

ATTACHMENT 2 –PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the “Agreement”), dated as of _____, 200_ (the “Effective Date”), is entered into by and between _____, a _____ corporation having a place of business at _____ (“Contractor”), and the Judicial Council of California, Administrative Office of the Courts (the “AOC”).

WHEREAS, the AOC published the Administrative Office of the Courts, Request for Proposal, Shared Services Environment, dated [] (the “RFP”),

WHEREAS, based on the Contractor’s response to such RFP, the Contractor has been selected to perform Phase One of the RFP;

WHEREAS, as part of such Phase One performance, the Contractor is required to perform the services set forth in this Agreement.

NOW THEREFORE, in consideration for the representations and agreements contained herein, the parties hereby covenant and agree as follows:

1. SERVICES

1.1 **Services.** The Contractor agrees to (i) perform all tasks required by the RFP for Phase One, (ii) perform the services described in Exhibit A attached hereto and (iii) provide the items to be delivered by the Contractor to the AOC (“Deliverables”) as specified in this Agreement (collectively the “Services”). For purposes of Articles 1 through 13, references to the "AOC" shall include the AOC together with state, local and other government entities (including the courts), where applicable, and their respective contractors and agents.

1.2 **Status Reporting.** The Contractor will provide written status reports, prepared using Microsoft Project, or such other application software as the AOC requests to the AOC every two weeks while performance of the Services is in progress, containing such information as the AOC may reasonably request.

1.3 **Status Meetings.** Every two weeks, the Contractor shall hold status meetings or status conference calls, at the AOC’s option, with AOC management in order to review the status of the Contractor activities. Such meetings and calls will be conducted at such times as are mutually agreed and, if status meetings are requested by the AOC, the meetings shall be held at the AOC’s offices located at 455 Golden Gate Avenue, San Francisco, California. Each party shall prepare for and attend such status meetings at their own expense.

1.4 **Provision of Resources.** Except where this Agreement specifically provides otherwise, the Contractor is responsible for providing any and all facilities, assets, and resources (including personnel, facilities, equipment, and software) necessary and appropriate for delivery of the Services and to meet the Contractor’s obligations under this Agreement. Assets to which access is being provided for use by the Contractor (including equipment, software licenses and third party service contracts) are provided on an “as is, where is” basis, and the AOC does not provide the Contractor any representations or warranties regarding such assets.

1.5 **Record Keeping and Inspection.** The Contractor agrees that the AOC, or its designated representative will have the right to audit and copy any records and supporting documentation pertaining to performance of this Agreement in accordance with Government Code Section 8546.7. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the AOC to audit records and interview staff in any subcontract related to performance of this Agreement.

2. **PERFORMANCE OF SERVICES**

2.1 **Performance.** The Contractor shall perform the Services as described in Exhibit A.

2.2 **Delivery.** The Contractor shall complete and deliver to the AOC any Deliverable(s) owed to the AOC pursuant to Exhibit A in accordance with the time periods set forth in Exhibit A.

2.3 **Acceptance.** The parties acknowledge and agree that the purpose of this Agreement is the development of a detailed statement of work, specifications and corresponding pricing for the Shared Services Environment Project. Each Deliverable provided by the Contractor to the AOC will be subject to the AOC's review and acceptance as set forth in Section I of Exhibit A. Notwithstanding any provision of this Agreement, nothing in this Agreement limits or restricts the AOC's discretion in selecting the Phase Two Contractor in accordance with the terms set forth in the RFP.

2.4 **Stop Work.**

(a) The AOC may, at any time, by written stop work order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Agreement for a period of up to ninety (90) days after the stop work order 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 Section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to end the incurrence of the costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of up to 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 AOC shall either:

(i) Cancel the stop work order; or

(ii) Terminate the work covered by the stop work order as provided for in the Termination provisions of this Agreement.

(b) If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The AOC shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and this 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; provided, that if the AOC decides the facts justify the action, the AOC 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 provision entitled Termination for the Convenience, the AOC shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

2.5 **Time of the Essence.** Time is of the essence in this Agreement.

3. **CONTRACT ADMINISTRATION**

3.1 **Project Manager.** The Contractor will appoint a full-time Project Manager who will (i) operate as the main interface among the Contractor and the AOC regarding the Services, (ii) ensure that the Contractor personnel coordinate and interface with appropriate AOC personnel in a manner satisfactory to the AOC, and (iii) assist with resolving any problems.

3.2 **Contractor Resources.** Negotiation in good faith of the Phase Two Contract commencing upon the Effective Date and continuing throughout the term of this Agreement is a material obligation of the Contractor hereunder. Without limiting the Contractor's obligations under any other provision of this Agreement, the Contractor shall assign sufficient personnel to perform the Services under this Agreement, including without limitation assignment of sufficient legal and business personnel to negotiate the Phase Two Contract.

3.3 **Contractor's Personnel Replacement.** The AOC reserves the right to disapprove the continuing assignment of the Contractor's key personnel, including the Project Manager and the other personnel listed in Exhibit A if in the AOC's opinion, such personnel's performance is unsatisfactory. If the AOC exercises this right, the Contractor shall immediately assign replacement personnel.

3.4 **Control of Contractor's Employees and Subcontractors.** The Contractor shall require all of its employees, agents and subcontractors to comply with: (i) the terms of this Agreement; and (ii) the employment and security policies and procedures that the AOC generally requires of its contractors that have access to AOC Information (as defined in Section 10).

3.5 **Background Checks.** The AOC shall have the right, but not the obligation, to conduct a background check, as permitted by law, on all persons granted access to the AOC's premises or systems (including premises and systems of the courts supported by the AOC) or those of a third party contractor of the AOC. The Contractor will cooperate with the AOC in performing such background check, and will promptly notify the AOC of any such person refusing to undergo such background check, or and will reassign such person, and any person whose background check results are unacceptable to the AOC, to another area reasonably satisfactory to the AOC. The Contractor shall obtain all releases, waivers, or permissions required for the release of such information to the AOC.

4. **WARRANTIES**

4.1 **Work Standards.** The Contractor represents, warrants and covenants that the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing

services similar to the Services. The Contractor will represent and covenant that it will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services.

4.2 **Efficiency and Cost Effectiveness.** The Contractor represents, warrants and covenants that it will (i) use efficiently the resources or services necessary to provide the Services; and (ii) perform the Services in the most cost efficient manner consistent with the required level of quality and performance.

4.3 **Non-Infringement.** The Contractor represents, warrants and covenants that it will perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other proprietary rights of any third-party.

4.4 **Compliance with Laws.** The Contractor represents, warrants and covenants that it will perform its obligations in a manner that complies with all applicable statutes, rules regulations and orders of the United States and AOC of California.

4.5 **Authorization.** The Contractor represents, warrants and covenants that (i) it has full power and authority to enter into this Agreement, to grants the rights herein and to carry out the transactions contemplated by this Agreement; (ii) the execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated by this Agreement, have been duly authorized by all requisite corporate action on the part of the Contractor; and (iii) it will not enter into any arrangement with any third party which might abridge any rights of the AOC under this Agreement. The Contractor warrants and represents that the Contractor's execution, delivery and performance of this Agreement will not constitute (i) a violation of any judgment, order, or decree; (ii) a material default under any material contract by which it or any of its material assets are bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a default.

4.6 **Inducements.** The Contractor represents and warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the AOC with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of the warranty, the AOC will have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by the AOC in procuring on the open market any items which the Contractor agreed to supply will be borne and paid for by the Contractor. The rights and remedies of the AOC provided in the clause will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

4.7 **Absence of Litigation.** The Contractor represents, warrants and covenants that there is no claim, or any litigation, proceeding, arbitration, investigation or material controversy pending to which the Contractor or any of the Contractor's affiliates, agents, or representatives is a party, relating to the provision of the Services offered by Contractor, or which would have a material adverse effect on the Contractor's ability to enter into this Agreement and perform its obligations hereunder and, to the best of the Contractor's knowledge, no such claim, litigation, proceeding, arbitration, investigation or material controversy has been threatened or is contemplated.

4.8 **Effect of Breach of Warranty.** If, at any time during the term of this Agreement, the Contractor fails to perform according to any warranty under this Section, the AOC shall promptly notify the Contractor in writing of such alleged nonconformance, and the Contractor shall correct any deficiencies in Services provided, or repair or replace all errors and malfunctions in any

Deliverable, at no additional charge to the AOC, so long as the errors or malfunctions are not necessitated by an unauthorized act of the AOC or any third party acting on behalf of the AOC. The rights and remedies of the AOC provided in this clause will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. PAYMENT TERMS

5.1 **Compensation.** The AOC agrees to pay the Contractor the fixed price of \$250,000 for the performance of the Services.

5.2 **Fees and Invoice.** The Contractor will invoice the AOC in accordance with the payment schedule set forth in Exhibit B. The AOC will not make any advance payment for Services. The AOC may withhold ten percent of each invoice until receipt and acceptance by the AOC of all Services and Deliverables.

5.3 **Payment.** Payment will be made net sixty (60) days of the AOC's receipt of a correct, itemized invoice from the Contractor submitted after acceptance in accordance with the terms hereof by the AOC of the Services and Deliverables covered under such invoice.

5.4 **Taxes.** The AOC is exempt from federal excise taxes and no payment shall be made for any personal property taxes levied on the Contractor or on any taxes levied on employee wages. The AOC shall pay only for any AOC or local sales or use taxes on the Services rendered under this Agreement.

6. PROPRIETARY RIGHTS

6.1 **AOC Works.** As between the Contractor and the AOC, the AOC will be the sole and exclusive owner of all inventions, discoveries, literary works or other works of authorship ("Works") owned by it as of the Effective Date of the Agreement, including all domestic and foreign intellectual property rights in such Works and all modifications, enhancements and derivative works thereof ("AOC Works"). As of the Effective Date, the Contractor will be granted a limited, non-exclusive license during the term of this Agreement to use, access, copy, maintain, modify, enhance and create derivative works of AOC Works for the sole purpose of providing the Services. The Contractor may not use AOC Works for any other purpose, and may not sublicense any rights with respect to AOC Works. The Contractor will cease use of AOC Works upon expiration or termination of the Agreement.

6.2 **Contractor Works.** As between the Contractor and the AOC, the Contractor will be the sole and exclusive owner of all Works owned by it as of the Effective Date of the Agreement including all domestic and foreign intellectual property rights in such Works and all modifications, enhancements and derivative works thereof ("Contractor Works").

(a) The AOC will have the right to approve the introduction of any Contractor Works prior to the Contractor's use of such Works to provide the Services.

(b) Upon introduction of any Contractor Works in providing the Services, the Contractor grants to the AOC and its subcontractors rights of access to, and use of, such Works during the Term as reasonably necessary for the conduct of the AOC's business. At the expiration or upon any whole or partial termination of the Agreement, the Contractor will provide the AOC (and designees thereof for the purpose of providing services to the AOC), without additional charge, (a) a perpetual, irrevocable, fully paid-up, non-exclusive license to use, copy, maintain, modify, enhance and create derivative works of such Works (including, with respect to software, source code, programmer interfaces,

available and to sublicense such rights to other entities for the purpose of providing services to the AOC; and (b) with respect to Contractor Works that are software, copies of machine-readable and human-readable source code and technical documentation for such software.

6.3 Third Party Works.

(a) The AOC will have the right to approve the introduction of any third party Works prior to the Contractor’s use of such Works to provide the Services.

(b) Prior to introducing any third party Work in providing the Services, the Contractor will (i) obtain the right to grant the AOC (and designees thereof for the sole purpose of providing services to the AOC), without additional charge and (ii) upon the expiration or any whole or partial termination of the Agreement, a perpetual, irrevocable, fully paid-up, non-exclusive license to use, copy, maintain, modify, enhance and create derivative works of such Works and to sublicense such rights to other entities for the purpose of providing services to the AOC.

6.4 Rights in Developed Works. The Contractor hereby irrevocably assigns, transfers and conveys to the AOC without further consideration all worldwide right, title and interest in and to all Works created pursuant to the Agreement and modifications or enhancements to such Works developed by or on behalf of the Contractor, the Contractor’s agents or any combination of the Contractor, the Contractor’s agents, and the AOC (“Developed Works”) and those works of authorship, trade secrets, inventions, discoveries and improvements which are first conceived, reduced to practice, originated or developed under and pursuant to the Agreement in creating the Developed Works, including worldwide ownership of trade secret rights, copyright and patent rights that may be granted by any country based on Developed Works or those works of authorship, trade secrets, inventions, discoveries and improvements which are first conceived, reduced to practice, originated or developed under and pursuant to the Agreement in creating the Developed Works (collectively, “AOC Intellectual Property”). The Contractor further agrees to execute any documents or take any other actions as may be reasonably necessary, or as the AOC may request, to perfect the AOC’s or its designee’s ownership of any such Developed Works and AOC Intellectual Property and to obtain and enforce intellectual property rights in or relating to Developed Works and AOC Intellectual Property. The Contractor may use such Developed Works and AOC Intellectual Property solely to provide the Services during the Term.

7. FORCE MAJEURE

If, and to the extent that, a party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or any other similar cause beyond the reasonable control of such party (each, a "Force Majeure Event"), and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the non-performing, hindered or delayed party will be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such party continues to use its best efforts to re-commence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. The party whose performance is prevented, hindered or delayed by a Force Majeure Event will immediately notify the other party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event.

8. TERM AND TERMINATION

8.1 **Term.** The term of this Agreement shall commence as of the Effective Date and shall continue, unless sooner terminated as provided herein, until final completion of the Services and acceptance of the Deliverables.

8.2 Termination by AOC for Cause.

(a) The AOC may, by written notice of default to the Contractor, terminate this Agreement in whole or in part if the Contractor defaults in the performance of any of its material obligations under this Agreement, and does not cure such default within ten (10) days of receipt of a notice of default.

(b) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the AOC.

(c) The rights and remedies of the AOC in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

8.3 **Termination by the AOC for Convenience.** The AOC may terminate this Agreement at any time, by giving the Contractor written notice at least ten (10) days before the effective date of such termination.

8.4 **Termination by the AOC for Non-Appropriation of Funds.** The Contractor acknowledges that funding for this Agreement beyond the current appropriation year is conditioned upon appropriation by the California Legislature of sufficient funds to support the activities described in this Agreement. Without limiting the foregoing, the AOC may terminate this Agreement without prejudice to any right or remedy of the AOC for lack of legislative appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration or other termination of this Agreement, the AOC may terminate this Agreement in whole or in part by written notice to Contractor. Such termination shall be in addition to the AOC's rights to terminate for convenience or cause. If this Agreement is terminated for non-appropriation: (i) the AOC will be liable only for payment in accordance with the terms of this Agreement for Services rendered and expenses incurred prior to the effective date of termination whether or not there has been a Deliverable; and (ii) the Contractor shall be released from any obligation to provide further Services pursuant to this Agreement as are affected by such termination.

8.5 Effect of Termination.

(a) Termination of this Agreement shall not affect the rights and/or obligations of the parties which arose prior to any such termination (unless otherwise provided herein) and such rights and/or obligations shall survive any such termination. Except as expressly provided in Section 8.5(b), the AOC shall incur no liability by virtue of terminating for convenience.

(b) Upon expiration or termination for convenience under Sections 8.3 ("Termination by AOC for Convenience"), the AOC will pay contract price for completed Deliverables delivered and accepted by the AOC. If this Agreement is terminated for convenience, the AOC shall pay the Contractor for (i) all accepted Deliverables, and (ii) the reasonable and necessary costs incurred by Contractor in performing Services prior to the effective date of termination other than on the accepted Deliverables. Contractor shall submit a termination settlement proposal within thirty (30) days of the effective date of such termination, with a complete statement of all such costs, including the costs of

terminating subcontracts, if any. The AOC may withhold from these amounts any sum the AOC determines to be necessary to protect the AOC against loss because of outstanding liens or claims of former lien holders. Upon expiration or termination for any reason, the AOC shall have the right to take possession of any partially completed Deliverables and any other materials or work product hereunder. In such event, the Contractor shall deliver to the AOC any and all materials or work product relating to such partially completed Deliverables, and hereby assigns and agrees to assign all of the Contractor's right, title and interest in and to such partially completed Deliverables and related materials and work product, and any and all intellectual property rights therein or thereto.

(c) Unless the AOC directs otherwise, promptly upon the effective date of any termination hereunder, for any reason or no reason, the Contractor shall: (i) stop performing the Services as of the effective date of such termination; (ii) place no further orders or subcontracts for materials, equipment, services or facilities applicable to the performance of Services or the development of Deliverables hereunder; (iii) cooperate in good faith with the AOC and as the AOC directs to cancel or assign to the AOC any orders or contracts in place with the Contractor, to the extent that such orders or contracts relate to the Contractor's performance of its obligations hereunder; (v) take such action as may be necessary or as directed by the AOC to preserve and protect any work products and any property related to his Agreement in the possession of the Contractor in which the AOC has an interest; (vi) continue performance of this Agreement, only the extent not terminated; and (vii) take any other steps required by the AOC with respect to this Agreement.

8.6 **Survival.** Sections 1.5, 4, 6, 8, 9, 10, 11, 12 and 13 shall survive any termination of this Agreement.

9. INDEMNIFICATION

9.1 **General Indemnity.** The Contractor will indemnify, defend and save harmless the State of California, state and local governmental entities, the AOC, and their respective officers, agents and employees from any and all claims for losses, costs, liabilities, damages or deficiencies, including interest penalties and attorneys' fees, which (i) arise out of or are due to a breach by the Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement; or (ii) are caused by or resulting from the Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of it duties under this Agreement; or (iii) are accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies 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 which may be injured or damaged by the Contractor in the performance of this Agreement; or (iv) are arising out of or related to the Contractor's breach of its confidentiality obligations under this Agreement; or (v) are arising out any violation by the Contractor or its employees, agents, or contractors of any applicable law, order, ordinance, regulation, code, or the reasonable policies and procedures adopted in writing and provided to the Contractor from time to time during the term hereof.

9.2 **Intellectual Property Indemnity.** The Contractor will indemnify, defend and save harmless the State of California, state and local governmental entities, the AOC, and their respective officers, agents and employees from any and all liability of any nature or kind, including losses, costs, liabilities, damages or deficiencies, including interest penalties and attorneys' fees, which arise out of any claim of infringement or misappropriation of patent, trade secret, copyright or other proprietary rights, alleged to have occurred because of software, systems or other resources, including the Deliverables, provided by the Contractor or its subcontractors to the AOC. The AOC will notify the Contractor in writing within thirty (30) days of the AOC's first knowledge of such claim. Contractor will have control of the defense and all settlement negotiations relating to such claim and at the Contractor's cost and

expense, the AOC will provide the Contractor with reasonable assistance, information and authority necessary to perform the Contractor's obligations under this Section.

9.3 **Personal Injury and Property Damage.** The Contractor will indemnify, defend and save harmless the State of California, state and local governmental entities, the AOC, and their respective officers, agents and employees from any and all liability of any nature or kind, including losses, costs, liabilities, damages or deficiencies, including interest penalties and attorneys' fees, arising in favor of any person, corporation or other entity, including the parties to this Agreement and their employees, Contractors and agents, on account of personal injuries, death, or damage to tangible personal or real property in any way incident to, or in connection with, or arising out of: (i) this Agreement; (ii) performance of work under this Agreement; (iii) the presence of the Contractor or the presence of the Contractor or its subcontractors, suppliers or agents on the premises of the AOC; or (iv) the act or omission of the Contractor, its subcontractors, suppliers or agents, for which the Contractor is legally liable.

10. AOC INFORMATION

10.1 **AOC Information.** All data and information (i) submitted to the Contractor or the Contractor's agents or contractors by or on behalf of the AOC; or (ii) obtained, developed or produced by the Contractor or the Contractor's subcontractors or agents in connection with the Agreement, including information relating to the AOC or its respective contractors, agents, employees, technology, operations, facilities, markets, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter, patents and other intellectual property and proprietary information ("AOC Information") is and will remain the property of the AOC or its respective contractors or agents, as applicable. The AOC will have all right, title and interest, including worldwide ownership of trade secret rights, copyright and patents, in and to the AOC Information and all copies made from it. Without the AOC's prior written approval (in its sole discretion), the AOC Information will not be (1) used by the Contractor or the Contractor's agents other than in connection with providing the Services, (2) disclosed, sold, assigned, leased or otherwise provided to third parties by the Contractor or the Contractor's agents, or (3) commercially exploited by or on behalf of the Contractor or the Contractor's agents. The Contractor and the Contractor's agents will irrevocably assign, transfer and convey to the AOC without further consideration all of its right, title and interest in and to the AOC Information, including all rights of patent, copyright, trade secret or other proprietary rights in and to such materials.

10.2 **Return of Information.** From time to time and upon the AOC's request, AOC Information will be returned to the AOC in a form acceptable to the AOC, or if the AOC so elects, will be destroyed.

10.3 **Confidential Information.** All financial, statistical, personal, technical and other data and information relating to the AOC's operation which are designated confidential by the AOC and made available to the Contractor in order to carry out the Agreement, or which become available to the Contractor in carrying out the Agreement ("Confidential Information") will remain the property of the AOC. The Contractor will protect the Confidential Information from unauthorized use and disclosure and will use at least the same degree of care, but no less than a reasonable degree of care, to safeguard the Confidential Information of the AOC as it employs with respect to its own information of a similar nature. The identification of all such Confidential Information as well as the AOC's procedural requirements for protection of such Confidential Information from unauthorized use and disclosures will be provided by the AOC in writing to the Contractor. The Contractor will require that its employees, agents, and subcontractors comply with the confidentiality restrictions of the Agreement. In the event of

unauthorized disclosure or loss of Confidential Information, the receiving party will immediately notify the furnishing party in writing.

10.4 **Protection of AOC Information.** The Contractor will establish and maintain safeguards against the unauthorized access, destruction, loss or alteration of AOC Information in the possession of the Contractor which are no less rigorous than the most rigorous practices of the AOC or the Contractor as of the Effective Date. The Contractor personnel and subcontractors will not attempt to access, and will not or allow access to AOC Information that is not required for the performance of the Services by such personnel.

10.5 **Technical Communications and Records .** All technical communications and records originated or prepared by the Contractor pursuant to this Agreement including papers, reports, charts, computer programs and other documentation, but not including the Contractor's administrative communications and records relating to this Agreement will be delivered to and become the exclusive property of the AOC and may be copyrighted by the AOC.

11. **CONFIDENTIALITY**

11.1 **Confidential Information.** All financial, statistical, personal, technical and other data and information relating to the AOC's operation which are designated confidential by the AOC and made available to the Contractor in order to carry out the Agreement, or which become available to the Contractor in carrying out the Agreement ("Confidential Information") will remain the property of the AOC. The Contractor will protect the Confidential Information from unauthorized use and disclosure and will use at least the same degree of care, but no less than a reasonable degree of care, to safeguard the Confidential Information of the AOC as it employs with respect to its own information of a similar nature. The identification of all such Confidential Information as well as the AOC's procedural requirements for protection of such Confidential Information from unauthorized use and disclosures will be provided by the AOC in writing to the Contractor. The Contractor will require that its employees, agents, and subcontractors comply with the confidentiality restrictions of the Agreement. In the event of unauthorized disclosure or loss of Confidential Information, the receiving party will immediately notify the furnishing party in writing.

12. **LIMITATION OF LIABILITY.** IN NO EVENT WILL THE AOC BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OR RELATING TO THIS AGREEMENT. IN NO EVENT WILL THE AOC'S LIABILITY FOR DAMAGES TO THE CONTRACTOR ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, EXCEED THE AMOUNTS PAYABLE BY THE AOC TO THE CONTRACTOR UNDER THIS AGREEMENT. IN NO EVENT WILL THE CONTRACTOR'S LIABILITY FOR DAMAGES TO THE AOC ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, EXCEED THE AMOUNTS PAYABLE BY THE AOC TO THE CONTRACTOR UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE 12 WILL NOT APPLY WITH RESPECT TO: (A) DAMAGES OCCASIONED BY THE FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE CONTRACTOR; (B) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION UNDER THIS AGREEMENT; (C) DAMAGES TO THE AOC OCCASIONED BY VIOLATION OF LAW BY THE CONTRACTOR; (D) DAMAGES OCCASIONED BY THE BREACH OF THE CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT; AND (E) LIABILITY COVERED BY THE CONTRACTOR'S INSURANCE.

13. GENERAL

13.1 **Choice of Law.** This Agreement and performance under it will be exclusively governed by the laws of the AOC of California without regard to its conflict of law provisions and the AOC or federal district courts located in San Francisco, California will have exclusive jurisdiction over any legal action concerning or relating to this Agreement.

13.2 **Consents and Approvals.** Consents and approvals to be given by either party under this Agreement will not be unreasonably withheld or delayed, and such consents and approvals will not be construed as relieving a party of its obligations or as a waiver of its rights under this Agreement.

13.3 **Waiver of Rights.** Any action or inaction by the AOC or the failure of the AOC on any occasion, to enforce any right or provision of this Agreement, will not be construed to be a waiver by the AOC of its rights under this Agreement and will not prevent the AOC from enforcing such provision or right on any future occasion. The rights and remedies of the AOC under this Agreement will be cumulative and in addition to any other rights or remedies that the AOC may have at law or in equity.

13.4 **Independent Contractor.** The Contractor and the agents and employees of the Contractor in the performance of this Agreement, will act in an independent capacity and not as officers or employees or agents of the AOC. Neither the making of this Agreement nor the performance of its provisions shall be construed to constitute either of the parties hereto as an agent, employee, partner, joint venturer, or legal representative of the other, and the relationship of the parties under this Agreement is that of independent contractors.

13.5 **Insurance.** When performing work on property in the care, custody or control of the AOC, the Contractor will maintain the following insurance:

(a) Commercial general liability insurance, including bodily injury, property damage and products/completed operations coverage in the amount of not less than five million dollars (\$5,000,000) each occurrence or aggregate where applicable.

(b) Property insurance shall be secured in amounts appropriate to adequately cover the Contractor's businesses and personal property, with no risk to any co-insurance penalty. Coverage shall be written under "Special Form" perils. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the AOC may require additional coverage to be purchased by the Contractor to restore the required limits. The Contractor may combine primary, umbrella and as broad as possible excess liability coverage to achieve the total limits indicated above.

(c) Worker's Compensation coverage providing statutory benefits and employer's liability insurance with minimum limits of one million dollars (\$1,000,000) each accident/each employee covering all employee.

(d) Professional errors and omissions liability insurance in an amount of not less than one million dollars (\$1,000,000) in aggregate.

The Contractor shall include any subcontractors as insured under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contractor shall be subject to all of the requirements stated herein.

All insurance which the Contractor is obligated to carry pursuant to this Agreement, shall (i) be endorsed to name the AOC as an additional insured, and (ii) require the insurer to provide at least thirty (30) days prior written notice to the AOC of cancellation. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, then notwithstanding anything to the contrary stated herein, 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. The Contractor shall cause its insurers to issue to the AOC on or before the Effective Date certificates of insurance evidencing that the coverages and policy endorsements required under the Agreement are maintained in force. The insurers selected by the Contractor shall be reputable and financially responsible insurance carriers, with a Best's minimum rating of "A+" (or any future equivalent).

13.6 No Assignment of Subcontracting. The Contractor shall not assign this Agreement in whole or in part or subcontract the performance of the Services without the AOC's prior written consent. This Agreement shall be binding on any and all permitted successors and assigns. No party to this Agreement shall in any way contract on behalf of or in the name of another party to this Agreement. Violation of this provision shall confer no rights on any party and shall be void.

13.7 No Amendment. 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. To be effective, changes or amendments to this Agreement must be (i) submitted in writing, (ii) accompanied by a narrative description of the proposed change and the reasons for the change, and (iii) approved in writing by the AOC.

13.8 Permits and Licenses. The Contractor shall observe and comply with all federal, AOC, city, and the AOC laws, rules, and regulations effecting its provision of the Services under this Agreement. The Contractor shall procure and keep in full force during the term of this Agreement any and all permits and licenses necessary to accomplish the work contemplated in this Agreement.

13.9 Severability. The provisions of this Agreement shall be effective in all cases unless otherwise prohibited by California AOC law or applicable Federal Law. The provisions of this Agreement are separate and severable. The invalidity of any sentence, paragraph, provision, section, or portion of this Agreement shall not effect the validity of the remainder of this Agreement.

13.10 Accounting System Requirement. The Contractor shall establish and maintain an adequate system of accounting and internal controls.

13.11 Publicity Unless otherwise exempted, new releases and other public disclosures pertaining to this Agreement will not be made without prior written approval of the AOC's Business Services Manager.

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

13.13 Public Contract Code References. References to the Public Contract Code herein are provided for the Contractor's convenience only and shall not imply that the Public Contract

Code applies to the AOC, but rather shall be used when referenced to define the Contractor's obligations under the particular provision in which such code section is referenced.

13.14 **Recycling.** The Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this Agreement meet or exceed the minimum percentage of recycled material as defined in California Public Contract Code (PCC) Sections 12161 and 12200.

13.15 **Newly Manufactured Goods.** All goods furnished under this Agreement will be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.

13.16 **Assignment of Antitrust Actions.** The following provision of Government Code Section 4552, 4553, and 4554 (Statutes of 1978, Ch. 414) will be applicable to the Contractor:

(i) In submitting a bid to the AOC, the supplier offers and agrees that if the bid is accepted, it will assign to the AOC of California 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. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material or services by the supplier for sale to the AOC of California pursuant to the solicitation. Such assignment will be made and become effective at the time the AOC of California tenders final payment to the supplier.

(ii) If the AOC receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor will be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the AOC any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the AOC of California as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

Upon demand in writing by the assignor, the assignee will, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

13.17 **Drug-Free Workplace.** The Contractor certifies that it will provide a drug-free workplace as required by California Government Code sections 8355 through 8357.

13.18 **Statement of Compliance.** The Contractor's signature affixed to this Agreement constitutes a certification under the penalty of perjury under the laws of the AOC of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

13.19 **Union Organizing.** The Contractor will acknowledge the applicability of Government Code Section 16645 through Section 16649 to this Agreement:

(i) The Contractor will not assist, promote or deter union organizing by employees performing work on a AOC service contract, including a public works contract.

(ii) No AOC funds received under this Agreement will be used to assist, promote or deter union organizing.

(iii) The Contractor will not, for any business conducted under this Agreement, use any AOC property to hold meeting with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the AOC property is equally available to the general public for holding meetings.

If the Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, the Contractor will maintain records sufficient to show that no reimbursement from AOC funds has been sought for these costs, and that the Contractor will provide those records to the State of California Attorney General upon request. **[Need answer to Grant's question from OGC.]**

13.20 Child Support Compliance Act. For any contract in excess of \$100,000, the Contractor acknowledges in accordance with California Public Contract Code section 7110, that:

(i) The Contractor recognizes the importance of child and family support obligations and will fully comply with all applicable AOC and federal laws relation 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 California Family Code; and

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

13.21 Forced, Convict and Indentured Labor. By signing this Agreement, the Contractor hereby certifies that no foreign-made equipment, materials, or supplies furnished to the AOC pursuant to this Agreement will be produced in whole or in part by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. By signing this Agreement the Contractor agrees to comply with the requirements of California Public Contract Code (PCC) Section 6108.

(a) If the Contractor knew or should have known that the foreign-made equipment, materials or supplies furnished to the AOC were produced in whole or part by forced labor, convict labor, or indentured labor under penal sanction, when entering into this Agreement, subject to California Public Contract Code (PCC) Section 6108, subdivision (c), may have any or all of the following sanctions therein imposed:

(i) The contract under which the prohibited equipment, materials or supplies were provided may be voided at the option of the AOC to which the equipment, materials or supplies were provided.

(ii) The Contractor may be assessed a penalty which will be the greater of one thousand dollars (\$1,000) or an amount equaling 20 percent of the value of the equipment, materials or supplies that the AOC demonstrates were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction and were supplied to the AOC under this Agreement.

13.22 Nondiscrimination. During the performance of this Agreement, the Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), or sex. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The Contractor

shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §§ 12990, et seq.), and the applicable regulations promulgated under California Code of Regulations, title 2, section 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Contractor and 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. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement. The Contractor is required to give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200. (See Public Contract Code Section 10353).

13.23 Americans with Disabilities Act. By signing this Agreement, the Contractor assures the AOC that it complies with the Americans with Disabilities Act of 1990 (42 USC §§ 12101, et seq.) which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

13.24 Assignment. The Agreement will not be assignable by the Contractor in whole or in part without the written consent of the AOC, which may be withheld in its sole discretion. The AOC will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder. Any assignment made in contravention of the foregoing shall be void and of no effect. The Agreement will be binding on the parties and their permitted successors and assigns.

13.25 Disabled Veteran Business Participation Review. The Contractor agrees that the AOC or its designee shall have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Contractor agrees to provide the AOC or its designee with any relevant information requested and shall permit the AOC or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Public Contract Code section 10115 et seq. The Contractor further agrees to maintain such records for a period of three (3) years after final payment under the Agreement.

13.26 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but taken together, all of which shall constitute one and the same Agreement.

13.27 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 and/or agreements between the parties, whether written or verbal, express or implied, relating in any way to the subject matter hereof.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this instrument to be duly executed as of the date last written below.

CONTRACTOR

JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE
COURTS

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

EXHIBIT A

SERVICES

The Contractor shall perform the following services:

- (A) develop a detailed statement of work, specifications and schedule (collectively, the “Statement of Work” or “SOW”) for performance of Phase Two as described in the RFP, as more fully described in Section II;
- (B) establish prices for the Phase Two work (“Pricing Schedule”) as more fully described in Section III; and
- (C) negotiate the contract terms and conditions for the Phase Two Contract as described in the RFP, as more fully described in Section IV.

The Contractor and the AOC shall finalize the major portions of the SOW on a sequential basis (as set forth in Section II below) and establish the prices and negotiate the contract terms and conditions for each portion of the SOW as such portion is finalized, subject to agreement upon a definitive SOW, Pricing Schedule and final Phase Two Contract terms and conditions by the conclusion of the Term of this Agreement. The Contractor’s negotiated SOW, Pricing Schedule and Phase Two contract terms and conditions shall constitute the Contractor’s final proposal for the Phase Two Contract. It is intended that by the end of Phase One, negotiation of the Phase Two Contract will be complete and the Phase Two Contract will be in final form, ready for acceptance by the AOC.

II. STATEMENT OF WORK

The Contractor shall use (i) the information provided in the RFP, including but not limited to the information in Part VI, Mandatory Functional Requirements and Technical Proposal, of the RFP, (ii) information discovered during due diligence and (iii) additional information provided by the AOC to update the Contractor’s Phase One Proposal in order to develop the Statement of Work for the Phase Two Contract. The Contractor and the AOC shall finalize the portions of the SOW set forth in the Table below as each element is further described in Part VI of the RFP (each a “SOW Deliverable”) on a sequential basis. The Contractor shall provide initial drafts of each SOW Deliverable to the AOC in accordance with the schedule set forth in the Table below. If the SOW Deliverable meets the requirement of the RFP and is acceptable to the AOC, the SOW Deliverable will be accepted. If the SOW Deliverable does not meet the requirements of the RFP or is not acceptable to the AOC, the parties will negotiate in good faith to reach agreement on the SOW Deliverable. The Contractor will make all necessary corrections to the SOW Deliverable based upon such negotiations. Upon completion of such corrections, the Contractor will redeliver the SOW Deliverable to the AOC for review. This process will be repeated as necessary until the SOW Deliverable is acceptable to the AOC. Upon acceptance of an SOW Deliverable and its corresponding pricing and terms and conditions as set forth in Sections III and IV, the Contractor will provide the initial draft of the next SOW Deliverable and the procedures will be repeated until all SOW Deliverables have been accepted by the AOC.

DESCRIPTION OF SOW DELIVERABLE	EXPECTED INITIAL DELIVERY
I. Technology Center Facility	
II. Technology Center Network	
III. Local LAN/WAN/MAN	
IV. Managed Service Provider	
A. Performance and Availability Monitoring	
1. Monitoring	
2. Job Scheduling Software	
3. Batch Processing Jobs	
4. Printing Support	
B. Storage Device and Data Management	
C. Resource Management	
1. Hardware Configuration	
2. Software Configuration	
3. Capacity Management	
4. Change Management	
5. Staging Environment	
6. Hardware Refresh	
D. Asset Management	
E. System Security	
F. Disaster Recovery	
G. Hardware Procurement	
V. Application Service Provider for Business and Desktop Applications	
A. Application Monitoring, Problem Identification and Resolution	
B. Maintenance and Support	
C. Database Administration	
D. Information Security Administration	
E. Change Control	
F. Implementation	
G. Maintain Application Inventory and Configuration Information	
VI. Help Desk and Level 1 through Level 3 Support	
VII. Desktop Support	
VIII. Management and Key Personnel	
A. Project Management	
B. Project Manager	
C. Support Personnel	
D. Roles/Use of Subcontractors	
IX. Migration	

X. Service Levels	
XI. Prime Contractor and Direct Services	
XII. Integration of Existing Resources and Initiatives	
A. Existing AOC Networks	
B. AOC Initiatives	
XIII. Transition Services at Phase Two Contract Conclusion	
XIV. Implementation Schedule	

III. PRICING SCHEDULE

The Contractor shall use (i) the information provided in the RFP, including but not limited to the information in Part VIII, Pricing, of the RFP, (ii) information discovered during due diligence and (iii) additional information provided by the AOC to update the Contractor’s Phase One Proposal in order to develop the Pricing Schedule for the Phase Two Contract. The Contractor shall establish a fixed price (unless otherwise specified) for each service and deliverable described in Part VI of the RFP using the Excel pricing templates set forth in Attachment 2 of the RFP and in accordance with Part VIII of the RFP. The Contractor shall provide initial drafts of pricing spreadsheets for all services and deliverables encompassed by an SOW Deliverable (“Pricing Schedule Deliverable”) upon acceptance of the SOW Deliverable. If the Pricing Schedule Deliverable meets the requirement of the RFP and is acceptable to the AOC, the Pricing Schedule Deliverable will be accepted. If the Pricing Schedule Deliverable does not meet the requirements of the RFP or is not acceptable to the AOC, the parties will negotiate in good faith to reach agreement on the Pricing Schedule Deliverable. The Contractor will make all necessary corrections to the Pricing Schedule Deliverable based upon such negotiations. Upon completion of such corrections, the Contractor will redeliver the Pricing Schedule Deliverable to the AOC for review. This process will be repeated as necessary until the Pricing Schedule Deliverable is acceptable to the AOC. The Pricing Schedule containing all finalized Pricing Schedule Deliverables shall be included in the Phase Two Contract and used as the baseline for pricing additional or new work that may be required or ordered in Phase Two performance, but that is not specified in the Pricing Schedule. The Contractor shall provide a hard copy printout of the completed Pricing Schedule. All fields must be completed. If an item does not apply, the Contractor shall so indicate with zero (0). Failure to propose a price as required will be interpreted as a no price charge to the AOC.

IV. NEGOTIATION OF TERMS AND CONDITIONS FOR PHASE TWO CONTRACT

Concurrent with the negotiation of the SOW Deliverables and the Pricing Schedule Deliverables, the Contractor shall negotiate in good faith all the terms and conditions of the Phase Two Contract. The AOC shall provide the Contractor with a draft of the Phase Two Contract. The parties shall use the AOC’s Phase Two Contract as the starting point in negotiation of the final Phase Two Contract. In the event there are terms and conditions applicable to an SOW Deliverable, such terms shall be negotiated at the time of the negotiation of such SOW Deliverable. Otherwise, the parties shall negotiate the terms and conditions in as expedited a manner as is reasonably possible.

Key Personnel: The following individuals shall be considered "key personnel" for purposes of this Agreement:

Project Manager: _____

EXHIBIT B
PAYMENT SCHEDULE

1.