

ATTACHMENT 2 CONTRACT TERMS

EXHIBIT A - STANDARD PROVISIONS

1. INDEMNIFICATION

The Contractor shall indemnify, defend (with counsel satisfactory to the State), and save harmless the State and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all other contractors, Subcontractors, suppliers, and laborers, and any other person, firm, or corporation furnishing or supplying Work, Materials, Data, or services in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor or its agents or employees in the performance of this Agreement.

2. 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 State of California.

3. TERMINATION FOR CAUSE

A. Pursuant to this provision, the State 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 State 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 State authority relating to insolvency or protection from the rights of creditors.

B. In the event the State terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the State 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 State 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. If, after Notice of termination for default of this Agreement, it is determined for any reason that the Contractor was not in default under this provision, or that the default was excusable under this provision, the obligations of the State shall be to pay only for the services rendered at the rates set forth in the Agreement.
- E. 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.

4. NO ASSIGNMENT

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

5. TIME OF ESSENCE

Time is of the essence in this Agreement.

6. 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.

7. 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 and per diem, unless otherwise expressly provided.

END OF EXHIBIT

ATTACHMENT 2 CONTRACT TERMS

EXHIBIT B - SPECIAL PROVISIONS

1. DEFINITIONS

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

- A. “**Acceptance**” means the written acceptance issued to the Contractor by the State after the Contractor has completed a Deliverable or other Contract requirement, in compliance with the Contract Documents, including without limitation, *Attachment 2 Contract Terms, Exhibit D - Work to be Performed*, and *Attachment 2 Contract Terms, Exhibit E - Acceptance of the Work and Sign-off Form*.
- B. “**Administrative Director**” refers to that individual or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- C. “**Amendment**” means a written document issued by the State 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.
- D. “**Confidential Information**” means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State’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.
- E. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “Agreement.”
- F. “**Contract Amount**” means the total amount encumbered under this Agreement for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.
- G. The “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures,

contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.

- H. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- I. “**Day**” means calendar day, unless otherwise specified.
- J. “**Deliverable(s)**” or “**Submittal(s)**” means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- K. “**Force Majeure**” means a delay which impacts the timely performance of Work which neither the Contractor nor the State 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.
- L. “**Key Personnel**” refers to the Contractor’s personnel identified in the resume set forth in *Exhibit TBD - Contractor’s Key Personnel*, whom the State has identified and approved to perform the Work of the Contract.
- M. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- N. “**Notice**” means a written document initiated by the authorized representative of either party to this Agreement and given by:
- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
 - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- O. The “**State**” refers to the Judicial Council of California/Administrative Office of the Courts (“AOC”). The State is one of the parties to this Agreement.

- P. **“State Standard Agreement”** means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual “Contract Counterpart.”
- Q. **“Stop Work Order”** means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this *Attachment 2 Contract Terms, Exhibit B - Special Provisions*.
- R. **“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 State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
- S. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- T. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the State or the Contractor, which is not a party to this Agreement.
- U. **“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 State and incorporated into the Agreement via Amendment(s).
- V. **“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 State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

2. MANNER OF PERFORMANCE OF WORK

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction and in compliance with the Non-discrimination/No Harassment Clause, as set forth in this *Attachment 2 Contract Terms, Exhibit B - Special Provisions*.

3. TERMINATION OTHER THAN FOR CAUSE

- A. In addition to termination for cause under *Attachment 2 Contract Terms, Exhibit A* –

Standard Provisions, paragraph 3, the State may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.

- B. If the State terminates all or a portion of this Agreement other than for cause, the State shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.

4. STATE'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
 - i. The State will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
 - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
- C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

5. AGREEMENT ADMINISTRATION/COMMUNICATION

- A. Under this Agreement, the Project Manager, shall monitor and evaluate the Contractor's performance. All requests and communications about the Work to be Performed under this Agreement shall be made through the Project Manager. Any Notice from the Contractor to the State shall be in writing and shall be delivered the Project Manager as follows:

Judicial Council of California
Administrative Office of the Courts
TBD, Project Manager
455 Golden Gate Avenue
San Francisco, CA 94102-3688

B. Notice to the Contractor shall be directed in writing to: TBD.

6. STANDARD OF PROFESSIONALISM

The Contractor shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement.

7. STOP WORK

- A. The State may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- i. Cancel the Stop Work Order; or
 - ii. Terminate the Work covered by the Stop Work Order as provided for in either of the termination provisions of this Agreement.
- B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume Work. The State shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
- i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and
 - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- C. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State's Obligation Subject to Availability of Funds provision, as set forth under this *Attachment 2 Contract Terms, Exhibit B - Special Provisions*, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

8. ACCEPTANCE OF THE WORK

- A. The Project Manager shall be responsible for the sign-off Acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the Project Manager will apply the Acceptance Criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
- B. Acceptance Criteria for Work (“**Criteria**”) provided by the Contractor pursuant to this Agreement:
- i. Timeliness: The Work was delivered on time;
 - ii. Completeness: The Work contained the Data, Materials, and features required in the Contract; and
 - iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the State, in accordance with direction from the Project Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The Project Manager shall use the Acceptance and Signoff Form, provided as *Attachment 2 Contract Terms, Exhibit E - Acceptance and Sign-off Form* to this Agreement, to notify the Contractor of the Work’s acceptability.
- D. If the State rejects the Work provided, the Project Manager shall submit to the Contractor a written rejection using *Attachment 2 Contract Terms, Exhibit E - Acceptance and Sign-off Form*, describing in detail the failure of the Work as measured against the Criteria. If the State rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- E. If the Project Manager requests further change, the Contractor shall meet with the Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.
- F. If agreement cannot be reached between the Project Manager and the Contractor on the Work’s acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the

reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the State may terminate this Agreement pursuant to the terms of Standard Provisions paragraph 3, as set forth in *Attachment 2 Contract Terms, Exhibit A - Standard Provisions*.

9. CONTRACTOR'S PERSONNEL AND REPLACEMENT OF PERSONNEL

- A. The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the State under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. The State agrees to provide Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- B. If any of the Contractor's personnel become unavailable during the term of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- C. The Contractor shall endeavor to retain the same individuals on the Project during the performance of the Work of this Agreement. However, the Contractor may, with approval of the Project Manager, introduce personnel to the Project with specific skill sets or release personnel from the Project whose skill set is not needed at the time.
- D. If any of the Contractor's personnel identified within the Agreement become unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the Project Manager.
- E. If any of the Contractor's personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the State, the State may terminate this Agreement for cause pursuant to *Attachment 2 Contract Terms, Exhibit A - Standard Provisions, paragraph 3*.

10. ASSIGNMENTS OR SUBCONTRACTING

- A. This Agreement is based upon the unique expertise of the Contractor. Therefore, in addition to the prohibition against assignment under *Attachment 2 Contract Terms, Exhibit A - Standard Provisions, paragraph 4*, it is the policy of the State to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance under this Agreement. No performance of this Agreement or any portion thereof may be assigned or subcontracted by the Contractor without the express written consent of the State, and any attempt by the Contractor to assign or subcontract any performance of this Agreement without the express written consent of the State shall be void and shall constitute a breach of this Agreement. If the Contractor is authorized by the State to

subcontract or assign, all the terms of this Agreement shall be included in such subcontract or assignment.

- B. Any substitution or prolonged absence of the personnel, who were specifically identified in the original proposal, as accepted, must be approved. Failure to obtain acceptance shall constitute a major breach of this Agreement.

11. EVALUATION OF CONTRACTOR

The State shall evaluate the Contractor's performance under the Agreement.

12. CONFIDENTIALITY

- A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State may disclose Confidential Information to the Contractor.
- B. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the State's Confidential Information on a "need to know" basis to the Contractor's employees and Subcontractors and, as directed by the Project Manager, representatives of the State that are working on the Project. All such employees and Subcontractors of the Contractor shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor's clients and business.
- C. The Contractor shall acquire no right or title to the Confidential Information. The Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

13. COPYRIGHTS AND RIGHTS IN DATA

- A. The State reserves the right to use and copyright, in whole or in part, any Data produced with funding from this Agreement.
- B. The Contractor agrees not to copyright any Data produced with funding from this Agreement unless the State gives the Contractor express permission to do so. If such permission is obtained and the Data is copyrighted, the State will be given an exemption that reserves for it the right to use, duplicate, and disseminate the Data without fee.

14. AGREEMENT TERM AND OPTIONS TO RENEW

- A. The Initial Term of the Agreement shall commence on **December 2, 2008** and expire on **January 31, 2009**. Thereafter, the State, in its sole discretion, has the option to extend the term of the Agreement for an additional period on the same terms and conditions applicable during the Initial Term, as defined below:

First Option Term: **February 1, 2009 – December 31, 2010**

- B. The State may exercise the First Option Term by amendment prior to expiration of the Initial Term. In the event the State elects to exercise the option to extend the Agreement as set forth in this provision, the expiration date of the Agreement shall become the ending date of the option term exercised.

15. SERVICES WARRANTY

The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services or provide any technical assistance in planning, development, training, consulting or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will conform to the requirements of this Agreement. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

16. CHANGES AND AMENDMENTS

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Project Manager. Requests for changes or Amendments must be submitted in writing and must 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. After the Project Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

17. ACCOUNTING SYSTEM REQUIREMENT

The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP.

18. RETENTION OF RECORDS

The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with State

and Federal law, a minimum retention period being no less than four (4) years. The retention period starts from the date of the submission of the final payment request. The Contractor is also obligated to protect Data adequately against fire or other damage.

19. AUDIT

The Contractor shall permit the authorized representative of the State or its designee or both at any reasonable time to inspect or audit all Data relating to performance to the State under this Agreement. The Contractor further agrees to maintain such Data for a period of four (4) years after the expiration date of this Agreement, whichever occurs later.

20. OWNERSHIP OF INTELLECTUAL PROPERTY, ETC.

A. Unless the Contractor and the State reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the State's requirement (i) all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the State shall be treated as if it were "work for hire" for the State, and (ii) the Contractor will immediately disclose to the State all discoveries, inventions, enhancements, improvements, and similar creations (collectively, "Creations") made, in whole or in part, by the Contractor in the course of or related to providing services to the State.

B. All ownership and control of the above Data, Materials, and Creations, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the State, without any additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the State. The Contractor agrees to execute any documents required by the State to register its rights and to implement the provisions herein.

21. SOLICITATION

No employee of the applicant agency, the Contractor, or any agency acting on behalf of the agency, may solicit or accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

22. LIMITATION ON PUBLICATION

The Contractor shall not, without prior written consent of the State, directly or indirectly, make use of advertising or publicity containing any reference to the State or any of its employees.

23. LIMITATION ON STATE'S LIABILITY

The State shall not be responsible for loss of or damage to any non-State equipment arising from

causes beyond the State's control.

24. INSURANCE REQUIREMENTS

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the State shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an “occurrence” form; excepting that insurance for professional liability, when required, may be acceptable on a “claims made” form. If coverage is approved and purchased on a “claims made” basis, the Contractor warrants continuation of 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.
- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
- i. In the event Contractor has employees: Workers' Compensation at statutory requirements of the State of residency.
 - ii. In the event Contractor has employees: Employers' Liability with limits not less than \$500,000.00 for each accident.
 - iii. Commercial General Liability Insurance with limits not less than \$500,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage.
 - iv. Business Automobile Liability Insurance with limits not less than \$500,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the State. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor’s liability to the State and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
- i. The State, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
 - ii. To the extent of the Contractor’s negligence, the Contractor’s insurance coverage shall be primary insurance as respects the State, its officers, officials,

employees and agents. Any insurance and/or self-insurance maintained by the State, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way.

- iii. The 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. The Contractor shall provide the State certificates of insurance satisfactory to the State evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the State's request.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the State, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the State, the Contractor shall, upon Notice to that effect from the State, promptly obtain a new policy, and shall submit the same to the State, with the appropriate certificates and endorsements, for approval.
- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Judicial Council, Administrative Office of the Courts, Senior Manager, Business Services, 455 Golden Gate Avenue, 7th Floor, San Francisco, CA 94102-3688.

25. CONFLICT OF INTEREST

- A. The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or (v) adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- B. The Contractor certifies and shall require any Subcontractor to certify to the following:

Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from state service.

26. COVENANT AGAINST GRATUITIES

The Contractor warrants by signing this Agreement that no gratuities, in the form of entertainment,

gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

27. NATIONAL LABOR RELATIONS BOARD

By executing this Agreement, the Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal Court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.

28. DRUG-FREE WORKPLACE

The Contractor certifies that it will provide a drug-free workplace as required by California Government Code, § 8355 through § 8357.

29. EQUAL EMPLOYMENT OPPORTUNITY

All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." (Reference: OMB Circular A-110, Appendix A—reference applies to Clauses 31 through 37)

30. NONDISCRIMINATION/NO HARASSMENT CLAUSE

- A. During the performance of this Agreement, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or proposer for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and proposers for employment are free of such discrimination.
- B. During the performance of this Agreement, the Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its Subcontractors interact in the performance of this Agreement. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.

- C. The Contractor shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, §§ 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, §§ 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, § 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. The Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. The Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

31. AMERICANS WITH DISABILITIES ACT

By signing this Agreement, Contractor assures the State that it complies with applicable provisions of the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. §§ 012101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

32. PERMITS AND LICENSES

The Contractor shall observe and comply with all federal, state, city, and county laws, rules, and regulations affecting services under this Agreement. The Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the Work contemplated in this Agreement.

33. CALIFORNIA LAW

This Agreement shall be subject to and construed in accordance with the laws of the State of California.

34. SEVERABILITY

If any term or provision of this Agreement is found to be illegal or unenforceable, this Agreement shall remain in full force and effect and that term or provision shall be deemed stricken.

35. WAIVER

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

36. SIGNATURE AUTHORITY

The parties signing this Agreement certify that they have proper authorization to do so.

37. SURVIVAL

The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

38. ENTIRE AGREEMENT

This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a duly authorized representative of the State.

END OF EXHIBIT

**ATTACHMENT 2
CONTRACT TERMS**

EXHIBIT C - PAYMENT PROVISIONS

1. CONTRACT AMOUNT

- A. The total amount the State may pay to the Contractor under this Agreement for performing the Work set forth in *Attachment 2 Contract Terms, Exhibit D - Work to be Performed*, and allowable expenses, shall be the actual cost not to exceed the Contract Amount of **\$TBD**, as set forth in this *Attachment 2*.

- B. The Contractor has estimated the costs and expenses necessary to complete the Work. The State’s acceptance of the Contractor’s proposal and price does not (i) imply that the State approves of or adopts the Contractor’s plan, means, methods, techniques, or procedures required to perform the Work, nor (ii) relieve the Contractor from the sole responsibility for the accuracy of its estimate and timely completion of the Work of this Agreement within the total amount for compensation set forth herein.

2. COMPENSATION FOR CONTRACT WORK

- A. For performing the Work of this Agreement, as set forth in *Attachment 2 Contract Terms, Exhibit D - Work to be Performed*, the State shall compensate the Contractor at the rate(s) set forth in Table 1, below, not to exceed the amount per Deliverable nor the due date per Deliverable, as set forth in Table, 2, below.

Table 1: Contract Hourly Rates for Each of Contractor’s Key Personnel and Other Personnel / Job Functions

1. Key Personnel	Hourly Rate
1.A TBD	
1.B TBD	
1.C TBD	
1.D TBD	
2. Other Personnel / Job Functions	Hourly Rate
2.A TBD	
2.B TBD	
2.C TBD	

Table 2: Due Date and Not to Exceed Amount per Each Deliverable

Deliverable	Due Date	Not to exceed Amount
Finalize Public Education Plan	TBD	TBD
Implement Public Education Plan	TBD	TBD
Activities to Follow-up to Summit Meeting and Final Report	TBD	TBD
Public Education and Outreach for Commission Meetings	TBD	TBD

- B. Except for the allowable expenses, as further addressed in paragraph 3 of this *Attachment 2 Contract Terms, Exhibit C – Payment Provisions*, the rate(s) set forth in this provision shall be inclusive of all costs, benefits, expenses, fees, overhead, markups, and profits payable to the Contractor for services rendered to the State.
- C. The Contractor shall not charge nor shall the State pay any overtime rate.
- D. The Contractor shall not request nor shall the State consider any reimbursement for non-production work including but not limited to time spent traveling to and from the job site or any living expenses.
- E. The total actual cost which the State may reimburse the Contractor, pursuant to this paragraph, shall not exceed **\$TBD**.

3. COMPENSATION FOR ALLOWABLE EXPENSES

- A. The State shall reimburse the Contractor for the following transportation, meals, and lodging expenses.
 - i. The State shall reimburse the Contractor for actual expenses incurred for reasonable and necessary transportation, meals, lodging, and other travel-related expenses required performing the Work of this Agreement.
 - ii. The Contractor shall submit a written travel plan to the Project Manager *prior to incurring any travel expenses*, including the reason for the trip, number of persons traveling, types of expenses the Contractor expects to incur and the estimated costs. Prior approval of the travel plan is required.
 - iii. For necessary air transportation, the State will reimburse the Contractor for the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) days prior to travel, unless the Project Manager agrees otherwise in writing.

- iv. For overnight travel, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the State will reimburse the Contractor for meal and lodging expenses in an amount not to exceed **\$150.00** per day, plus sales tax. Meals shall be reimbursed at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~**\$6.00**; lunch~**\$10.00**; dinner~**\$18.00**; and/or incidentals~**\$6.00**. Hotel room rental shall be reimbursed for the actual cost not to exceed **\$110.00** per Day plus tax and/or energy surcharge. Within the counties of Alameda, San Francisco, San Mateo, and Santa Clara, the maximum rate is **\$140.00** (per day per person), plus tax and energy surcharge.
- v. For necessary private vehicle ground transportation usage, the State will reimburse the Contractor up to **\$0.585** cents per mile.
- vi. Upon the Project Manager's request, the Contractor shall provide copies of receipts for reimbursement of transportation, lodging, and meal expenses.
- vii. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed **\$TBD**.

4. DIRECT EXPENSES

All fees and charges noted in this Agreement are inclusive of any and all anticipated travel, lodging, transportation, clerical support, Materials, fees, overhead, profits, and other costs and/or expenses incidental to the performance of the specified requirements under this Agreement.

5. OTHER EXPENSES

The State shall not consider reimbursement for costs not defined as allowable in this Agreement, including but not limited to any administrative, operating, travel, meals, and lodging expenses incurred during the performance of this Agreement.

6. TAXES

The State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement.

7. METHOD OF PAYMENT

- A. The Contractor shall submit an invoice for Work provided, as set forth in *Attachment 2 - Contract Terms, Exhibit D - Work to be Performed*. In no event shall the Contractor bill the State more often than once during any month. After receipt of invoice, the State will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

- B. The State will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate the following:
- i. The Contract number;
 - ii. An unique invoice number;
 - iii. The Contractor's name and address;
 - iv. The taxpayer identification number;
 - v. A description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate;
 - vi. The dates and hours worked;
 - vii. The appropriate contractual billing rate(s), including rate(s) for allowable expenses, as set forth herein; and
 - viii. A preferred remittance address, if different from the mailing address.

- C. The Contractor shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California
Administrative Office of the Courts
Finance Division, Accounts Payable
455 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102-3688

- D. Please note that invoices or vouchers not on printed bill heads shall be signed by the *Contractor or the person furnishing the supplies or services.*

8. DISALLOWANCE

If the Contractor claims or receives payment from the State for a service or reimbursement that is later disallowed by the State, the Contractor shall promptly refund the disallowed amount to the State upon the State's request. At its option, the State may offset the amount disallowed from any payment due or that may become due to the Contractor under this Agreement or any other agreement.

END OF EXHIBIT

ATTACHMENT 2 CONTRACT TERMS

EXHIBIT D – WORK TO BE PERFORMED

1.0 TERM

The services of the Initial Term are expected to be performed by the service provider between **December 2, 2008** and **January 31, 2009**. The services of a First Option Term are expected to be performed between **February 1, 2009** and **December 31, 2009**. The First Option Term shall be exercised at the discretion of the AOC.

2.0 SCOPE OF SERVICES

2.1 INITIAL TERM. The Initial Term will include final report editing, public and media outreach for Summit meeting, assistance staffing the Summit meeting and follow-up public and media outreach. The contractor will be asked to do the following:

2.1.1 Finalize the Commission's public education plan for the final report and local summit meeting

2.1.2 Implement public education plan in advance of summit meeting

2.1.2.1 Write supporting materials for the final report, including talking points, press releases, opinion articles and slide presentations

2.1.2.2 Train commissioners, staff and other stakeholders in outreach

2.1.2.3 Outreach to stakeholder groups and media to provide outlets for commissioner presentations and written materials

2.1.3 Assist with summit meeting and analysis of planned implementation activities resulting from the local summit

2.1.4 Assist with editing, layout and production of the final draft of the Commission report. The report, which includes a summary of Commission findings, recommendations, and a plan to implement the recommendations, is expected to be 100-200 pages in length.

2.1.5 Implement public education plan to follow up summit meeting and release of final Commission report

2.1.5.1 Write supporting materials for the dissemination of the final report, including talking points, press releases, opinion articles and slide presentations

2.1.5.2 Work with Commission staff to monitor activities of local groups following the summit meeting and prepare materials on key progress in implementing recommendations

2.1.5.3 Outreach to stakeholder groups and media to provide outlets for commissioner presentations and written materials

2.2. INITIAL TERM DELIVERABLES AND DUE DATES: The contractor will be asked to do the following, by the dates listed to the right of each deliverable: (All dates subject to negotiation prior to execution of a contract.)

2.2.1 **Deliverable 1:** Public Education Plan

Finalize Public Education Plan	Due Date
Meet with Commission staff to review and revise the Commission's current public education plan	
Deliverable due	Contractor submits revision of Commission's public education plan to cover period Dec. 2008 to June 2009. Upon completion and acceptance of Deliverable 1, Contractor shall submit an invoice for Deliverable 1.
	TBD

2.2.2 **Deliverable 2:** Public Education in Advance of Commission Summit Meeting

Implement Public Education Plan		Due Date
	<p>Write supporting materials for the final report, including talking points, press releases, opinion articles and slide presentations</p> <p>Train Commissioners, staff and other stakeholders in outreach</p> <p>Outreach to stakeholder groups and media to provide outlets for Commissioner presentations and written materials in advance of Dec. 10 Summit meeting.</p> <p>Assist with Dec. 10 Summit meeting and analysis of planned implementation activities resulting from the local Summit.</p>	
Deliverable due	<p>Contractor submits report detailing all activities outlined above, including number of public education materials placed and activities conducted.</p> <p>Upon completion and acceptance of Deliverable 2, Contractor shall submit an invoice for Deliverable 2.</p>	TBD

2.2.3 Deliverable 3: Public Education to Follow-up Commission Summit Meeting and Release of Final Report

Activities to Follow-up to Summit Meeting and Final Report	Due Date
Review and assist in editing final report and recommendations	
Write supporting materials for the final report, including talking points, press releases, opinion articles and slide presentations	
Outreach to stakeholder groups and media to provide outlets for Commissioner presentations and written materials	
Work with Commission staff to monitor activities of local groups following the Summit meeting and prepare materials on key progress in implementing recommendations	
Deliverable due Contractor submits report detailing all activities outlined above, including number of public education materials placed and activities conducted. Upon completion and acceptance of Deliverable 3, Contractor shall submit an invoice for Deliverable 3.	TBD

2.3 FIRST OPTION TERM. The First Option Term will include public and media outreach for Commission activities, in particular the four Commission meetings planned for March, June, October and December 2009. The contractor will be asked to do the following:

2.3.1 Assist in planning and staffing Commission meetings in March, June, October and December 2009 to follow up the work of the local stakeholders and implementation of the Commission recommendations.

2.4 FIRST OPTION TERM DELIVERABLES AND DUE DATES: The contractor will be asked to do the following, by the dates listed to the right of each deliverable: (All dates subject to negotiation prior to execution of a contract.)

2.4.1 **Deliverable 4:** Contingent on Need, Assist in Planning and Staffing 2009 Commission Meetings

Public Education and Outreach for Commission Meetings	Due Date
<p>Work with Commission staff to plan and implement Commission meetings in March, June, October and December 2009, designed to review, encourage and disseminate the work of local commissions</p> <p>Write supporting materials in advance of meetings, including talking points, press releases, opinion articles and slide presentations</p> <p>Outreach to stakeholder groups and media to provide outlets for Commissioner presentations and written materials</p>	
Deliverable due	<p>Contractor submits report detailing all activities outlined above, including number of public education materials placed and activities conducted. Upon completion and acceptance of Deliverable 4, Contractor shall submit an invoice for Deliverable 4.</p>

3.0 CONFIDENTIALITY

The contractor must agree to observe rigorous measures for the protection of subject confidentiality and anonymity. All tapes, transcripts, participant lists and informed consent forms are confidential and must be returned with the final deliverables. The contractor is to retain no information about any participant’s identity, location, or interview status.

4.0 PROGRESS REPORTS

The Contractor shall submit progress reports to the Project Manager, as may be requested, describing Work performed, Work status, Work progress difficulties encountered, remedial actions, and statement of activity anticipated.

5.0 CONTRACTOR'S RESPONSIBILITIES

The Contractor's Project Manager will have the following responsibilities under this Contract:

- i. Responsible for the end results and for day-to-day Project management;
- ii. Serves as the Contractor's primary contact;
- iii. Works closely with AOC Project Manager;
- iv. Manages, prepares, and refines the Contract's end results;
- v. Proactively assists with resolution of issues with any aspect of the Work;
- vi. Proactively anticipates Project deviations and is responsible for taking immediate corrective action; and
- vii. Works with Project Manager to manage and coordinate work and knowledge transfer.

6.0 AOC'S RESPONSIBILITIES

The State's Project Manager will be responsible for managing, scheduling, and coordinating all Project activities, including Project plans, timelines, and resources, and escalating issues for resolution to AOC management.

END OF EXHIBIT

**ATTACHMENT 2
CONTRACT TERMS**

**EXHIBIT E - ACCEPTANCE OF WORK AND
SIGN-OFF FORM FOR DELIVERABLES**

▶ Description of Work for Deliverable No. _____ provided by Contractor:

▶ Date submitted: _____

▶ Work is:

1) Submitted on time: yes no. If no, please note length of delay and reasons.

2) Complete: yes no. If no, please identify incomplete aspects of the Work.

3) Technically accurate: yes no. If no, please note corrections required.

▶ Please indicate the level of satisfaction: Poor Fair Good Very Good Excellent

▶ Comments, if any:

▶ Work: is accepted. is unacceptable as noted above.

Signature: _____

Print Name: _____

Title: _____

Date: _____

END OF FORM