each party's Chief Executive Officer ("CEO") or designated representative to meet, exchange information and attempt resolution within fifteen days of the effective date of the Notice.
- (2) If the matter is not resolved as set forth above, the aggrieved party may submit a second Notice which will:
  - (a) provide detailed factual information;
  - (b) identify the specific provisions in the Agreement on which any demand is based;
  - (c) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and
  - (d) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment. Notice will be signed by an authorized representative of the aggrieved party.
- (3) Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen (15) days after receipt of a written request, unless otherwise agreed.

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

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



## **16. Economic Sanctions.**

Contractor certifies that Contractor is: (i) in compliance with economic sanctions imposed pursuant to applicable laws by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law (collectively, "Economic Sanctions"); and (ii) not a target of Economic Sanctions. The Court may, at its sole discretion, suspend and/or terminate this Agreement upon written notice to Contractor if Contractor is not in compliance with, or is a target of, Economic Sanctions.

## **17. Entire Agreement.**

- A. Headings or captions to the provisions of the Agreement are solely for the convenience of the parties, are not part of the Agreement, and will not be used to interpret or determine the validity of the Agreement.
- B. Negotiated Agreement. The Agreement was negotiated between the parties, and neither party "prepared" the Agreement for purposes of California Civil Code § 1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.
- C. The Agreement, including all documents incorporated by reference, constitutes the entire and final understanding of the parties regarding the matter, and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to this matter, and is mutually binding on the parties in accordance with its terms.
- D. No agent, representative, employee or officer of either the Court or Contractor has the authority to make, or has made, any oral statement, agreement or representation, in connection with the Agreement, which in any way can be deemed to modify, add to and detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Agreement. No subsequent purchase order, invoice, click-through or shrink-wrap agreement, or similar document containing conflicting terms and conditions issued by Contractor in conjunction with the performance of any party's duties and/or obligations due under the Agreement, shall be permitted to modify or contradict any of the terms and conditions of the Agreement.

## **18. Fair Labor Standards Act.**

Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act (FLSA), and shall indemnify, defend, and hold harmless the Court, its officers, employees, and agents from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorney's fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by Contractor's employees for which the Court may be found jointly or solely liable.

## **19. Force Majeure.**

- A. Force Majeure events include, but are not limited to:
  - (1) catastrophic acts of nature, or public enemy;
  - (2) civil disorder;
  - (3) fire or other casualty for which a party is not responsible; and
  - (4) quarantine or epidemic.
- B. The party asserting a Force Majeure event will immediately provide Notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. Contractor will have no right to additional payment for costs incurred as a result of a Force Majeure event. Any assertion of a Force Majeure event by subcontractors will be attributed to Contractor.

## 20. Generative Artificial Intelligence (GenAI).

### A. Definitions: the following terms shall be given the meanings shown below:

- (1) Artificial Intelligence or AI: technology that enables computers and machines to reason, learn, and act in a way that would typically require human intelligence.
- (2) GenAI Training Data: any content, information, or data that is used to train, tune, test, or validate a GenAI, including text, images, video, audio, code, or similar types of input.
- (3) Generative AI (GenAI): an Artificial Intelligence system that can generate derived synthetic content, including text, images, video, audio, code, and data visualizations, that emulates the structure and characteristics of the system's training data.
- (4) Hallucination: Generated Data that is nonsensical, false, or misleading, and is not based on real or existing data, but is instead produced by bias or the GenAI's extrapolation or creative interpretation of its Gen AI Training Data.
- (5) Materially Impacts: a Material Impact exists when:
  - (a) the work using GenAI could have a significant, substantial effect on the Court system's data integrity, availability, confidentiality, or security, and failure to perform such work in accordance with the contract could cause major disruptions to Court operations;
  - (b) the work using GenAI could have a significant, substantial effect on the Court's operations, finances, security, or reputation, and failure to perform such work in accordance with the contract would constitute a high likelihood of damage to the Court; or
  - (c) when failure to conduct work which uses GenAI in accordance with the Agreement would constitute a material breach under the Agreement.
- (6) Prompt: any written, spoken, or rendered information provided as a query, command, or other form of input, to any GenAI in connection with this Agreement. For avoidance of doubt, Prompt includes any input automatically detected or created by the GenAI, as well as any derivative works of a Prompt or collection of Prompts.

### B. GenAI Disclosure Obligations.

#### (1) Disclosure Obligations.

- (a) Contractor must immediately notify the Court in writing if Contractor intends to include or provide GenAI in Deliverables, Goods, or Services; or if Contractor intends to include GenAI in any Deliverable, Goods, or Services that Materially Impacts:
  - 1) functionality of a Court system (i.e., the work using GenAI could have a significant, substantial effect on the system's data integrity, availability, confidentiality, or security, and failure to perform such work in accordance with the contract could cause major disruptions to Court operations);
  - 2) risk to the Court (i.e., the work using GenAI could have a significant, substantial effect on the Court's operations, finances, security, or reputation, and failure to perform such work in accordance with the contract would constitute a high likelihood of damage to the Court); or
  - 3) contract performance (i.e., when failure to conduct work which uses GenAI in accordance with the contract would constitute a material breach of contract).
- (b) Such notification shall be provided to the Court designee identified in this Agreement.
- (c) At the direction of the Court, Contractor shall discontinue the provision to the Court of any previously unreported GenAI, including GenAI that results in a Material Impact to the functionality of a Court system, risk to the Court, or contract performance, as determined by the Court.

(d) If the use of previously undisclosed GenAI is approved by the Court, then Contractor will update the description of the Deliverables, Goods, and Services, and the parties will amend the Agreement accordingly.

(2) Failure to Disclose or Discontinue GenAI Use: The Court, at its sole discretion, may consider Contractor's failure to disclose or discontinue the provision or use of GenAI as described above, to constitute a material breach of Agreement when such failure results in a Material Impact to functionality of a Court system, risk to the Court, or Agreement performance. The Court is entitled to seek any and all remedies available to it under law as a result of such breach, including but not limited to termination of the Agreement for cause.

C. Contractor's Obligations for Responsible Use.

(1) Contractor shall ensure that it has obtained all necessary consents, permissions, and licenses from data subjects and third parties to use the GenAI for this Agreement. Contractor represents and warrants that it has the appropriate intellectual property rights associated with any GenAI used in the Deliverables, Goods, or Services.

(2) Contractor shall ensure that the GenAI included, or made available as part of the Deliverables, Goods, or Services is equitable, non-discriminatory, and reasonably well-designed to avoid harmful, offensive, dangerous, and unlawful impact. Contractor shall be liable for any Hallucination produced by the GenAI that has an adverse impact on Generated Data or a Deliverable, Goods, or Services.

(3) Contractor shall comply with all applicable laws and regulations in relation to the provision or use of any GenAI in the Deliverables, Goods, or Services.

D. Contractor's Use of Court Data.

Contractor shall not incorporate any confidential or non-public Court data into GenAI Training Data and shall not otherwise utilize confidential or non-public Court data to train, tune, maintain, improve, or develop GenAI, except with the express written authorization from the Court specifying the confidential or non-public Court data that may be used along with the acceptable scope of such usage.

**21. Generative AI (GenAI) Special Provisions.**

A. GenAI Additional Security Requirements.

Contractor shall not incorporate any confidential or non-public Court data into GenAI Training Data and shall not otherwise utilize confidential or non-public Court data to train, tune, maintain, improve, or develop GenAI, except with the express written authorization from the Court specifying the confidential or non-public Court data that may be used along with the acceptable scope of such usage.

B. Confidentiality of Data and Prompts.

Contractor shall protect from unauthorized use and disclosure any Prompts that Contractor provides to any GenAI in connection with this Agreement, as well as any Generated Data that is created based on Contractor provided Prompts.

C. Rights in Prompts and Generated Content.

(1) For the avoidance of doubt and for the purposes of this Agreement: (i) Court-provided Prompts and Generated Data created from a Court provided Prompt shall constitute a subset of the Court's data, and the Court owns all rights, title, and interest to such Prompts and Generated Data; and (ii) the Court shall own all rights, title, and interest to any Prompts or Generated Data developed or produced by the Contractor as Deliverables or Services pursuant to this Agreement.

(2) Unless otherwise specified in this Agreement:

- (a) Contractor shall not use, copy, modify, distribute, or disclose any Prompts or Generated Data for any purpose other than performing its obligations under this Agreement, unless expressly authorized by the Court in writing.
- (b) For any Contractor-provided Prompts or Generated Data from a Contractor-provided Prompt, Contractor hereby grants the Court an unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive right and license to use, modify, reproduce, perform, release, display, create derivative works from, and disclose such Prompts and Generated Data.

**D. GenAI Training and Generated Data Review.**

- (1) **GenAI Training Data Review.** Contractor shall track and disclose the quality of the GenAI Training Data used for any GenAI in relation to this Agreement, using suitable metrics and methods to measure the accuracy, relevance, and bias of the data over time. Contractor shall share such metrics and methods, as well as the underlying data, with the Court upon request by the Court or at periodic intervals as may be agreed by the Court and Contractor. The Court retains the right to audit, review, or investigate the quality of the GenAI Training Data at any time, upon reasonable advance notice from Court to Contractor.
- (2) **Generated Data Review.** Contractor shall track and disclose the quality of the Generated Data of any GenAI in relation to this Agreement, using suitable metrics and methods to measure the accuracy, relevance, and bias of the output over time. Contractor shall share such metrics and methods, as well as the underlying output, with the Court upon request by the Court or at periodic intervals as agreed by the Parties. The Court retains the right to audit, review, or investigate the quality of the Generated Data at any time, subject to reasonable advance notice from Court to Contractor.
- (3) **Generated Data Identification.** Contractor shall ensure that all Generated Data that materially impacts Deliverables created pursuant to the Agreement contains a digital watermark or other digital identification that clearly identifies that the Generated Data was created by GenAI. Contractor shall comply with all other applicable laws, regulations, and guidelines concerning the identification Generated Data.

**22. Indemnification.**

- A. Contractor will defend (with counsel satisfactory to the Court or its designee) indemnify and hold harmless the Court, the County of Los Angeles, the State of California, other California judicial branch entities, and their officers, agents, and employees from and against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) a latent or patent defect in any goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any goods, services, or deliverables. 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.
- B. Contractor's obligation to defend, indemnify, and hold the Court and court personnel harmless is not limited to, or restricted by, any requirement in the Agreement that Contractor procure and maintain insurance policies.

## 23. Insurance Requirements.

The Agreement shall specify whether the insurance requirements of Section 23.1 or Section 23.2 apply. Unless the Agreement expressly calls for specific coverage(s) set forth in Section 20.2, the insurance requirements of Section 23.1 shall apply.

### 23.1 Insurance Requirements – General.

Contractor will maintain insurance that is sufficient in scope and amount to permit Contractor to pay in the ordinary course of business insurable claims, losses and expenses, including insurable claims, losses and expenses that arise out of Contractor's performance of this Agreement. Contractor will maintain employer's liability and workers' compensation coverage at statutory levels covering all employees performing work under this Agreement. Should the Court make such a request, Contractor shall provide to the Court certificates of insurance and/or complete copies of all insurance policies maintained by Contractor to meet the insurance requirements contained in this paragraph.

- OR -

### 23.2 Insurance Requirements – Specific Coverages.

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

- (1) Workers' Compensation and Employer's Liability Insurance. If Contractor has employees, it shall maintain workers' compensation insurance as required by law. Employer's liability limits shall be not less than one million dollars (\$1,000,000) for each accident, one million dollars (\$1,000,000) as the aggregate disease policy limit, and one million dollars (\$1,000,000) as the disease limit for each employee. If Contractor does not have employees, it shall provide a letter, on company letterhead, to the Court certifying, under penalty of perjury, that it does not have employees. Upon the Court's receipt of the letter, Contractor shall not be required to maintain workers' compensation insurance.
- (2) Commercial General Liability Insurance. Commercial General Liability Insurance shall be written on an occurrence form with limits of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage and two million dollars (\$2,000,000) annual aggregate, unless otherwise indicated on the Insurance section of the Standard Agreement. The policy shall include coverage for liabilities arising out of or in connection with premises, operations, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom a claim is made or suit is brought. The products and completed operations liability shall extend for not less than three (3) years past the completion of Contractor's performance under this Agreement or the termination of this Agreement, whichever occurs first.
- (3) Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance shall have limits of not less than one million dollars (\$1,000,000) per accident. This insurance must cover liability arising out of or in connection with the operation, use, loading, or unloading of a motor vehicle assigned to or used in connection with the Contractor's performance under this Agreement, including, without limitation, owned, hired, and non-owned motor vehicles.
- (4) Professional Liability Insurance. Professional Liability Insurance shall include coverage for any negligent act, error, or omission committed or alleged to have been committed which arises out of rendering or failure to perform its obligations as required under the terms of this Agreement. The policy shall provide limits of not less than one million dollars (\$1,000,000) per claim or per occurrence and two million dollars (\$2,000,000) annual aggregate unless otherwise indicated on the Insurance section of the Standard Agreement. If the policy is written on a "claims made" form, Contractor shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement. The retroactive date

or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that Contractor commences performance pursuant to the Agreement.

- (5) Cyber Liability Insurance. Cyber Liability Insurance, with limits not less than two million dollars (\$2,000,000) per occurrence or claim, two million dollars (\$2,000,000) aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Contractor in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.
- (6) Technology Professional Liability Errors & Omissions. Technology professional liability errors and omissions insurance appropriate to the Contractor’s profession and work hereunder, with limits not less than two million dollars (\$2,000,000) per occurrence, and two million dollars (\$2,000,000) per annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by the Contractor pursuant to this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties, as well as credit monitoring expenses.

The technology professional liability errors and omissions insurance policy shall include, or be endorsed to include, *property damage liability coverage* for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Court in the care, custody, or control of the Contractor. If not covered under Contractor’s technology professional liability errors and omissions insurance, such “property” coverage of the Court must be endorsed onto the Contractor’s Cyber Liability Policy.
- (7) Builders Risk/Installation. Builders Risk/Installation Coverage Policy shall be written on an all-risk basis and that covers the work to be performed under this Agreement for direct physical loss or damage while in the course of transportation, erection, installation, and completion with limits of liability equal to the final completed value of the project.
- (8) Contractor’s Equipment Insurance. Contractor shall maintain equipment insurance covering its business property, equipment, and tools used in the performance at the project site that are not intended to become a permanent part of the work. The Court shall not be responsible for loss or damage to or obtaining and/or maintaining in force insurance on temporary structures, construction equipment, tools, or personal effects, owned or rented to or in the care, custody, and control of a Contractor of any tier.
- (9) Sexual Misconduct Insurance. This policy must cover bodily injury arising out of, resulting from, or in connection with the actual or threatened sexual abuse, molestation, or harassment of any person by Contractor’s employees or any other person for whose acts Contractor may be held liable (“Contractor’s Agents”), and the negligent employment, investigation, supervision, failure to report, or retention of Contractor’s employees or Contractor’s Agents for the actual or threatened sexual abuse, molestation, or harassment of any person. The minimum liability limit must be \$1 million per occurrence.
- (10) Commercial Crime Insurance. This policy is required if Contractor handles or has regular access to Court’s funds or property of significant value to the Court. This policy must cover dishonest acts including loss due to disappearance or destruction of money, securities, and property; forgery and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be one million dollars (\$1,000,000).

- (11) Contractor's Pollution Liability Insurance. Contractor's Pollution Liability insurance written on an occurrence form with limits of liability not less than \$1 million per occurrence and \$1 million per project aggregate. The policy will include coverage for claims for bodily injury or property damage, and remediation costs resulting from a pollution incident caused by or exacerbated by the performance of the work at the project site.
- (12) Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.

B. Insurance Requirements Applicable to Required Policies.

- (1) The cost of all insurance required by the Agreement is the sole responsibility of Contractor, and is a component part of Contractor's agreed compensation.
- (2) Contractor shall obtain and maintain the required insurance for the duration of this Agreement with an insurance company or companies acceptable to the Court, in its sole discretion, and that are rated "A-VII" or higher by A. M. Best's key rating guide and are authorized to do business in the state of California.
- (3) By requiring such minimum insurance, the Court will not be deemed or construed to have assessed the risks applicable to Contractor. Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- (4) The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to the Court in compliance with the insurance requirements set forth in this Agreement. The Court may, in its sole discretion, accept self-insurance or risk-pool coverage as a substitute for any of the required insurance policies under this Agreement. No representation is made by the Court that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.
- (5) For full coverage, each insurance policy shall be written on an "occurrence" form, except for professional liability insurance, which may be made on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, for three (3) years, without lapse, from the date of termination or expiration of the Agreement and the Court's acceptance of all work provided under the Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that the work commences under the Agreement.
- (6) If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:
  - (a) *Separate.* Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
  - (b) *Joint.* Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- (7) Deductibles and Self-Insured Retentions.

For all insurance policies required under this Agreement, no deductible shall exceed five (5) percent of the minimum limit of insurance required under this Agreement unless authorized in writing by the Court. Any Contractor deductible must be clearly stated on the appropriate certificate of insurance.

Self-Insured retentions (SIR) must be declared to and approved in writing by the Court. The Court may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language

shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the Court. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Court or Court Personnel. The Court may deduct from any amounts otherwise due Contractor to fund the SIR. Policies shall NOT contain any SIR provisions that limit the satisfaction of the SIR to the named insured. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR. The Court reserves the right to obtain a copy of any policies and endorsements for verification.

Contractor is responsible for and may not recover from the State of California, Judicial Council, or the Court any deductible or self-insured retention that is connected to the insurance required under this Agreement. If self-insured, Contractor warrants that it will maintain funds to cover losses required to be insured against by Contractor under the terms of this Agreement.

- (8) All insurance policies required under this Agreement must remain in force for the entire duration of this Agreement. If the insurance expires during the Term of this Agreement, Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsement(s), or Contractor will be in breach of this Agreement, and the Court may direct the Contractor to stop work or may take other remedial action. Contractor must provide renewal insurance certificates and signed policy endorsements to the Court on or before the expiration date of the previous insurance certificates and signed policy endorsements. Any new insurance procured by Contractor must conform to the requirements of this Agreement.
- (9) In the event Contractor fails to keep the specified insurance coverage in force at all times required under this Agreement, the Court may, in addition to and without limiting any other remedies available to it, (i) order the Contractor to stop work, or (ii) terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- (10) Endorsements; Additional Insureds. All required insurance policies will contain, or be endorsed to contain, the following provisions:
  - (a) Additional Insureds. The State of California, the Judicial Council of California, and the Superior Court of California, County of Los Angeles, and their respective elected and appointed officials, judges, officers, and employees shall be covered as additional insureds for liability arising out of activities performed by, or on behalf of, Contractor under the Agreement. This requirement applies to Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy.
  - (b) Primary Insurance; Waiver of Subrogation. The insurance required under this Agreement, including all required additional insured coverages, must be endorsed to be primary and non-contributory to any insurance or self-insurance maintained by the State of California, the Judicial Council, or the Court. Contractor's liabilities under this Agreement shall not be limited in any manner to the insurance coverage required.
  - (c) Contractor, and each insurer providing insurance required under this Agreement, expressly waives all rights of recovery and subrogation rights it may have against the State of California, Judicial Council, the Court, and their respective elected and appointed officials, judicial officers, officers, employees, and agents for direct physical loss or damage arising from Contractor's performance of this Agreement, and for any liability arising out of or in connection with Contractor's performance of this Agreement or arising out of or in connection with Contractor's breach of this Agreement. This provision does not apply to professional liability insurance policies.
  - (d) Separation of Insureds. Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
  - (e) Notice. All policies required of Contractor shall be endorsed to provide written notice to the Court of cancellation in coverage, non-renewal, or reduction of coverage within fifteen (15) days.



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

- (1) If Contractor fails to maintain adequate insurance policies conforming to the above requirements, including the appropriate certificate holder/additional insured endorsements, primary/noncontributory and waiver of subrogation clauses, and amounts and extent of coverage, Contractor shall indemnify, defend (with counsel satisfactory to the Court), and hold harmless the State of California, the Judicial Council of California, and the Superior Court of California, County of Los Angeles, and their respective elected and appointed officials, judges, officers, and employees for all claims, damages, losses, judgments, liabilities, expenses, and other costs, including court fees, litigation or settlement costs, attorneys' fees (including attorneys' fees incurred in enforcing this indemnification clause), arising or resulting from, or in connection with Contractor's performance or breach of the Agreement, notwithstanding any clause or amounts limiting Contractor's liability to the Court. Contractor's failure to maintain adequate insurance policies conforming to the above requirements may be considered a breach of the Agreement.
- (2) Contractor, prior to commencing performance under this Agreement, shall provide the Court with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the Court, as evidence that the required insurance is in full force and effect. The insurance required under this Agreement, and any excess liability or umbrella liability insurance, that Contractor maintains in compliance with the terms of this Section (with the exception of Professional Liability Insurance, if required) must be endorsed to include the State of California; Judicial Council of California; the Court, and their respective elected and appointed officials, judicial officers, officers, employees, and agents as additional insureds. No payments will be made to Contractor until all required current and complete certificates of insurance and signed insurance policy endorsements are properly endorsed and on file with the Court.
- (3) Failure to provide the documentation as required prior to the commencement of Work shall not constitute or be construed as a waiver of the obligation to provide such documentation.
- (4) Submission of certificates of insurance (or lack thereof) and/or their approval by the Court shall not relieve Contractor of its obligation to ensure that all required insurance policies conform to all foregoing requirements, and to ensure that any exclusions contained in such policies do not unduly or unfairly restrict the coverages required by the Court. Upon the Court's request at any time, Contractor shall provide: (1) complete copies of each required policy; and (2) the same evidence of insurance for its subcontractors as the Court requires of Contractor.
- (5) If at any time, the foregoing policies become unsatisfactory to the Court, as to form or substance, or if a company issuing any such policy becomes unsatisfactory to the Court, Contractor shall, upon written notice from the Court, promptly obtain a new policy, and submit the same to the Court, with the appropriate certificates and endorsements.
- (6) If any of the required policies lapse 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.

**24. Limitation of Liability.**

The Court will not be liable to Contractor, its officers, employees, subcontractors, or third parties for any indirect, special, or consequential damages, including lost profits or revenue, arising from or relating to the Agreement, regardless whether the Court was advised of the possibility of such loss or damage. In no event will the Court's liability for direct damages arising from or related to the Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Contractor by the Court under the Agreement. Neither the Court nor court personnel will be personally responsible for liabilities arising under the Agreement.

**25. Loss Leader.**

Contractor shall not sell or use any article or product as a "loss leader" as defined in section 17030 of the Business and Professions Code.

## **26. Minimum Age, Language Skills, and Legal Status of Contractor Personnel at Facility.**

Contractor shall not assign employees under the age of 18 to perform work under this Agreement. All of Contractor's employees working at court facilities must be able to communicate in English. Contractor's employees must be legally present and permitted to work in the United States.

## **27. Modification.**

No modification or change to the Agreement, including any changes to Exhibit A (Statement of Work), shall be valid without the written approval of the Court, in the form of an Amendment.

## **28. Non-Exclusivity.**

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

## **29. Notices.**

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

## **30. Prevailing Wages / Public Works.**

- A. If this is an Agreement for a Public Work (as defined by California Labor Code §§ 1720 & 1771), Contractor, and all its subcontractors, are subject to the Prevailing Wage rules and regulations imposed by the California Labor Code, Division 2, Part 7, Chapters 1-2 (§§ 1720-1815); and the California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapters 3-6 (8 CCR §§ 16000-17264). Contractor, and all its subcontractors, are registered with the Department of Industrial Relations, and are responsible for paying its workmen at least the Prevailing Rates of Wages, maintaining certified payrolls for inspection by the Division of Labor Standards Enforcement of the Department of Industrial Relations, and complying with all other applicable rules and regulations governing Public Works and Prevailing Wages. Contractor or subcontractor's failure to do so may subject it to fines, penalties, and civil suit; a ban from bidding on future Public Works projects; and misdemeanor penalties. Contractor is responsible for complying with any other applicable federal, state, and local Prevailing Wage requirements whether referenced or not.
- B. Prevailing Wage rates, as determined by the Department of Industrial Relations, can be found at: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

## **31. Prior Work.**

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

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

- A. If Contractor or its affiliates provides Consulting and Direction (as defined below), Contractor and its affiliates: (i) shall not submit a bid or be awarded a subsequent contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Consulting and Direction; and (ii) will not act as consultant to any person or entity that does receive a contract described in sub-section (i).

- B. "Consulting and Direction" means services for which Contractor received compensation from the Court and includes: (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies; (ii) development or design of test requirements; (iii) evaluation of test data; (iv) direction of or evaluation of another contractor; (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or (vi) provisions of formal recommendations regarding any of the above. For purposes of this section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- C. To the extent permissible by law, the Court may waive the restrictions set forth in this section by written notice to Contractor if the Court determines their application would not be in the Court's best interest. Except as prohibited by law, the restrictions of this section will not apply: (i) to follow-on advice given by vendors of commercial off-the-shelf products, including software and hardware, on the operation, integration, repair, or maintenance of such products after sale; (ii) to contractors that were awarded a subcontract of the original consulting service contract that amounted to no more than ten (10) percent of the total monetary value of the original consulting services contract; or (iii) where the Court has entered into a master agreement for software or services and the statement of work at the time of Agreement execution expressly calls for future recommendations among Contractor's own products.
- D. The restrictions set forth in this section are in addition to conflict of interest restrictions imposed on public contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this section, even if enacted after execution of the Agreement.

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

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

### **34. Public Contract Code.**

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

### **35. Recovery of Court Costs Incurred Due to Poor Performance or Non-Performance.**

Should the Court incur any costs due to Contractor poor performance or non-performance, and if these Court costs are foreseeable consequences resulting from Contractor poor performance or non-performance, the Court has the right to withhold (and keep) such amounts from any future payment(s) to Contractor. This Court right is not tied to any other Default, Breach and/or Remedy process set forth elsewhere in this Agreement.

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

- A. **Scope of Work.** Contractor will perform and complete all work in compliance with the requirements of the Agreement, and to the satisfaction of the Court. Contractor shall strictly adhere to the delivery and completion schedules specified in the Statement of Work. Time, if stated as a number of days, shall mean calendar days unless otherwise specified.
- B. **Acceptance.** Notwithstanding any prior inspection or payments, all goods and services delivered hereunder shall be subject to final inspection and acceptance or rejection by the Court within a reasonable time after delivery to the Court. Until work is completed and accepted by the Court, the risk of loss or damage to the work shall remain with Contractor. All items which are not in compliance with the specifications hereof, which are not as warranted or which are shipped late, shipped in excess or insufficient quantities, or substituted for items ordered hereunder may be rejected by the Court and returned or held at Contractor's expense and risk. No damages or extras will be allowed for unforeseen difficulties or obstructions. Payment shall not constitute an acceptance of the goods, services, or work nor impair the Court's right to inspect or any of its remedies. Contractor shall immediately refund any payment made in error.
- C. **Rejection.** The Court may reject any goods, services, or deliverables that: (i) fail to meet applicable requirements or acceptance criteria; (ii) are not as warranted; or (iii) are performed or delivered late. The Court's Project Manager may apply any acceptance criteria set forth in the Agreement (including timeliness, completeness, technical accuracy, and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the work.
  - (1) If the work is not acceptable, the Court's Project Manager shall detail Contractor's failure to meet the acceptance criteria. Contractor shall have ten (10) business days from receipt of the Court's notification of non-acceptance to correct the failure(s) to conform to the acceptance criteria. Contractor will re-submit the work and the Court's Project Manager shall re-apply the acceptance criteria to determine its acceptance or non-acceptance. Thereafter, the parties shall repeat the process set forth in this section until Contractor's receipt of the Court's written acceptance of such corrected work; provided, however, that if the Court rejects any work on at least two (2) occasions, the Court may terminate that portion of the Agreement which relates to the rejected work at no expense to the Court.
  - (2) If the Court rejects any goods, services, or other deliverables after payment to Contractor, the Court may exercise all contractual and other legal remedies, including: (i) setting off the overpayment against future invoices payable by the Court; (ii) setting off the overpayment against any other amount payable for the benefit of Contractor pursuant to the Agreement or otherwise; and (iii) requiring Contractor to refund the overpayment within thirty (30) days of the Court's request.

### **37. Shipping and Packing Slips.**

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

### **38. Signatures; Counterparts.**

- A. The signatures required for execution of the Agreement may be made by manual signature, or by digital signature that may conform to California Government Code § 16.5 and all California regulations promulgated thereunder

(including California Code of Regulations, title 2, division 7, chapter 10), or by any other commercially acceptable signature method, use of which by both parties for signature and execution of the Agreement evidences consent to the validity of the method of signature used.

- B. The parties give the same validity, force, and effect to a scanned, faxed, photocopied, or other accurately reproduced signature as to an original signature.
- C. The Agreement may be executed in counterparts, each of which is considered an original.

### **39. Standard of Performance; Warranties.**

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

### **40. Stop Work.**

- A. The Court may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the work, for up to ninety days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree.
- B. Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to the Court during the applicable Stop Work period. Within ninety days after

a Stop Work Order is delivered to Contractor, or within any mutually agreed extension of that period, the Court will either cancel the Stop Work Order or terminate the work, as provided in the Termination provisions.

- C. If a Stop Work Order is cancelled, or the period of the Stop Work Order or any extension thereof expires, Contractor will resume work. The Court may make an equitable adjustment in the delivery schedule, the Agreement amount, or both, if (i) the Stop Work Order Increases Contractor's costs or the time required for performance; and (ii) Contractor asserts its right to an equitable adjustment within thirty days after the end of the applicable Stop Work period.
- D. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated other than for cause, the Court may allow reasonable costs resulting from the Stop Work Order.
- E. The Court will not be liable to Contractor for loss of profits because of any Stop Work Order.

#### **41. Survival.**

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

#### **42. Termination.**

- A. Termination for Cause. The Court may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following notice of default (or, in the opinion of the Court, 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; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading. If the Court terminates this Agreement 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.
- B. Termination for Convenience. The Court may terminate the Agreement, in whole or in part, at any time, for any or no reason, upon written notice to Contractor. Upon receipt of notice of termination, Contractor will promptly discontinue work as specified in the Notice. The Court will pay Contractor for the work satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the work.
- C. Termination due to Fund Non-Appropriation and/or Availability.
  - (1) The Court's obligations under the Agreement are subject to the availability of funds authorized for this work. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of the Agreement. Funding beyond the current Appropriation Year is conditioned upon appropriation of sufficient funds to support the activities described in the Agreement.
  - (2) Upon Notice, the Court may terminate the Agreement in whole or in part, without prejudice to any right or remedy of the Court, for lack of appropriation of funds. Upon termination, the Court will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.
  - (3) In the event that budget reductions occur in any fiscal year covered by the Agreement that may cause the Court to consider terminating the Agreement, the parties agree to attempt to renegotiate in good faith the terms of the Agreement to reduce the Maximum Contract Sum in lieu of cancellation under the termination provisions of the Agreement.

**D. Effect of Termination. Upon the Termination Date:**

- (1) The Court shall be released from compensating Contractor for work, other than those Contractor satisfactorily performed before the Termination Date, and for any indirect costs. Without prejudice to the Court, Contractor shall be released from performing work.
- (2) If only a part of the Agreement is terminated by the Court such that Contractor is released from performing a portion of the work, the Court shall accordingly be released from compensating Contractor for that portion of work.
- (3) Court will have the right to take possession of any materials, equipment, and other work including partially completed work. Contractor shall return to the Court any equipment purchased or built with Court funds, with costs incurred by Contractor being reimbursed by the Court. Unless otherwise provided in the Agreement, Contractor will immediately assign to the Court all of Contractor's right, title, and interest in and to such work, related materials, work product, and any and all intellectual property rights.
- (4) Upon termination of any kind, the Court may withhold from payment any sum that the Court determines to be owed to the Court by Contractor, or as necessary to protect the Court against loss due to outstanding liens or claims of former lien holders. Unless otherwise specifically provided, any advance payments made by the Court to Contractor shall be refunded to the Court on a pro rata basis.
- (5) Contractor shall have no claim against the Court, the County of Los Angeles, the State of California, the Judicial Council, and their respective officers, employees, and agents for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Agreement. Should Contractor receive any such payment it shall immediately notify the Court and shall immediately repay all such funds to the Court. Payment by the Court for services rendered after expiration/termination of this Agreement shall not constitute a waiver of the Court, the County of Los Angeles, the State of California, the Judicial Council, and their respective officers, employees, and agents' right to recover such payment from Contractor. This provision shall survive the expiration or other termination of this Agreement.
- (6) 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 Court. In the event the Court performs or contracts with a third party to perform any such service, Contractor shall cooperate in good faith with the Court and any such third party, to the extent reasonably required by the Court. 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.

**43. Time is of the Essence.**

Time is of the essence in the performance of work by Contractor under the Agreement.

**44. Waiver; Severability.**

- A. **Waiver of Rights.** The Court's action, inaction, or failure to enforce any right or provision of the Agreement is not a waiver of its rights, and will not prevent the Court from enforcing such rights on any future occasion. A Court-specific waiver does not constitute a waiver by the Court of any earlier, concurrent, or later breach or default.
- B. **Severability.** The provisions of the Agreement are separate and severable. If any part of the Agreement is held invalid or unenforceable, all other parts remain valid or enforceable, unless prohibited by applicable state and federal law.

- C. **Waiver of Jury Trial.** To the extent enforceable under California law, each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding, or counterclaim brought by any party hereto against the other (and/or against its judges, subordinate judicial officers, officers, administrators, agents, representatives, and employees) on or with regard to any matters whatsoever arising out of or in any way connected with the Agreement and/or any other claim of injury or damage.

#### 45. Work Site.

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

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

A. Union Activities Certification.

*[OPTION 1: If the Agreement is \$50,000 or under, and allows for the reimbursement of Contractor expenses]*

Contractor must include with any request for reimbursement from the Court a certification that Contractor is not seeking reimbursement for costs incurred 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 reimbursement from the Court was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

*[OPTION 2: If the Agreement is over \$50,000, and allows for the reimbursement of Contractor expenses]*

Contractor must include with any request for reimbursement from the Court a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. No Court funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term). 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.

*[OPTION 3: If the Agreement is over \$50,000, but does not allow for the reimbursement of Contractor expenses]*

No Court funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term). 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. Contractor will provide those records to the Attorney General upon request.

- B. Provisions Applicable to **Certain Services with Compensation** over \$200,000. If this is an Agreement for services, other than consulting services, with total compensation over \$200,000, Contractor shall give priority consideration



in filling vacancies in positions funded by the Agreement to qualified recipients of aid under Welfare and Institutions Code § 11200 in accordance with Public Contract Code § 10353.

- C. Provisions Applicable to **Commercial Office Moving Services Agreements**. If this is an agreement of more than \$2,500 with a carrier for commercial office moving services, Contractor shall abide by the requirements contained in the State Administrative Manual, section 3810, which requires Contractor to employ only drivers and supporting personnel who are under a current collective bargaining agreement or who are paid applicable prevailing wages and employed under prevailing standards and conditions of employment.

- D. Provisions Applicable to **Competitively Bid Contracts; Antitrust Claims**.

If work under the Agreement was obtained by means of a competitive bid, Contractor shall comply with the requirements of Government Code sections set out below.

- (1) The Government Code chapter on antitrust claims contains the following definitions:

- (a) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of § 16750 of the Business and Professions Code.
- (b) "Public purchasing body" means the state or the subdivision or agency making a public purchase. See Government Code § 4550.

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

- (3) If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, 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 Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. See Government Code § 4553.

- (4) Upon demand in writing by Contractor, the Court shall, within one year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (i) the Court has not been injured thereby, or (ii) the Court declines to file a court action for the cause of action. See Government Code § 4554.

- E. Provisions Applicable to **Consulting Services**.

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

F. Provisions Applicable to **Court-Purchased or Court-Financed Equipment.**

- (1) If the Agreement provides Compensation to Contractor for a project funded through a grant, at the conclusion of the Project, title to all expendable and non-expendable personal property with a value of \$500 or more purchased with Court funds shall vest, automatically and without further action of the parties, with the Court. If Contractor provides written certification to the Court that the property will continue to be used for grant-related purposes and the Court approves such certification in writing, the Court may permit title to all such property to remain with Contractor in accordance with the Court's written instructions. Contractor must await specific written instructions from the Court's Project Manager regarding any transfer of title or disposition.
- (2) If Compensation under the Agreement is not through grant funding and the Agreement provides for the provision of equipment purchased or built with Court funds, title to any equipment purchased or built with Court funds shall vest in the Court immediately upon payment of the purchase price. Before delivery to the Court, Contractor is responsible for loss or damage to the equipment to the extent it results from the negligent act or omission of Contractor or its directors, officers, employees, or agents, and Contractor shall make all necessary or appropriate repairs and adjustments.
- (3) Contractor shall maintain an inventory record for each piece of equipment purchased or built with Court funds provided under the Agreement, except for a piece of equipment that (i) has a normal life expectancy of less than one (1) year, or (ii) costs less than \$5,000 and is not easy to steal. The inventory record must include the date acquired, total cost, serial number, model identification, and any other information or description necessary to identify the piece of equipment. Upon request by the Court, Contractor shall submit to the Court a copy of the inventory record.
- (4) Upon the expiration or termination of the Agreement, or as otherwise directed by the Court, Contractor shall return such property to the Court in good condition, reasonable wear and tear expected, unless such property was not utilized, and in such case, shall be returned new and unopened from its original packaging.

- G. Provisions Applicable to **DVBE Participation Certification.** 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 complete and return to the Court a post-contract certification form(<https://www.lacourt.org/generalinfo/procurement/contractspurchase.aspx>), promptly upon completion of the awarded contract, and by no later than the date of submission of Contractor's final invoice to the Court. If Contractor fails to do so, the Court will withhold \$10,000 from the final payment, or withhold the full payment if it is less than \$10,000, until Contractor submits a complete and accurate post-contract certification form. The Court shall allow Contractor to cure the deficiency after written notice of Contractor's failure to complete and submit an accurate post-contract certification form. Notwithstanding the foregoing and any other law, if after at least 15 calendar days, but no more than 30 calendar days, from the date of the written notice the Contractor refuses to comply with these certification requirements, the Court shall permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. The post-contract certification form shall include: (1) the total amount of money Contractor received under the Agreement, (2) the total amount of money and the percentage of work Contractor committed to provide to each DVBE subcontractor; (3) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (4) the amount of money each DVBE subcontractor actually received from Contractor in connection with the Agreement and the corresponding percentage this payment comprises of the total amount of money Contractor received under the Agreement; and (5) that all payments under the Agreement have been made to the applicable DVBE subcontractors. Upon request by the Court, Contractor shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Contractor will comply with all rules, regulations, ordinances and statutes that govern the DVBE program, including, without limitation, Military and Veterans Code section 999.5.

- H. Provisions Applicable to **Elevator Maintenance Agreements**. If the Agreement provides for elevator maintenance, the Term of the Agreement shall be for a period of no less than five (5) years even if the Coversheet of the Agreement specifies a shorter term; however, the Agreement may be terminated during the Term in accordance with the Termination provisions contained herein.
- I. Provisions Applicable to **Federal or Federally-Assisted Contracts**.
- (1) Funding. If the Agreement is funded in whole or in part by the federal government, then:
- (a) It is mutually understood between the parties that the Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
  - (b) This contract is valid and enforceable only if sufficient funds are made available to the Court by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, the Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
  - (c) The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which the Agreement is intended to be paid, the Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds.
- J. Provisions Applicable to **Legal Services**.
- (1) If the Agreement provides for the performance of legal services, Contractor shall adhere to any legal cost and billing guidelines, legal budgets, and legal bill or law firm audits as may be required by the Court. If the Agreement does not provide for legal representation to low-income or middle-income persons in civil, criminal, or administrative matters, Contractor shall also adhere to any litigation plans or case phasing of activities as may be required by the Court. If the Agreement does not provide for legal representation to low-income or middle-income persons in civil, criminal, or administrative matters, and also provides for Compensation (other than reimbursement of expenses) over \$50,000, Contractor shall also comply with the requirements of Business and Professions Code § 6072, which concerns the performance of pro bono legal services.
- (2) Under Business and Professions Code § 6072, Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the Agreement equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10 percent of the Agreement. Failure to make a good faith effort may be cause of non-renewal of the Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with the Court for legal services.
- K. Provisions Applicable to **Janitorial Services or Building Maintenance Agreements**. If the Agreement requires Contractor to perform services at a new site, Contractor shall retain for 60 days all employees currently employed at that site by any previous contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code §§ 1060 et seq.
- L. Provisions Regarding **Material Safety Data Sheets**. If some or all of the goods provided by Contractor under the Agreement are on CAL OSHA's "Hazardous Substances List," Contractor shall forward a completed Material Safety Data Sheet (MSDS) to the Court.

- M. Provisions Applicable to **Mined Mineral Agreements**. If the Agreement involves the purchase of mined minerals, Contractor shall not supply through the Agreement any sand, gravel, aggregates, or other minerals the Court may not purchase under Public Contract Code § 10295.5.
- N. Provisions Regarding **Recycled Goods**.
- (1) Unless otherwise provided in the Agreement, pursuant to Public Contract Code § 12203(d), Contractor shall use or sell only recycled products under the Agreement to the maximum extent economically feasible, but only if the fitness and quality of such recycled products are equal to non-recycled products.
  - (2) If the Agreement provides for the purchase and sale of goods specified in Public Contract Code § 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of Contractor's postconsumer material in these goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or vendor website:
    - (a) Contractor shall deliver a declaration to the Court specifying the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code § 12200 in goods offered or sold to the Court, regardless of whether the goods meet the requirements of Public Contract Code § 12209.1;
    - (b) UNDER PENALTY OF PERJURY, the declaration shall be true and correct and will remain so until Contractor delivers any amendment of the current declaration to the Court, in which case the current declaration as amended will be true and correct; and
    - (c) If Contractor sells under the Agreement any printer or duplication cartridges that comply with Public Contract Code § 12209, Contractor shall so specify in the declaration required under this section.
- O. Provisions Applicable to **Rental Agreements**. If the Agreement provides for the rental of personal property, the Court shall have no responsibility for loss or damage to the rented equipment arising from causes beyond the Court's control. The Court is responsible for repairs and liability for damage or loss only to the extent they become necessary and result from a negligent act or omission of the Court or any court personnel. If the Agreement provides for the rental of equipment or other personal property and the Court has not expressly elected through the Agreement to maintain the equipment or other personal property, Contractor shall keep the equipment in good working order and make all necessary or appropriate repairs and adjustments without qualification.
- P. Provisions Applicable to **Small Business Preference Agreements**. If Contractor received a small business preference in connection with this Agreement, Contractor must complete and submit the Small Business Contract Report Form. Contractor assumes an express affirmative obligation to promptly notify the Court if any information on the Small Business Contract Report Form becomes inaccurate. Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.
- Q. Provisions Applicable to **Work by Facilities Contractors**.
- (1) **Guidelines for Contractor Conduct While Working In Court Buildings.**

These Guidelines for Contractor Conduct are subject to revision and may be modified by the Court at any time. Contractor will be notified of modifications.

    - (a) Work areas are to be free of all tools, trash, material packaging, etc., and any other discarded items at the end of each shift. Contractors should take their trash with them at the end of each shift, rather than disposing of trash in court containers.
    - (b) All waste, excess materials, tools, etc. shall be removed from the areas upon completion. The areas shall be thoroughly cleaned.

- (c) If desk items need to be moved, they must be placed back in the same location (including chairs moved to access under desk space).
  - (d) Vacuum all areas paying special attention to all drywall cutouts and/or ceiling tile debris on floor and around work areas at the end of each shift.
  - (e) Use caution when removing and installing ceiling tiles. Any damage resulting in mishandled ceiling tiles will be the responsibility of Contractor to replace.
  - (f) Do not remove any furniture or chairs from any office area.
  - (g) Do not prop open any secure doorways. Access cards will be furnished.
  - (h) Do not modify the adjustments on any chairs or remove any chairs from any area.
  - (i) Do not use any court radio, stereo, or TV. (Contractor's crew may furnish their own radio. However, volume must be kept at a low level, as judicial and administrative staff often works after hours).
  - (j) Smoking is prohibited in all Court buildings, including any/all restrooms.
  - (k) Do not use any restrooms in judicial chambers. Only use common area restrooms.
  - (l) Do not leave company items behind once a job is complete (i.e. ladders and tools).
  - (m) Any furniture moves necessary to complete the work must be indicated during the job walk or pre-project planning. No furniture is to be moved without prior notice to the Court's Project Manager.
  - (n) For security purposes, do not allow any person(s) into your work area, or into any other Court Building area. Do not open doors to allow person(s) access into your work area, or any other Court Building area. As you go through doors, be sure to securely pull them closed behind you. Don't let person(s) come through a door along with you.
- (2) **Bonds.** The Court may require written evidence of Contractor's ability to obtain from a reputable bond company required bonds. If requested, Contractor may be asked to supply a fidelity bond covering the dishonest acts of employees or a performance bond covering the completion of work. Bond limits and reimbursement of expenses, if any, shall be determined by the Court.
- (3) **Conduct of Work.** As may be applicable, Contractor shall maintain the work site and perform the work in a manner that meets all legal requirements for the provision of a safe workplace. Contractor will ensure that all work is performed in a safe and satisfactory manner, and that all work conforms to all regulatory and industry standards. Upon completion of the work, Contractor shall remove all equipment and unused materials provided for the work, put the buildings and premises in a neat and clean condition, and do all other cleaning and washing as applicable. Further, Contractor shall comply with safety standards and provisions of applicable laws, building codes, and safety regulations issued by the California Department of Industrial Relations. Contractor shall be liable for damages arising out of injury to the Court's employees or its contractors during performance of the work, provided that the injury or damage was caused by the fault or negligence of Contractor, or by its equipment or tools.
- (4) **Contractor-Caused Damage(s).** Contractor shall repair or replace, at the option of the Court's Project Manager(s), all damage to the building, equipment, or furniture caused by its operations within five (5) working days, and preferable sooner.
- (5) **Court Policy Regarding Drugs / Alcohol / Weapons.**
- (a) Contractor agrees to advise its employees and the employees of its subcontractors and agents that it is the policy of the Court that:

- 1) The use, possession and/or distribution of illegal or unauthorized drugs, drug-related paraphernalia or weapons on the Court's premises, right-of-way, or Job Site is prohibited and the use or possession of alcoholic beverages, except where authorized by the Court's management, is also prohibited;
  - 2) Entry onto or presence on the Court's premises by any person, including Contractor, Contractor's employees, subcontractors, subcontractors' employees, contract personnel, temporary employees and visitors, constitutes consent to the Court to conduct searches, whether announced or unannounced, on the Court's premises of the person and his or her personal effects for such prohibited items, and consent to drug testing at any time while on the Court's premises;
  - 3) Any person suspected or found in violation of the policy or who refuses to permit a search or drug or alcohol test may be removed and barred from the Court's premises, at the sole discretion of the Court; and
  - 4) Contractor personnel who test positive for illegal drugs or unauthorized alcohol as a result of a test conducted on the Court premises, or upon request of the Court, will be removed from any further performance or services under this Agreement.
- (b) Contractor represents and warrants that it has established, maintains, and enforces both a Drug and Alcohol Program and an Operator Qualification Program per industry standards.

**(6) *Inspections.***

- (a) **Materials Inspections.** The Court may from time to time, at its sole good faith option, inspect and test certain materials or equipment. Therefore in contracting for the purchase of any material or equipment that Contractor will use in the performance of the work, Contractor shall obtain for the Court from the vendor of such material or equipment the right to inspect all such material and the manufacture and fabrication thereof. Whether or not the Court conducts such inspection, the Court shall also have the right to reject all materials or equipment that, in the sole good faith discretion of the Court, fail to conform to either adequate manufacturing specifications, the specifications under which such materials or equipment were purchased or the specifications required for the performance of the work.
  - (b) **Field Inspections.** Throughout the performance of the work, the Court shall have the right to designate one or more inspectors or engineers to inspect and test the work site and the progress of the work. Contractor shall cooperate with such inspectors and engineers in order that the work may be fully inspected and that the Court may at all times be fully advised of the progress of the work and the manner in which it is being performed.
  - (c) **Inspection Not Acceptance.** Contractor expressly understands and agrees that any inspection by the Court pursuant to this Agreement shall be for the Court's sole benefit and shall not be deemed an acceptance by the Court of all or any portion of the materials or work so inspected. Contractor further understands and agrees that no inspection by the Court pursuant to this Agreement or approval or failure to object to any portion of the work shall relieve or release Contractor from any duties, obligations, or liabilities provided in this Agreement.
- (7) ***Liens.*** Contractor shall discharge at once, and hold the Court harmless from, liens or stop notices that may be filed in connection with the work. The Court may withhold payment of funds from Contractor in an amount sufficient to discharge delinquent accounts of Contractor or any of Contractor's subcontractors for which liens on the Court's or County's property have been or can be filed or for which stop notices have been or can be filed. Contractor must furnish unconditional lien releases to the Court.
- (8) ***Safety Devices.*** Contractor shall furnish and maintain all safety devices, e.g., signs, barricades, cones, etc. required to adequately warn and protect all persons who will be utilizing this facility during the course of the work.

- (9) ***Scheduling Work.*** All work shall be scheduled with the Court’s Project Manager or his/her designee before starting the assigned project.

**END OF STANDARD BUSINESS TERMS AND CONDITIONS**

MODEL AGREEMENT

## EXHIBIT D

### IT TERMS AND CONDITIONS 3.0

The Court's "IT Terms and Conditions 3.0" which are posted at:  
<https://www.lacourt.ca.gov/pages/lp/procurement/cp/doing-business-with-the-court> are hereby  
incorporated by this reference as though fully set forth herein.

### END OF EXHIBIT D

### NOTE FOR MODEL AGREEMENT:

**Exhibit D will only be included in Agreements for IT goods and/or services.**

**Exhibit D in the final Agreement will link  
to the Court IT Terms and Conditions 3.0  
on the Court's website.**

**For purposes of this MODEL AGREEMENT only,  
the full set of Court IT Terms and Conditions  
are attached on the pages that follow for ease reference.**





**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
IT TERMS AND CONDITIONS 3.0**

1. Data and Security.
2. Intellectual Property.
3. Upgrade.
4. Malicious Code.
5. Four-Digit Date Compliance.
6. Liquidated Damages.
7. Pass Through of Warranties.
8. Special Warranty Provisions Relating to Software.
9. Subcontracting of Software Maintenance and Support.
10. Generative Artificial Intelligence.
11. Generative AI Special Provisions.

## **1. Data and Security.**

### **A. Data Security.**

- (1) Contractor shall comply with Data Safeguards, defined as industry-standard safeguards against the destruction, loss, misuse, unauthorized disclosure, or alteration of the Court's data or Confidential Information, and such other related safeguards that are set forth in applicable laws, a statement of work, or pursuant to the Court's policies or procedures.
- (2) Contractor personnel and subcontractors shall not attempt to access, and shall not allow access to the Court's 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's 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.

### **B. Security Assessments.**

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. 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 may, at the Court's expense, perform the assessments described in this subsection and "snap" assessments (e.g., safety and data/physical security assessments) of the court facilities.

## **2. Intellectual Property.**

- A. 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 Court's benefit, all Contractor Materials, Third Party Materials, and Licensed Software used and to be used in connection with the Work.

### **B. Contractor/Third Party Materials.**

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 Court, together with all Court Contractors, without additional charge, a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, non-exclusive license to use, reproduce, perform, display, transmit, distribute, modify, create derivative works of, make, have made, sell, offer for sale and import Contractor 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.

### **C. 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 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 Contractor's Project Director and/or 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.

**D. Retention of Rights.**

The Court retains all rights, title and interest (including all intellectual property rights) in and to any Court materials owned, licensed, made, conceived, or reduced to practice by the Court 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. Subject to rights granted herein, Contractor retains all rights, title and interest (including all intellectual property rights) in and to any Contractor materials owned or developed prior to the provision of Work, or developed by Contractor independently from the provision of the Work and without the use of Court Materials or confidential information.

**E. Third Party Rights.**

Contractor hereby assigns to the Court all of Contractor's licenses and other rights (including any representations, warranties, or indemnities that inure to Contractor from third parties) to all third party materials incorporated into the work. If such licenses and rights cannot be validly assigned to or passed through to the Court by Contractor without a third party's consent, then Contractor will use its best efforts to obtain such consent (at Contractor's expense) and will indemnify and hold harmless the Court against all claims arising from Contractor's failure to obtain such consent.

**3. Upgrade.**

Contractor shall promptly provide the Court with all upgrades, including without limitation: (i) all upgrades generally made available by Contractor to its other customers; (ii) upgrades as necessary so that the Work complies with the Agreement and any applicable laws (including changes in applicable laws); (iii) upgrades as necessary so that the Work operates under new versions or releases of the Court's operating system or database platform; and (iv) all on-site services necessary for installation of upgrades. Without limiting any other obligation of Contractor under this Agreement, Contractor represents and warrants that it will maintain services, equipment, software or any other part of the Work so that they operate in accordance with the Agreement.

**4. Malicious Code.**

- A. No Work will contain any Malicious Code, defined as any (i) program routine, device or other feature or hidden file, including any time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm any of the Court's hardware, software, data or other programs, and (ii) hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.
- B. Contractor shall immediately provide to the Court written notice in reasonable detail upon becoming aware of the existence of any Malicious Code. Without limiting the foregoing, Contractor shall use best efforts and all necessary precautions to prevent the introduction and proliferation of any Malicious Code in the Court's IT Infrastructure or networks or in the Contractor systems used to provide 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 Court's IT Infrastructure and the repair of any files or data corrupted thereby, and the expenses associated with the removal of the Malicious Code and restoration of the data shall be borne by Contractor. In no event will Contractor or any Subcontractor invoke any Malicious Code.

## **5. Four-Digit Date Compliance.**

Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the Court. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.

## **6. Liquidated Damages.**

A. In the event that Contractor fails to complete Work in accordance with the Agreement within the time parameters specified, and fails to provide suitable substitutions of Work acceptable to the Court, the Parties agree that the delay will interfere with the proper implementation of the Court's operations or programs to the loss and damage of the Court. From the nature of the case, it may be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The Court and Contractor, therefore, presume that in the event of any such delay, the amount of damage which will be sustained from such delay and payable to the Court as liquidated damages, and not as a penalty, will be \$500 for each and every day's delay in excess of the allotted time parameters set forth in the Agreement. In the event Contractor fails to pay such liquidated damages, the Court may deduct the amount from any money payable to Contractor under the Agreement.

(1) If Contractor is delayed by reason of force majeure events, change orders or stop orders, or additional Work requested by the Court, or delays directly caused by the Court, the time of Contractor's performance may be extended by written agreement by the Court's Project Manager. Contractor will be relieved of paying liquidated damages for the period of such extension.

(2) Although the Court, at its option, may waive the payment of liquidated damages, nothing herein will be construed as affording Contractor any additional time for performance. The Court will notify Contractor in writing of any claim for liquidated damages pursuant to this section on or before the date the Court deducts such sums from money payable to Contractor.

## **7. Pass Through of Warranties.**

Where Contractor resells hardware or software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the Court and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth in the Agreement.

## **8. Special Warranty Provisions Relating to Software.**

A. In addition to the other warranties set forth herein, where the Agreement involves the furnishing of software (regardless of whether such software is installed on the Court's systems or accessible via an online interface), Contractor warrants that such software (i) is free of harmful code (e.g., viruses, worms) and will run without material interruption; (ii) will perform in accordance with its license and accompanying documentation; and (iii) will not cause any material fault, loss, or malfunction in the Court's existing systems. The Court's approval of designs or specifications furnished by Contractor will not relieve the Contractor of its obligations under this warranty.

B. Contractor warrants that Contractor will not cause any unplanned interruption in the operations of, or accessibility to, any software furnished under the Agreement or any portion thereof through any device, method, or means including, without limitation, the use of any virus, worm, "lockup," "time bomb," or "key lock" device or program, or other disabling code, which (i) has the potential or capability of causing any unplanned interruption in the operations of, or accessibility of any Goods or Services or any portion thereof; (ii) could alter, destroy, or inhibit

use of any Goods or Services or any portion thereof; or (iii) which could block access to or prevent use of any Goods or Services or any portion thereof by the Court or its users (collectively, “Disabling Device(s)”). Contractor further represents and warrants that it has not purposely placed, nor is it aware of, any Disabling Device on any portion of the Goods or Services furnished to the Court under the Agreement, nor shall Contractor knowingly permit any subsequently delivered portion of the Goods or Services to contain any Disabling Device. Without limiting the foregoing, if the Court believes that harmful code may be present in any software delivered hereunder, Contractor will, upon the Court’s request, provide a master copy of the software for comparison and correction.

**9. Subcontracting of Software Maintenance and Support.**

The Court acknowledges and agrees that Contractor is the authorized reseller of software owned by the manufacturer and, as such, software maintenance and support may be provided by the manufacturer. The Court approves the provision of software maintenance by the manufacturer and agrees that the prohibition against subcontracting is not applicable to the relationship between the manufacturer and Contractor.

**10. Generative Artificial Intelligence (GenAI).**

See Exhibit C (Standard Business Terms and Conditions), Section 20.

**11. Generative AI Special Provisions (GenAI).**

See Exhibit C (Standard Business Terms and Conditions), Section 21.

**END OF IT TERMS AND CONDITIONS**