

STANDARD AGREEMENT COVERSHEET

For Statewide Office Supplies, Paper and Toner



AGREEMENT NUMBER [Agreement Number]
FEDERAL EMPLOYER ID NUMBER [Fed. Employer ID Number]

1. In this agreement (the “Agreement”), the term “Contractor” refers to **[Contractor name]**, and the term “AOC” refers to the Judicial Council of California, Administrative Office of the Courts.

2. This Agreement becomes effective as of **[Date]** (the “Effective Date”) and expires on **[Date]**.


3. The title of this Agreement is: **Master Agreement for Statewide Office Supplies, Paper and Toner.**
 [The title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.]

4. The parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement (made up of this coversheet, the following exhibits, and any attachments) contains the parties’ entire understanding related to the subject matter of this Agreement. If there are any inconsistent terms in the Exhibits, the following is the descending order of precedence: Exhibit A, B, C, and D.
 Exhibit A – Master Agreement Terms and Conditions **[Note: this is Attachment 4 of the IFB]**
 Exhibit B – Goods to be Provided **[Note: this is Attachment 2 of the IFB]**
 Exhibit C – Pricing Sheets **[Note: this is Attachment 3 of the of the IFB]**
 Exhibit D – Delivery Locations **[Note: this is Attachment 9 of the IFB]**

AOC’S SIGNATURE	CONTRACTOR’S SIGNATURE
Judicial Council of California, Administrative Office of the Courts	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)</i> [Contractor name]
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title]	PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title]
ADDRESS Attn: Business Services Unit 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS [Contractor Address; include addressee]

Administrative Office of the Courts Use Only

Agreement Number	[Agreement Number]
Contractor Name	[Contractor Name]

Fund Title	Program/Category	Item	Chapter	Statute	Fiscal Year	Object of Expenditure	Amount
Amount Encumbered by this Document:			Prior Amount Encumbered for this Contract:			Total Amount Encumbered to Date:	
\$N/A			\$N/A			\$N/A	
I hereby certify upon my own personal knowledge that budgeted funds are available for the period of the expenditure stated above.							
SIGNATURE OF ACCOUNTING OFFICER						DATE	
							

ATTACHMENT 4
EXHIBIT A: MASTER AGREEMENT TERMS AND CONDITIONS

This Master Agreement for Office Supplies, Toner and Paper (“Agreement”) is entered into effective as of _____ (“Effective Date”) between _____ (“Contractor”) and the Administrative Office of the Courts, the staff agency to the Judicial Council of California (“AOC”), for the benefit of the 58 Superior Courts of California, the California Appellate Courts, (including the Supreme Court of California), the Habeas Corpus Resource Center, the Judicial Council of California, and the AOC, collectively, “Judicial Branch Entities” (“JBEs”), and each, a “Judicial Branch Entity” (“JBE”).

PURPOSE

The purpose of this Agreement is to set forth the terms and conditions that apply to Contractor’s provision of office supplies, toner and paper pursuant to IFB No. FIN010111CK (“IFB”) and as further described in Exhibit B [*Note: this is Attachment 2 of the IFB*], Goods to be Provided, which is hereby incorporated into and made a part of this Agreement by this reference.

Contractor and the AOC agree as follows:

1. **TERM:** The initial term of this Agreement is two (2) years, commencing on the Effective Date with three (3) one-year options to extend the term (for a total of up to three years), which options may be exercised by the AOC in its sole discretion any time prior to the expiration of the initial term or the then current term. Pricing for the Goods (including but not limited to the Core List and Non-Core List Items) shall be held firm and fixed for the initial two (2) year term. If the AOC elects to extend the term of this Agreement, the AOC may negotiate price adjustments applicable during the extended term(s) and any agreed-upon price adjustments will be set forth in a written amendment to this Agreement. Any agreed-upon price adjustment (whether an increase or decrease in price) may not exceed during any one-year extended term the previous 12 months’ change in the Los Angeles Area Consumer Price Index as published by the U.S. Bureau of Labor Statistics.
2. **OBLIGATION:** This Agreement does not obligate any JBE to place any orders under this Agreement and it does not guarantee Contractor a specific volume of orders under this Agreement.
3. **RELATIONSHIP OF PARTIES:** The AOC has the authority to enter into agreements for goods for itself and for the benefit of the other JBEs. Individual JBEs may elect to utilize this Agreement by placing orders, as set forth herein, in which case the terms and conditions of this Agreement govern such orders.
4. **SCOPE / PRICE:**

(a) Contractor shall provide goods, materials, and supplies (collectively, “Goods”) pursuant to the terms and conditions of this Agreement. The descriptions and prices for the Goods are set forth in Exhibit B (Goods to be Provided) and Exhibit C (Pricing Sheets) [*Note: this is Attachment 3 of the IFB*] to this Agreement.

(b) Contractor’s prices are set forth in Exhibit C (Pricing Sheets) which is hereby incorporated into and made a part of this Agreement, and include all charges, including but not limited to, cost of labor, materials, licenses, overhead, profits, travel and other costs or expenses related or incidental to the Goods provided by Contractor under this Agreement.

(c) Contractor shall pass through all manufacturer supplied end-user warranties to the JBE on all Goods.

5. ORDERING:

(a) Any JBE may place individual orders for office supplies, paper and toner pursuant to this Agreement. Orders will be placed by issuing a Purchase Order. A “Purchase Order” is defined as an ordering document used by a JBE to place an order for Goods under this Agreement. The form and format of an ordering document may vary. All Purchase Orders will reference this Agreement. The terms and conditions of this Agreement are applicable to all Purchase Orders, regardless of the ordering document or the ordering process selected.

(b) A Purchase Order placed by a JBE constitutes and will be construed as a separate independent contract between Contractor and such JBE, and such contract will be subject to and incorporate the terms and conditions of this Agreement, subject to the following: any additional or supplemental terms contained in the Purchase Order or in any invoice or confirmation of the Purchase Order that conflict with or materially alter any term or condition of this Agreement as it relates to a Purchase Order will not be deemed part of such contract.

(c) The JBE placing the Purchase Order will be responsible for the receipt and acceptance of (as well as payment for) all Goods under such Purchase Order..

(d) Each JBE placing a Purchase Order will include the name of a JBE contact person in the Purchase Order (“Purchase Order Project Manager”). Contractor shall contact the Purchase Order Project Manager regarding questions on any Purchase Order or payment status of any Purchase Order.

(e) Prior to a JBE issuing a Purchase Order to Contractor, the JBE will confirm the delivery dates for the Goods with Contractor; these dates will be included on the Purchase Order that is issued to Contractor. After a Purchase Order has been issued to

Contractor by a JBE, Contractor shall provide the JBE with acknowledgement of the Purchase Order within one (1) business day of receipt. The acknowledgement shall be submitted by facsimile or email, regardless of what method is used to place the order, and shall include: the goods ordered in the Purchase Order and approval of the Purchase Order. The Purchase Order is not binding until Contractor provides acknowledgement of the order and the quote for goods, to the JBE placing the order.

(f) Contractor shall deliver Goods ordered by JBEs to the JBEs' locations listed in Exhibit D (Delivery Locations), which is hereby incorporated into this Agreement. ***[Note: this is Attachment 9 of the IFB]*** Shipping and delivery costs, if applicable, shall be included in Contractor's prices in Exhibit C (Pricing Sheets). Contractor shall not invoice the JBEs separately for shipping or delivery costs. All deliveries shall be made F.O.B. destination, with freight prepaid by Contractor. Contractor shall bear the risk of loss or damage to the Goods until Contractor delivers the Goods to the JBE's place of business and, if specified by the JBE, the inside delivery location indicated on the Purchase Order.

6. RECYCLABLE GOODS

If this Agreement provides for the purchase and sale of Goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), with respect to these Goods, Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. In addition, the JBE shall purchase and Contractor shall sell under this Agreement only recycled products if fitness and quality are equal to non-recycled products and recycled products are available to the JBE at the same or lesser total cost as non-recycled products.

7. LOSS LEADER PROHIBITION: Contractor shall not sell or use any article or product as a "loss leader" as defined in Business and Professions Code section 17030.

8. FORCE MAJEURE:

No party to this Agreement shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: (i) catastrophic acts of nature; (ii) any outbreak or escalation of hostilities, war, riots or civil disorders; or (iii) any other event beyond the reasonable control of such party. In any such event, the non-performing party shall be excused from any further performance or observance of the obligation so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

9. REPRESENTATIONS AND WARRANTIES:

Contractor certifies that the following representations and warranties are true. Contractor shall cause the foregoing representations and warranties to remain true during the term of this Agreement. Contractor shall promptly notify the JBE if any representation and warranty becomes untrue.

- (A) *Authority.* Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and in good standing in the State of California.
- (B) *Not an Expatriate Corporation.* Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the JBE.
- (C) *No Gratuities.* Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. (Judicial Branch Personnel as used in this Agreement means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.)
- (D) *No Conflict of Interest.* Contractor has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- (E) *No Interference with Other Contracts.* To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- (F) *No Litigation.* No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse affect on Contractor's business, the validity or enforceability of this Agreement, or Contractor's ability to perform this Agreement.

- (G) *Compliance with Laws Generally.* Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.
- (H) *Work Eligibility.* All personnel assigned to perform this Agreement are able to work legally in the United States and possess valid proof of work eligibility.
- (I) *Drug Free Workplace.* Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.
- (J) *No Harassment.* Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- (K) *Non-discrimination.* Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.
- (L) *Special Provisions regarding Domestic Partners, Spouses, and Gender Discrimination.* If this Agreement provides for total Compensation ("Compensation" under this Agreement means all remuneration owed to Contractor for the provision of the Goods) of more than \$100,000, Contractor is in compliance with Public Contract Code section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.
- (M) *Special Provisions regarding Compliance with National Labor Relations Board Orders.* If this Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate

\$7,500 per year from the Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

(N) Special Provisions regarding Compliance with the Sweatfree Code of Conduct.

- (1) No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108. This declaration is made under penalty of perjury.
- (2) Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the JBE.

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

- (1) Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- (2) Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

(P) Special Provisions regarding Discharge Violations. If Contractor is a private entity, Contractor is not in violation of any order or resolution not subject to

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

- (Q) *Electronic Waste Recycling Act.* If this Agreement provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code sections 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.
- (R) *Use of Postconsumer Material.* If this Agreement provides for the purchase and sale of Goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of the Contractor's postconsumer material in these Goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or vendor website:
- (1) Contractor will deliver a declaration to the JBE specifying the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code section 12200 in Goods offered or sold to the JBE, regardless of whether the Goods meet the requirements of Public Contract Code section 12209.1 (and even if the product contains no recycled materials);
 - (2) Under penalty of perjury, the declaration is true and correct and will remain so until Contractor delivers any amendment of a the current declaration to the JBE, in which case the current declaration as amended will be true and correct; and
 - (3) If Contractor sells under this Agreement any printer or duplication cartridges that comply with Public Contract Code section 12209, Contractor has so specified in the declaration required under this section.
- (S) *Union Activities Certification Requirement.* As required under Government Code sections 16645-16649, if this Agreement provides for total Compensation in excess of \$50,000 to Contractor, Contractor shall include with any request for cost reimbursement from the JBE's funds a certification that the Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing.

10. ACCEPTANCE, NON-EXCLUSIVITY:

(a) Goods to be Provided: Contractor shall supply all Goods in compliance with the requirements of this Agreement. Notwithstanding any prior inspection or payments, all Goods shall be subject to final acceptance or rejection by the JBE for compliance with the applicable specifications at any time within thirty (30) business days following delivery of the Goods to the JBE. Payment shall not constitute an acceptance of noncompliant goods, or impair the JBE's right to any of its remedies. A JBE may reject Goods (and terminate all or a portion of the Purchase Order that relates to the rejected Goods at no expense to the JBE) if the Goods: (i) fail to meet applicable requirements or acceptance criteria, (ii) are not as warranted, or (iii) are damaged or delivered late. Such rejected Goods may be returned by JBEs to Contractor at Contractor's expense and risk. Contractor shall arrange for the return of all rejected Goods at no cost to JBEs.

(b) Non-Exclusivity: This is a non-exclusive agreement. The JBEs reserve the right to procure, or have others procure the Goods of this Agreement. The JBEs reserve the right to bid the Goods to others or procure the Goods by other means.

11. INVOICES, PAYMENT AND SETOFF: A JBE placing a Purchase Order under this Agreement shall have no obligation to pay for any Goods until acceptance of the Goods and receipt of one (1) original and two (2) copies of a correct invoice. The JBEs will not make any advance payments for any goods, and will not pay any late fees. The invoice must be sent to the address shown on the individual Purchase Orders. Each invoice must be printed on Contractor's standard printed bill form, and must include at a minimum (a) the Purchase Order number, (b) Contractor's name and address, (c) the nature of the invoiced charge, (d) the description of Goods provided, (e) the per unit amount charged, if applicable, (f) the price, with taxes itemized separately, and (g) each item on the invoice designated as taxable or nontaxable. JBEs are exempt from federal excise taxes and no payment will be made for any taxes levied on Contractor's employee's wages. The JBEs will pay for any applicable State of California or local sales or use taxes on the products provided. Payment (except for reasonably disputed payments) is due Net 45 from date of receipt by the JBE of Contractor's invoice. Contractor shall promptly refund any payment made in error. A JBE's obligation to compensate Contractor is subject to the availability of funds. The JBE shall notify Contractor if funds become unavailable or limited during the Term.

Amounts owed to a JBE due to rejection of all or a portion of the Goods in said invoices will be, at the JBE's option, fully credited against future invoices payable by the JBE, or paid by Contractor within thirty (30) days from Contractor's receipt of a debit memo or other written request for payment from the JBE. The JBE shall have the right at any time to set off any amount owing from Contractor to the JBE against any amount payable by the JBE pursuant to any Purchase Order or any other transaction or occurrence.

The fees paid by the AOC and JBEs to the Contractor shall be at least as low as those fees charged by the Contractor to its other customers in local and state government that are receiving substantially comparable Goods at substantially comparable volumes over a similar period of time to the Goods provided to the JBEs and AOC. The foregoing comparison shall take into effect total scope, volume, geography (to the extent that geography has a direct effect on the Contractor's actual costs), service levels (when taken as a whole), technology, and assets associate with the goods provided by the Contractor in each case and any taxes and transition charges included within the charges for such goods. If, during the Term, the Contractor enters into a government contract contradicting the foregoing sentence, the Contractor shall (a) give the AOC immediate notice of any such lower pricing, and (b) offer to the AOC an immediate adjustment to the terms of this Agreement to reflect such lower pricing. At least once each year during the Term, upon the AOC's request an officer of the Contractor shall certify to the AOC that this obligation has not been contradicted by any transaction entered into by the Contractor since the later of the (1) Effective Date and (2) date of the most recent certification provided by the Contractor pursuant to this obligation.

12. **FEDERALLY –FUNDED ORDERS.** If this Agreement or any ordering document under this Agreement is funded in whole or in part by the federal government, then:

- It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the Agreement was executed after that determination was made;
- The Agreement is valid and enforceable only if sufficient funds are made available to the JBE by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of an ordering document under this Agreement in any manner;
- The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, the Agreement shall be deemed amended for a JBE without any further action of the parties to reflect any reduction in funds.
- The parties may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than 30 days' notice of termination or cancellation), or amend an ordering document under this Agreement to reflect any reduction in funds.
- Exemptions from the above requirements may be granted if the JBEs can certify in writing that federal funds are available for the acquisition during the term of this Agreement.

13. **ANTITRUST CLAIMS:** If goods under this Agreement were obtained by means of a competitive bid, Contractor shall comply with the requirements of Government Code sections set out below.
- Contractor shall assign to the JBEs 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 of Division 7 of the Business and Professions Code), arising from purchases of goods by Contractor for sale to the JBE pursuant to the bid. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Contractor. (GC 4552)
 - If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553).
 - Upon demand in writing by the Contractor, the JBE shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (1) the JBE has not been injured thereby, or (2) the JBE declines to file a court action for the cause of action. (GC 4554)
14. **REPORTS:** Contractor shall provide to the AOC Project Manager quarterly reports that include a list of all JBEs that have placed a Purchase Order under this Agreement. The report shall also contain a cumulative listing of all issues reported by a JBE, description of the goods provided, the name of the requesting JBE, date of any dispute resolution and/or status of all pending issues. Additionally, the quarterly report shall provide a summary containing a breakdown of the number of JBEs and locations added to the list during the quarter reported.
15. **AUDIT RIGHTS:** Contractor shall allow the AOC and its designees to review and audit Contractor's documents and records relating to this Agreement, subject only to a lawyer's duty of confidentiality owed to a represented party. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit. Contractor shall maintain documentation supporting the allocation of any costs to JBEs for a period of not less than four years after the later of:
- (1) Contractor's receipt of final payment under this Agreement; and
 - (2) The JBE's resolution with Contractor of the findings of any final audit.

16. **AMENDMENT; WAIVER; SEVERABILITY:** No amendment to this Agreement will be effective unless it is in writing and signed by Contractor and the AOC. A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default. If any part of this Agreement is held unenforceable, all other parts remain enforceable. .
17. **STATE AUDITOR.** As required by Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, then this Agreement shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under this Agreement. .
18. **TERMINATION:**
 - (a) The AOC may terminate this Agreement without cause (for convenience) by providing Contractor with thirty (30) business days' prior written notice.
 - (b) Any JBE may terminate a Purchase Order for cause immediately if (1) the Goods are rejected in accordance with this Agreement, or (2) Contractor is otherwise in breach of the terms of such Purchase Order or this Agreement and such breach is not cured within ten (10) business days of written notice, or is not capable of cure. Whether or not any breach by Contractor is capable of cure, or is cured, is within the sole discretion of the JBE who placed the Purchase Order.
 - (c) The AOC may terminate this Agreement for cause immediately. Termination may be made for cause if Contractor fails or is unable to meet or perform any of its duties under this Agreement, and such failure is not cured within ten (10) business days of written notice, or is not capable of cure. Whether or not any failure by Contractor is capable of cure, or is cured, is within the sole discretion of the AOC Contract Manager. If necessary, the affected JBE, AOC Contract Manager, and Contractor shall discuss performance of any Purchase Orders outstanding at the date of termination.
 - (d) A JBE's obligations under a Purchase Order are subject to the availability of funds authorized for the purchase. Expected or actual funding may be withdrawn, reduced, or limited prior to the fulfillment of the Purchase Order. Upon written notice, a JBE may terminate a Purchase Order, in whole or in part, without prejudice to any right or remedy, for lack of appropriation of funds. Upon termination, the JBE will pay Contractor for the Goods delivered or completed prior to the date of termination.
19. **GENERAL INDEMNITY:** Contractor shall indemnify and defend (with counsel satisfactory to the AOC's Office of the General Counsel) JBEs and Judicial Branch Personnel against all claims, damages, losses, and expenses, including attorney fees and costs, founded upon (i) Contractor's performance of, or failure to perform, its duties under this Agreement, or (ii) any other breach by Contractor of this Agreement.

Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party. "Judicial Branch Personnel" means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a JBE.

20. INSURANCE:

(a) *Basic Coverage.* Contractor shall provide and maintain at Contractor's expense the following insurance during the term of this Agreement:

1. *Workers Compensation and Employer's Liability.* The policy is required only if Contractor has employees. It must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;

2. *Commercial General Liability.* The policy must cover bodily injury and property damage liability, including coverage for the products – completed operations hazard and liability assumed in a contract, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit; and

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

(b) *"Claims Made" Coverage.* If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three years beyond the termination or expiration of this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that the provision of Goods commence under this Agreement.

(c) *Umbrella Policies.* Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.

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

(e) *Deductibles and Self-Insured Retentions.* Contractor shall declare to the AOC all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any

increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the AOC's approval. Deductibles and self-insured retentions do not limit Contractor's liability.

(f) *Additional Insured Status.* Contractor shall require Contractor's commercial general liability insurer, Contractor's commercial automobile liability insurer, and, if applicable, Contractor's commercial umbrella liability insurer to name Judicial Branch Entities and Judicial Branch Personnel as additional insureds with respect to liability arising out of Contractor's provision of the Goods under this Agreement.

(g) *Certificates of Insurance.* Before Contractor begins providing the Goods, Contractor shall provide the AOC with certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 or more days' prior written notice to the AOC. Any replacement certificates of insurance are subject to the approval of the AOC, and, without prejudice to the AOC, Contractor shall not perform work before the AOC approves the certificates.

(h) *Qualifying Insurers.* For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.

(i) *Required Policy Provisions.* Each policy must provide, as follows:

1. *Insurance Primary; Waiver of Subrogation.* The basic coverage provided is primary and non-contributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; and
2. *Separation of Insureds.* The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.

(j) *Partnerships.* If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:

1. *Separate.* Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
2. *Joint.* Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

(k) *Consequences of Lapse.* If required insurance lapses during the term of this Agreement, the JBE is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

21. **UNION ACTIVITIES.** As required under Government Code sections 16645-16649, if this Agreement provides for total Compensation of \$50,000 or more to Contractor, then the covenants in this section apply to Contractor's activities. Contractor shall not:
- (a) Assist, promote, or deter union organizing by employees performing work under state or judicial branch contracts;
 - (b) Use the state's or JBE's funds received under this Agreement to assist, promote or deter union organizing; or
 - (c) For any business conducted under this Agreement, use any property of the state or JBE to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state or judicial branch property is equally available to the general public for holding meetings.

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

22. **CONFIDENTIALITY**

All financial, statistical, personal, technical and other data and information which are designated confidential by Contractor, the AOC, or JBEs (each a "Disclosing Party"), or, if not so designated, is nonpublic information that under the circumstances surrounding disclosure ought to be treated as confidential, and made available by the Disclosing Party to the other party (or to a JBE pursuant to this Agreement) (each, a "Receiving Party") in order to carry out this Agreement or any Purchase Order, or which become available to the Receiving Party in carrying out this Agreement or any Purchase Order ("Confidential Information") will remain the property of the Disclosing Party. The Receiving Party shall protect the Confidential Information of the Disclosing Party from unauthorized use and disclosure and shall use at least the same degree of care, but no less than a reasonable degree of care, to safeguard the Confidential Information of the Disclosing Party as Receiving Party employs with respect to its own information of a similar nature. The Receiving Party shall require that its employees, agents and subcontractors comply with the confidentiality restrictions of this Agreement. The obligations in this section will not restrict any disclosure to the extent necessary to comply with any applicable law or by order of any court or government agency (provided that the Receiving Party shall endeavor to give prompt notice to the Disclosing Party of such order in such time as to permit the Disclosing Party to participate in the response to any such order) and shall not apply with respect to information that (1) is independently developed by the Receiving Party without violating the Disclosing Party's proprietary rights as shown by the Receiving Party's written records, (2) is or becomes publicly known (other than through

unauthorized disclosure), (3) is disclosed by the owner of such information to a third party free of any obligation of confidentiality, (4) is already known by the Receiving Party at the time of disclosure, as shown by the Receiving Party's written records, and the Receiving Party has no obligation of confidentiality other than pursuant to this Leveraged Agreement or any confidentiality agreements entered into before the Effective Date between AOC and Contractor, (5) is rightfully received by the Receiving Party free of any obligation of confidentiality, or (6) with respect solely to a particular disclosure, such disclosure is approved in writing by the Disclosing Party. Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the AOC's Business Services Manager

23. STATUS AS INDEPENDENT CONTRACTOR AND SUBCONTRACTS: Contractor is an independent contractor to the JBEs. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBEs. Contractor shall not subcontract or delegate its obligations under this Agreement without the prior written consent of the AOC, which consent shall not be unreasonably delayed or withheld.

24. NOTICES:

(a) All requests, communications and notices concerning this Agreement must be made through the AOC Contract Manager. Notice to the AOC must be in writing and be delivered to the AOC Contract Manager at the following address by depositing in the U.S. Mail or commercial express mail, first-class and pre-paid with return receipt requested:

Business Services
Finance Division
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102

(b) Any notice or information that is required to be delivered to the AOC Project Manager will be delivered to the following address:

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Telephone: _____
FAX: _____

(c) Notice to Contractor concerning this Agreement or any Purchase Order must be in writing and be delivered to the following address by depositing in the U.S. Mail or commercial express mail, first-class and pre-paid with return receipt requested:

(d) Notice concerning this Agreement or any Purchase Order is effective on receipt; however, any correctly addressed written notice that is refused, unclaimed, or undeliverable because of an act or omission of the party notified will be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable.

(e) All requests, communications and notices concerning a Purchase Order between Contractor and a JBE must be made through the Purchase Order Project Manager for the JBE.

25. **ASSIGNMENT:** Neither the AOC nor Contractor shall assign this Agreement, either in whole or in part, without the prior written consent of the other party in the form of a written amendment signed by the AOC and Contractor. Such consent shall not be unreasonably withheld. However, the parties agree that in the event the AOC is required by law, statute, or regulation to assign this Agreement to another government entity for administrative or other purposes, Contractor's consent is not required. This Agreement shall be binding upon and inure to the benefit of successors and assigns of the parties.
26. **GOVERNING LAW:** California law, without regard to its choice-of-law provisions, governs this Agreement. Jurisdiction for any legal action arising from this agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts..
27. **CONTRACT CONSTRUCTION:** Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of the Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement or any Purchase Order shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement or the Purchase Order.
28. **SURVIVAL:** The following sections shall survive any termination or expiration of this Agreement: Termination, General Indemnity, Audit Rights, Confidentiality, Governing Law, and Insurance (regarding Section 20(b)) and Assignment.

29. **SIGNATURE:** The parties signing this Agreement certify that they have proper authorization to do so. This Agreement may be executed in counterparts, each of which is considered an original.

30. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement and final understanding of the parties with respect to the subject matter hereof and supersedes and terminates any and all prior and/or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to the subject matter hereof. No subsequent amendment to this Agreement will be effective unless in writing signed by properly authorized representatives of AOC and Contractor.