

ATTACHMENT - CONTRACT TERMS AND CONDITIONS
COURT STANDARD TERMS AND CONDITIONS
(NON-IT SERVICES)

Each proposer must Court in its proposal whether it accepts the below, standard contract terms and conditions. Any exceptions must be included, if at all, with the proposal submission. **Please note:** (1) Terms marked with an asterisk (*) are *mandatory minimum terms* of the procurement, and taking any material exception will render a proposal non-responsive; and (2) exceptions taken to other terms and conditions may be a negative factor in evaluation of a proposal.

1. RELATIONSHIP OF PARTIES

The Contractor and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Court of California.

2. TERMINATION FOR CAUSE

- A. Pursuant to this provision, the Court may terminate this Agreement in whole or in part under any one of the following circumstances, by issuing a written Notice of termination for default to the Contractor:
- i. If the Contractor (a) fails to perform the services within the time specified herein or any extension thereof, (b) fails to perform any requirements of this Agreement, or (c) so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, after receipt of a written Notice from the Court specifying failure due to any of the preceding three (3) circumstances, the Contractor does not cure such failure within a period of five (5) business days or a longer period, if authorized in the Notice of failure; or,
 - ii. If the Contractor should cease conducting business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer or permit the appointment of the receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any Court authority relating to insolvency or protection from the rights of creditors.
- B. In the event the Court terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the Court may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Court for any excess costs for such similar supplies or services, subject to the limitations contained elsewhere herein; further, the Contractor shall continue the performance of this Agreement to the extent not terminated under this provision.

- C. The Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of acts of Force Majeure; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- D. The rights and remedies of either party provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

3. NO ASSIGNMENT

Without the written consent of the Court, the Contractor shall not assign this Agreement in whole or in part.

4. TIME OF ESSENCE

Time is of the essence in Contractor's performance of this Agreement.

5. VALIDITY OF ALTERATIONS

Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

6. CONSIDERATION

The consideration to be paid to the Contractor under this Agreement shall be compensation for all the Contractor's expenses incurred in the performance of this Agreement, including travel, unless otherwise expressly provided.

7. DEFINITIONS

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.

- A. "**Amendment**" means a written document issued by the Court and signed by the Contractor, which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- B. "**Confidential Information**" means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the Court's business or the business of its constituents. Confidential Information does not include: (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii)

information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.

- C. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the Court and the Contractor, as attached to and incorporated by a fully executed Court Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “Agreement.”
- D. “**Contract Amount**” means the total amount encumbered under this Agreement for any payment by the COURT to the Contractor for performance of the Services, in accordance with the Contract Documents.
- E. “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the Court to do the Contract Work. The Contractor is one of the parties to this Agreement.
- F. “**Court**” means the Court of Appeal, Fourth Appellate District, Division Three.
- G. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- H. “**Force Majeure**” means a delay which impacts the timely performance of Work which neither the Contractor nor the Court are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
 - i. Acts of God or the public enemy;
 - ii. Acts or omissions of any government entity;
 - iii. Fire or other casualty for which a party is not responsible;
 - iv. Quarantine or epidemic;
 - v. Strike or defensive lockout; and,
 - vi. Unusually severe weather conditions.
- I. “**Standard Agreement Coversheet**” refers to the form used by the Court to enter into agreements with other parties. Several originally signed, fully executed versions of the Standard Agreement Coversheet, together with the integrated Contract Documents, shall each represent the Agreement as an individual “Contract Counterpart.”
- J. “**Standard Amendment Coversheet**” refers to the form used by the Court to amend agreements with other parties

- K. **“Court”** as used in this Agreement refers to the Court of California acting through the Judicial Council of California, Administrative Office of the Courts (which may also be referred to as the Court).
- L. **“Subcontractor”** shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the Court refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly Court, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and material men.
- M. **“Term”** refers to the period defined by a beginning date and an end date, in accordance with the terms and conditions set forth in the Agreement, during which the Contractor is authorized to provide the Contract Work. The possible Terms of the Agreement are described further in this Exhibit’s paragraph 24, Agreement Term(s) and Options to Renew.
- N. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the Court or the Contractor, which is not a party to this Agreement.
- O. **“To Be Determined”** or **“TBD”** is the item that is not yet identified. Any and all To Be Determined items, set forth herein, shall be determined prior to award or by mutual agreement between the Contractor and the Court and incorporated into the Agreement via Amendment(s).
- P. **“Work”** or **“Work to be Performed”** or **“Contract Work”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the Court. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

8. **INDEPENDENT CONTRACTOR**

Contractor shall be, and is, an independent contractor, and is not an employee or agent of the Court or the Court, and is not covered by any employee benefit plans provided to Court employees or Court employees. Contractor is liable for the acts and omissions of itself, its employees, its Subcontractors and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the Court, or the Court, and Contractor. Contractor will determine the method, details and means of performing the Services, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all Subcontractors, agents, employees or other persons assisting Contractor in the performance of the Services. Contractor shall be solely responsible for all matters relating to the payment of Contractor’s employees, including but not limited to compliance with Medicare, social security, income tax withholding, unemployment and workers’ compensation laws and regulations, withholding for/providing of any and all employee benefits, and all other laws and regulations

governing such matters. Neither party to this Agreement has any authority to enter into any contract or otherwise incur any liability in the name of, or on behalf of, the other party.

9. QUALITY OF SERVICES

- A. Contractor agrees that each of its employees, Subcontractors, and agents assigned to perform any Services under this Agreement shall have the skills, training, and background reasonably commensurate with his or her responsibilities, so as to be able to perform in a competent and professional manner. Contractor further agrees that the Services provided shall be performed in good faith and in a competent and timely manner consistent with professional standards for such work, will conform to the requirements of this Agreement, and will not infringe upon the rights of third parties. In addition, Contractor shall, and shall cause its employees, agents and Subcontractors to:
- i. Provide quality representation for its clients, and comply with the provisions of California Welfare and Institutions Code, section 317 and California Rules of Court, rule 5.660.
 - ii. Provide competent attorneys to render the Services. Contractor's attorneys shall participate regularly in continuing legal education activities respecting juvenile dependency issues, and shall demonstrate adequate skills, knowledge and comprehension of the statutory scheme, purposes and goals of dependency proceedings, the specific statutes, rules of Court and cases relevant to such proceedings, and the applicable procedures for filing petitions for extraordinary writs and other documents.
 - iii. Not restrict its attorneys' ability to serve on countywide committees, or their ability to participate in or lead public training seminars or conferences, provided such activities are consistent with the attorneys' obligations as professionals and the performance of the Services.
 - iv. Adhere to the Court Bar Act and the California Rules of Professional Conduct relative to the provision of the Services.

10. COURT'S QUALITY ASSURANCE PLAN

- A. The Court or its agent may evaluate Contractor's performance under this Agreement. Such evaluation may include assessing Contractor's compliance with all Agreement terms and performance standards.
- i. The Court may perform annual peer, client and judicial officer evaluation of attorneys, including attorneys providing services on a subcontracting basis. Contractor agrees to participate in the evaluation process by providing information requested by the Court, including completion and return of peer evaluation forms to the Court or to the Court's agent as requested.
 - ii. Contractor's deficiencies which Court determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to Contractor. The report may include recommended improvements and corrective measures to be taken by Contractor. If Contractor's performance remains

unsatisfactory to the Court, the Court may terminate this Agreement for cause or impose other penalties as specified in this Agreement. Any evaluation of Contractor's performance conducted by the Court shall not be construed as an acceptance of Contractor's work product or methods of performance. Contractor shall be solely responsible for the work product it delivers under this Agreement; Contractor shall not rely on the Court to perform any quality control review of Contractor's work product, and Contractor shall be solely responsible for the quality, completeness, and accuracy of its own work product.

- B. As required by Public Contract Code, section 10353.5, Contractor shall (i) adhere to legal cost and billing guidelines designated by the COURT; (ii) adhere to litigation plans designated by the COURT; (iii) adhere to case phasing of activities designated by the COURT; and (iv) submit and adhere to legal budgets as designated by the COURT.

11. SUBCONTRACTING

- A. Contractor is prohibited from subcontracting this Agreement or any part of it, unless such subcontracting is first approved by the Court in a written instrument executed and approved in the same manner as this Agreement. An agreement made in violation of this paragraph shall confer no rights on any party and shall be null and void.
- B. If requested by the Court, Contractor shall provide documentation that the proposed Subcontractor is experienced and able to perform that portion of the Services Contractor wishes to subcontract. Contractor shall require all Subcontractors to comply with the provisions of this Agreement. Contractor shall provide copies to the Court of all agreements with Subcontractors who will perform Services pursuant to this Agreement. The Court's approval of subcontracts shall in no way relieve Contractor of any of its responsibilities and obligations under this Agreement.

12. INDEMNIFICATION (*)

- A. Contractor shall indemnify, defend (with counsel satisfactory to the Court), and hold harmless:
 - i. The Court, its officers and employees;
 - ii. The Court, its judges, subordinate judicial officers, Court executive officers, Court administrators, officers and employees; and
 - iii. Their agents, representatives, contractors, subcontractors, and volunteers (**Indemnified Parties**) from any and all losses, costs, liabilities, claims, fees, penalties, interest and damages, including but not limited to reasonable attorneys' fees and costs (individually, (**Claim**) and collectively, (**Claims**)).
 - a. Arising from, related to or in connection with, in whole or in part, the negligent acts or omissions, or intentional misconduct, of Contractor, its agents, employees, or Subcontractors;
 - b. Arising from, related to or in connection with, in whole or in part, Contractor's breach of its obligations, representations or warranties under this Agreement, or

the violation of any applicable law, rule or regulation or the failure to report, withhold or pay any taxes when due by Contractor, its agents, employees or Subcontractors;

- c. Made or incurred by any Third Party that furnishes or provides Services, materials, or supplies in connection with this Agreement; or
- d. Made or incurred by any other Third Party who may be injured or damaged by Contractor, its agents, employees or Subcontractors in connection with this Agreement.

13. INSURANCE [2 OPTIONS]

Option 1 – non-government insurance

- A. **Insurance Required.** Without limiting Contractor’s indemnification obligations, Contractor shall secure and maintain in force throughout the term of this Agreement the following types of insurance with limits as shown. Each policy, other than the Professional Liability policy, shall be written on an “occurrence” form. The Professional Liability policy may be written on a “claims made” form.
 - i. **Workers’ Compensation**—A program of Workers’ Compensation Insurance in an amount and form sufficient to meet all applicable requirements of the California Labor Code, including Employer’s Liability with at least \$500,000 per accident. This coverage shall not be required when Contractor has no employees.
 - ii. **Commercial General Liability Insurance**—Coverage at least as broad as the Insurance Services Office (ISO) Commercial General Liability “occurrence” form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall provide limits of at least \$500,000 per occurrence and annual aggregate.
 - iii. **Automobile Liability Insurance**—If an automobile is used in providing the Services, automobile liability insurance covering bodily injury and property damage and applicable to all owned, non-owned, leased, and hired vehicles. The policy shall provide combined single limits of at least \$500,000 per occurrence.
 - iv. **Professional Liability Insurance**—Covering any act, error, or omission committed in the performance of Services under this Agreement. The policy shall provide limits of at least \$1,000,000 per occurrence and annual aggregate. If the policy is written on a “claims made” form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the termination and acceptance of all work provided under this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that activities commence pursuant to this Agreement.
- B. **Additional Insured Endorsements.** All policies required in Section 13.A above, with the exception of Workers’ Compensation, and Professional Liability, must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of Services under this Agreement: The COURT, the Court, its judges, its subordinate judicial

officers, its Court executive officers, its Court administrators, and any and all of their other officers, officials, agents, representatives, contractors, volunteers or employees.

- C. Required Policy Provisions. Each policy required in Section 13.A above must provide that:
- i. The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by the Court.
 - ii. The policy shall apply separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer's liability.
 - iii. The Court will receive fifteen (15) days' advance written notice of any reduction in coverage or other change, nonrenewal, or cancellation, mailed to the address provided for notices in Section 27.J of this Exhibit.
- D. No Reduction or Limit of Contractor's Obligation. Insurance affected or procured by Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Court. Acceptance of Contractor's insurance by the Court shall not relieve or decrease the liability of Contractor hereunder.
- E. Evidence of Coverage. Before commencing any work under this Agreement, Contractor must furnish to the Court certificates of insurance and applicable endorsements, in form and with insurers satisfactory to the Court, evidencing that all required insurance coverage is in effect. The Court reserves the right to require Contractor to provide complete, certified copies of all required insurance policies.
- F. Accident Reporting. If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify the _____. Contractor shall promptly submit a written report, in such form as may be required by the COURT, of all accidents, which occur in connection with this Agreement. The report must include at least the following information:
- i. Name and address of the injured or deceased person(s);
 - ii. Name and address of Contractor's Subcontractor, if any;
 - iii. Name and address of Contractor's liability insurance carrier;
 - iv. A description of the circumstances surrounding the accident, whether any of the Court's equipment, materials or staff were involved and the extent of damage to Court and/or other property; and
 - v. A description of what effect, if any, the accident will have upon Contractor's ability to perform the Services.

Option 2 – county/government self-insurance

- A. Insurance Required. Contractor will provide a Certification of Coverage providing evidence of its program of self-insurance for general liability, automobile liability, professional liability and workers' compensation/employers liability.
- B. No Reduction or Limit of Contractor's Obligation. Contractor's program of self-insurance shall not reduce or limit Contractor's contractual obligation to indemnify and defend the

Court. Acceptance of Contractor's program of self-insurance by the Court shall not relieve or decrease the liability of Contractor hereunder.

- C. Accident Reporting. If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify the _____. Contractor shall promptly submit a written report, in such form as may be required by the Court, of all accidents, which occur in connection with this Agreement. The report must include at least the following information:
- i. Name and address of the injured or deceased person(s);
 - ii. Name and address of Contractor's Subcontractor, if any;
 - iii. Name and address of Contractor's liability insurance carrier;
 - iv. A description of the circumstances surrounding the accident, whether any of the Court's equipment, materials or staff were involved and the extent of damage to Court and/or other property; and
 - v. A description of what effect, if any, the accident will have upon Contractor's ability to perform the Services.

14. TERMINATION FOR CAUSE

- A. Default. Each of the following shall constitute an event of default (**Event of Default**):
- i. Contractor fails or refuses to perform any covenant contained in this Agreement at the time and in the manner provided.
 - ii. Any representation or warranty made by Contractor is untrue when made or becomes untrue during the term of this Agreement.
 - iii. Contractor is generally not paying its debts as they become due.
 - iv. Contractor voluntarily files a petition in bankruptcy or to take advantage of any bankruptcy, insolvency, or other debtors' relief law of any jurisdiction.
 - v. Contractor is subject to an involuntary petition in bankruptcy filed by its creditors that has not been dismissed within forty-five (45) days of its filing.
 - vi. Contractor makes an assignment for the benefit of its creditors.
 - vii. A custodian, receiver, trustee, or other officer with similar powers is appointed over any substantial part of Contractor's property.
 - viii. Contractor winds up or dissolves its business, or is liquidated.
- B. Remedies. On and after any Event of Default, the Court shall have the right to exercise its contractual, legal and equitable remedies, which shall include, without limitation, the right to terminate this Agreement upon written notice or to seek specific performance of all or any part of this Agreement. In addition, the Court shall have the right (but no obligation) to cure or cause to be cured on behalf of Contractor any Event of Default. Contractor shall pay to the Court on demand all costs and expenses incurred by the Court in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The Court shall have the right to offset from any amounts due to Contractor under this Agreement,

or any other agreement between the Court or any California trial or appellate Court and Contractor, all damages, losses, costs, fees, penalties, interest or expenses incurred by the Court as a result of such Event of Default.

15. TERMINATION FOR NON-APPROPRIATION OF FUNDS (*)

- A. Contractor acknowledges that funding for this Agreement is conditioned upon appropriation by the California Legislature and allocation by the Judicial Council of California of sufficient funds to support the activities described in this Agreement. By written notice to Contractor, the Court may terminate this Agreement, in whole or in part, at any time for lack of appropriation of funds, or other withdrawal, reduction or limitation in any way of the Court's budget, funding or financial resources. Such termination is in addition to the Court's rights to terminate for convenience or cause. If this Agreement is terminated for non-appropriation:
- i. The Court will be liable only for payment in accordance with the terms of this Agreement for Services rendered and expenses incurred prior to the effective date of termination;
 - ii. Contractor shall be released from any further obligation to provide the Services affected by such termination; and
 - iii. Termination shall not prejudice any other right or remedy available to the Court.

16. TERMINATION FOR CONVENIENCE

The Court shall have the option, in its sole discretion, to terminate this Agreement, in whole or in part, at any time during the term hereof, for convenience and without cause. The Court shall exercise this option by giving Contractor at least thirty (30) days prior written notice of termination. The notice shall specify the date on which termination shall become effective.

17. ACTIONS OF CONTRACTOR UPON TERMINATION

- A. Immediately upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by the Court and to minimize the liability of Contractor and the Court to Third Parties as a result of termination. All such actions shall be subject to the prior approval of the Court, at the Court's sole discretion, and shall be in accordance with the attorneys' obligations to their clients.
- i. Withdrawal and Tail Representation. Contractor will continue to represent existing clients until Contractor withdraws as counsel of record (or substitutes counsel) without prejudice to the interests of Contractor's clients and without violating any law, rule or regulation.
 - ii. Release from Performance of Services. Contractor will be released from performing Services to the extent Contractor effectively withdraws as counsel of record (or substitutes counsel) in accordance with Section 17.A above. If Contractor cannot be released from performing Services due to an inability to withdraw as described above, Contractor will give the Court as much written notice as possible before the termination

date, which notice will describe each affected matter and the basis for the Contractor's inability to withdraw, and the Contractor and the Court will then confer in good faith. If a Court orders that Contractor maintain certain representations or, using its reasonable judgment, the COURT determines that Contractor's assertions warrant its continued representation as its withdrawal is not permitted for the reasons in the immediately preceding paragraph, then, until such time as this Agreement would have expired, (had it not been earlier terminated for change in law) pursuant to the expiration date of the Agreement or, if renewed, the date of expiration of the renewed Agreement, the following provisions shall apply:

- a. Contractor's duties under this Agreement will continue after the Termination Date solely with respect to the affected matters;
- b. Compensation following the Termination Date will be at a rate of **\$75.00** per hour for legal services provided;
- c. In addition, the COURT will reimburse the Contractor for any direct, reasonable, actual expenditure for long distance telephone and, if contained in a Court order, Third Party experts.

18. EFFECT OF TERMINATION

- A. In addition to any other remedies and actions set forth in this Agreement, if this Agreement is terminated for cause, non-appropriation of funds, or for convenience, the following will apply:
 - i. Payment Upon Termination. The Court shall pay for Contractor's Services satisfactorily performed through the effective date of termination; provided, however, that in no event shall Contractor's total compensation pursuant to this Agreement exceed the Contract Amount.
 - ii. Offset and Deduction. The Court may deduct from any payment upon termination:
 - a. All payments previously made by the Court for Services covered by Contractor's final invoice.
 - b. The amount of any claim that the Court may have against Contractor in connection with this Agreement.
 - c. Where Contractor is terminated for cause, in the event the Court determines it must provide services to remedy the results of Contractor's inadequately performed Services, the Court may deduct, from any amounts owed Contractor hereunder, the Court's good faith estimate of the reasonable cost of replacing performance of such inadequately performed Services.

19. OWNERSHIP OF DATA

Contractor will provide to the client or subsequent counsel at no cost copies of all relevant client files produced by Contractor in the course of its performance of Services including, without limitation, any motions or briefs. Contractor will provide these copies upon request by the client or upon appointment of subsequent counsel. The client or the subsequent counsel may use the

materials in the client file at his or her discretion. All reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data that the Contractor is required to create by the Court or provide to the Court pursuant to this Agreement (collectively, “Data”) are the sole property of the Court without the payment of additional compensation to Contractor. Contractor shall provide the Court with all Data within thirty (30) days of the Court’s written request. However, nothing in this Section 19 is intended to create any right in any person or entity to any Data that is covered by the attorney work-product doctrine.

20. OPERATING RESERVE

- A. Contractor shall maintain, at all times during the term of this Agreement, an unallocated operating reserve at least equal to 11.5 percent of the total annual contract amount.
- B. Contractor shall maintain, at all times during the term of this Agreement, an additional reserve (distinct from the reserve identified in Section 20.A above) in an amount at least equal to outstanding employee leave balances.
- C. [The unallocated operating reserve shall be established and maintained according to procedures developed by the Contractor’s Board of Directors. Expenditures from the unallocated operating reserve shall follow the procedures set forth by the Board of Directors and shall be reflected in the financial information the Contractor furnishes to the Court.]
- D. Contractor shall notify the Court within forty-five (45) calendar days if any reserve required by this Section 20 falls below the applicable minimum level. Contractor shall include with the notification: (1) a detailed explanation of the reason(s) for the reduced reserve level and (2) a plan for specific operational change(s) to increase the reserve to the mandatory minimum level. Contractor shall not be deemed to be in breach of this Agreement if any reserve required by this Section 20 falls below the applicable minimum level if Contractor has implemented a plan to raise the applicable reserve to the minimum level within a reasonable period of time. For avoidance of doubt, any line of credit or similar instruments may be used to determine whether the reserves required under this Section 20 have been met.

21. PROPRIETARY OR CONFIDENTIAL INFORMATION OF THE COURT

- A. Contractor understands and agrees that, in the performance of the Services under this Agreement or in contemplation thereof, Contractor may have access to private or Confidential Information that may be owned or controlled by, or entrusted to, the Court, their personnel or constituents and that the disclosure of such information to Third Parties may be damaging to the Court. Contractor agrees that all information disclosed to Contractor in connection with this Agreement shall be held in confidence and used only in the performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as Contractor uses to protect its own proprietary information and in any case, no less than a reasonably prudent person or entity would use to protect its own proprietary data.
- B. Notwithstanding the foregoing, Contractor may disclose the Confidential Information to the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that

Contractor has given reasonable prior notice of its intention to disclose in order to give the court an opportunity to seek a protective order.

- C. Contractor agrees that monetary damages are inadequate to remedy any breach or threatened breach of this provision and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

22. AUDIT AND RETENTION OF RECORDS

Contractor shall permit authorized representatives of the Court and/or its designee at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of the Agreement, including records related to billings and other financial records. Without limiting the foregoing, the Court and/or its designee may conduct legal bill audits and law firm audits, as those terms are defined in Public Contract Code, section 10353.5(c). Contractor shall allow the auditor(s) access to such records during normal business hours and shall allow the auditor(s) to interview any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the Court to audit records and interview staff in any subcontract related to performance of this Agreement. Contractor shall correct errors and deficiencies by the 20th day of the month following the audit. Contractor shall maintain all records and documentation related to the performance of this Agreement, including records related to billings and other financial records, in an accessible location and condition for a period of not less than four (4) years after final payment is received pursuant to this Agreement or until after final audit has been resolved, whichever is later. Contractor shall adequately protect all records against fire or other damage. The Court of California, or any other government agency or entity having an interest in the subject of this Agreement, shall have the same rights conferred upon the Court by this Section 22.

23. ACCOUNTING SYSTEM REQUIREMENTS

Contractor shall maintain an adequate system of accounting and internal controls in accordance with Generally Accepted Accounting Principles (GAAP).

24. AGREEMENT TERM(S) AND OPTIONS TO RENEW

- A. The Work of the Agreement shall commence **January #, 2014** and the Agreement shall expire **December 31, 2014** (“**Initial Term**”), unless otherwise set forth in writing, in accordance with the terms and conditions of the Agreement.

- B. The parties agree that the Court may elect, at its sole discretion, to extend the Agreement up to two (2) consecutive optional one-year Terms, identified as follows, if authorized in writing in accordance with the terms and conditions of the Agreement:

January 1, 2015 – December 31, 2015 (“First Option Term”).

January 1, 2016 – December 31, 2016 (“Second Option Term”).

- C. In the event any option Term is exercised under this Agreement, the rates and fees applicable for each option Term shall be set forth in any subsequent Amendments to

extend this Agreement. The rates and fees as incorporated in Exhibit C, Payment, may be renegotiated by the parties for each subsequent consecutive Term, **as long as the negotiated unit prices or fees do not increase more than three percent (3%) over the rates and fees established for the Work of the previous Term.**

- D. In the event the Court elects to exercise an option to extend the Agreement, as set forth in this provision, the parties will modify the Agreement via bilateral execution of the a Standard Amendment form.

25. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

- A. By executing this Agreement, Contractor certifies under penalty of perjury under the laws of the Court of California that the following representations and warranties are true and correct as of the Effective Date of this Agreement:
- i. Nondiscrimination/No Harassment Provisions and Compliance.
 - a. Nondiscrimination. During the performance of this Agreement, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, ancestry, physical or mental disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), medical condition, marital status, age (over 40), sex, sexual orientation, gender identity, or domestic partner status. Contractor and its Subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
 - b. No Harassment. During the performance of this Agreement, Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor or its Subcontractors interact in the performance of this Agreement. Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
 - c. FEHA. Contractor shall comply with all applicable provisions of the Fair Employment and Housing Act, Government Code, section 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, sections 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
 - d. Compliance with Americans with Disabilities Act. Contractor shall provide the Services specified in this Agreement in a manner that complies with the Americans with Disabilities Act, 42 United Courts Code, section 012101 *et seq.* and applicable regulations and guidelines in accordance therewith (the “ADA”), and any and all other applicable federal, Court and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of Services, benefits or activities provided under this Agreement.

- e. Notice to Labor Organizations. Contractor and its Subcontractors shall give written notice of their obligations under this clause to any labor organizations with which they have a collective bargaining or other agreement.
- f. Compliance. Contractor shall include the nondiscrimination and compliance provisions of this Section 24.A.i in any and all subcontracts issued to perform Services under the Agreement.
- ii. Conflict of Interest. Contractor has no interest that would constitute a conflict of interest under Public Contract Code, sections 10365.5, 10410 or 10411; Government Code, sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- iii. Drug-Free Workplace. Contractor will provide a drug-free workplace as required by Government Code, sections 8355 through 8357.
- iv. National Labor Relations Board. 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. Licenses and Permits. Contractor and any Subcontractors providing Services under this Agreement have, and will maintain in full force and effect throughout the term of this Agreement, all licenses, permits, and qualifications legally required to provide the Services.
- vi. Covenant Against Gratuities. No gratuities, in the form of gifts, entertainment, or otherwise, were or will be offered by Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the Court with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement.
- vii. Authority. Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and in good standing in the Court of California.
- viii. Work Eligibility. All personnel assigned to perform this Agreement are able to work legally in the United Courts and possess valid proof of work eligibility.
- ix. Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code, section 10286.1, and is eligible to contract with the COURT. (Expatriate corporations are certain foreign incorporated entities that are publicly traded in the United Courts. For additional information, see Public Contract Code, section 10286.1.)
- x. Discharge Violation. Contractor is not in violation of any order or resolution not subject to review promulgated by the Court Air Resources Board or an air pollution control

district; or subject to any cease and desist order not subject to review issued pursuant to section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

xi. Domestic Partners; Spouses; Gender Discrimination Contractor is in compliance with Public Contract Code, section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

xii. Child Support Compliance Act

a. Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable Court and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

B. During the term of this Agreement, Contractor shall not take an action, or omit to perform any act, that results in a representation and warranty becoming untrue. Contractor shall promptly notify the Court if any representation and warranty becomes untrue.

25. LOSS LEADER PROHIBITION

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. UNION ACTIVITIES

As required under Government Code, sections 16645-16649, Contractor shall:

- A. Not assist, promote, or deter union organizing by employees performing work under Court;
- B. Not use the Court’s funds received under this Agreement to assist, promote or deter union organizing;
- C. Not, for any business conducted under this Agreement, use any property of the Court to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the Court property is equally available to the general public for holding meetings; and
- D. If Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, maintain records sufficient to show that no reimbursement from the Court’s funds has been sought for these costs, and provide those records to the Attorney General upon request.

27. GENERAL

- A. Survival. Termination or expiration of this Agreement shall not affect, alter or impair the respective rights and obligations of the parties that accrue prior to the effective date of termination or expiration, except as otherwise expressly provided herein.
- B. No Endorsement. Contractor shall make no written or oral commitment, which represents or implies any endorsement by the Court of Contractor, its employees or subcontractors or the quality of the Contractor's, its employees' or subcontractor's services without the Court's prior written consent, the granting of which shall be in the Court's sole discretion. Nothing herein shall prevent Contractor's disclosure of the existence and nature of this Agreement.
- C. Assignment. The Services to be performed by Contractor are personal in nature and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor, including delegation to one or more Subcontractors, unless such assignment or delegation is first approved by the Court by written instrument executed and approved in the same manner as this Agreement. All of the terms, provisions and conditions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and legal representatives. Any assignment or delegation in violation hereof shall be null and void.
- D. Waiver. Either party's failure to enforce any of its rights pursuant to this Agreement shall not be construed as a waiver of such rights. Any waiver of any term of this Agreement must be in writing and executed by an authorized representative of the waiving party and shall not be construed as a waiver of any succeeding breach of the same, or breach of any other, term of this Agreement.
- E. Severability. The provisions of this Agreement are separate and severable. Should Court hold that any provision of this Agreement is invalid, void or unenforceable, then:
- i. The validity of other provisions of this Agreement shall not be affected or impaired thereby, and
 - ii. Such provision shall be enforced to the maximum extent possible so as to affect the reasonable intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- F. Compliance with Laws. Contractor shall keep itself fully informed of, and shall comply with, all applicable federal, Court, and local laws, rules, regulations, rules of Court and ordinances in any manner affecting the performance of this Agreement, as they may be amended from time to time.
- G. Time is of the Essence. Time is of the essence in Contractor's performance of this Agreement.
- H. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and interpreted in accordance with California law, without regard to any conflict of law provisions that would direct the application of the laws of any other jurisdiction. Contractor irrevocably consents to personal jurisdiction in the Courts of the Court of California, and any legal action filed by Contractor in connection with the Agreement must be filed in San Diego County, California, which shall be the sole venue for any such action.

- I. Agreement Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.
- J. Notices to the Parties. All notices, requests, demands, and other communications hereunder must be in writing and will be deemed to have been duly given when hand delivered or five (5) days after being deposited in the United Courts mail, if mailed by certified or registered mail, return receipt requested, postage prepaid, to the following contact information or at such other address as delivered by like notice:

To the Court:

To the Contractor:

[Contractor name]
[Attn:]
[Address]

- K. Amendments. This Agreement may not be modified or amended, except by written instrument executed and approved by all parties in the same manner as this Agreement. Requests for Amendments shall be submitted in writing and shall be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. Amendments to the Agreement shall be authorized via execution of a Standard Amendment Coversheet.
- L. Entire Agreement. This Agreement, consisting of the executed Standard Agreement Coversheet, the Agreement Funding and Account Code Information Form, and all exhibits and attachments thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties.

28. ANTITRUST CLAIMS

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

- B. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this Section, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the COURT any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)
- C. Upon demand in writing by the Contractor, the Court shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the COURT has not been injured thereby, or (b) the Court declines to file a Court action for the cause of action. (GC 4554)

29. PRIORITY CONSIDERATION

Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code, section 11200 in accordance with Public Contract Code, section 10353.

END OF ATTACHMENT 2