

**ATTACHMENT 2**  
**MINIMUM CONTRACT TERMS**

Section 1 below sets forth minimum terms that will be included in any contract awarded to a vendor under this RFP under which the AOC receives a license to the Licensed Software. Section 2 below sets forth minimum terms that will be included in any contract awarded to a vendor under this RFP under which the AOC receives implementation, configuration or development services. Section 3 below sets forth minimum terms that will be included in any contract awarded to a vendor under this RFP under which the AOC receives maintenance and support services. Finally, Section 4 below sets forth additional minimum terms that will be included in any contract awarded to a vendor under this RFP.

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**SECTION 1**

**Software License**

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1.1 Grant of Rights.

(a) AOC Group. Vendor grants to the AOC Group a perpetual, irrevocable, worldwide, non-exclusive license to: (i) install and use the Licensed Software for the purpose of conducting the AOC Group's business; and (ii) make a reasonable number of copies of the Licensed Software for archival and/or backup purposes.

(b) AOC Contractors. Notwithstanding any other provision in this Agreement, AOC Contractors may: (i) install, use and host the Licensed Software for the benefit of the AOC Group at the facilities of the AOC Group or the facilities of an AOC Contractor; (ii) install and use the Licensed Software for the purpose of providing the AOC Group with implementation and configuration services in connection with the Licensed Software; (iii) install and use the Licensed Software for the purpose of maintaining and supporting the Licensed Software for the benefit of the AOC Group; and (iv) make a reasonable number of copies of the Licensed Software for archival and/or backup purposes.

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**SECTION 2**

**Development and/or Implementation/Configuration Services**

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2.1 Development Services. Vendor shall perform (a) the development services described in the applicable Statement of Work in accordance with the applicable Project Plan and the applicable Specifications, as the same may be modified by written agreement of the Parties pursuant to the Change Control Procedures; and (b) any incidental services or responsibilities that are reasonable and customary in the industry and not specifically described in this Agreement, but which are required for the performance and delivery of the services identified in (a) above ((a) and (b) collectively, the “Development Services”).

2.2 Implementation/Configuration Services. Vendor shall perform (a) the implementation and configuration services described in the applicable Statement of Work in accordance with the applicable Project Plan and the applicable Specifications, as the same may be modified by written agreement of the Parties pursuant to the Change Control Procedures; and (b) any incidental services or responsibilities that are reasonable and customary in the industry and not specifically described in this Agreement, but which are required for the performance and delivery of the services identified in (a) above ((a) and (b) collectively, the “Implementation/Configuration Services”).

2.3 Delays. If the AOC delays in the performance of any AOC obligations under this Agreement, the Parties shall adjust the schedule for Vendor’s performance of its obligations and delivery of Deliverables, in each case that are dependent on the performance of such AOC obligations, forward by no more than the number of days that the AOC delayed; provided, however, that in all events Vendor shall mitigate any potential costs and delay to the maximum extent possible.

2.4 Stop Work Orders.

(a) Effect. The AOC may, at any time, by written stop work order to Vendor require Vendor to stop all, or any part, of the Services or other work called for by this Agreement for a period of up to ninety (90) calendar days after the stop work order is delivered to Vendor, and for any further period to which the Parties may agree. A stop work order shall be specifically identified as such and shall indicate it is issued under this Section 2.4. Upon receipt of a stop work order, Vendor shall promptly comply with the terms of the stop work order and take all reasonable steps to end the incurrence of any costs, expenses or liabilities allocable to the Services or other work covered by the stop work order during the period of work stoppage. Within ninety (90) calendar days after a stop work order is delivered to Vendor, or within any extension of that period mutually agreed to by the Parties, 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 Section 4.4.

(b) Expiration or Cancellation. If a stop work order issued under this Section 2.4 is canceled by the AOC or the period of the stop work order or any extension thereof expires, Vendor shall resume the

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Services or other work covered by such stop work order. The AOC shall make an equitable adjustment in the delivery schedule, and this Agreement shall be modified, in writing, accordingly, if:

- (i) the stop work order directly and proximately results in an increase in the time required for the performance of any part of this Agreement; and
- (ii) Vendor asserts its right to such equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage.

2.5 Management and Change Control.

(a) Management Committee and Management Meetings. The Parties hereby appoint an equal number of representatives identified in Exhibit F to serve on a management committee (the “Management Committee”). The AOC shall designate one of its representatives on the Management Committee to act as the chairperson of the Management Committee. No member of the Management Committee shall have voting power greater than any other member of the Management Committee. The Parties shall cause their representatives to the Management Committee to attend the meetings of the Management Committee. The Management Committee shall be authorized and responsible for: (i) reviewing any changes to the Statement of Work; (ii) overseeing the performance of each Party’s obligations under this Agreement; and (iii) monitoring and resolving disagreements regarding the provision of the Services. A Party may change any of its representatives on the Management Committee upon written notice to the other Party so long as Vendor’s representatives have at least the same level of decision-making authority as those individuals set forth in Exhibit F. The AOC and Vendor shall establish a schedule of regular Management Committee meetings.

(b) Change Control. The AOC may, from time to time, during the term of this Agreement and the Termination Assistance Period, provide written notice to Vendor requesting Changes including, for example, changes or additions to the Statements of Work or Specifications (“Change Request”). Such Change Request will include a proposed statement of work and proposed schedule to complete the requested Change. Vendor shall respond in good faith in writing to any Change Request within ten (10) calendar days (unless otherwise agreed in writing by the Parties) with Vendor’s approach to the requested Change and a pricing proposal that sets forth the total number of hours required to complete such Change in accordance with the AOC’s proposed statement of work and the AOC’s proposed schedule at the rates set forth in Exhibit C (and/or, if requested by the AOC, a lump sum amount to complete such Change). At the AOC’s option and election, exercisable by written notice to Vendor, the AOC may require (i) Vendor to perform the Change pursuant to the AOC’s proposed statement of work, the AOC’s proposed schedule and Vendor’s pricing proposal, or (ii) each party to negotiate in good faith Vendor’s pricing proposal and any Vendor-proposed changes to the AOC’s proposed statement of work and the AOC’s proposed schedule provided by Vendor to the AOC pursuant to this Section. The AOC may exercise its right to elect subsection (i) above at any time within thirty (30) Business Days following the AOC’s receipt of Vendor’s proposed pricing, including, without limitation, after the commencement of negotiations pursuant to subsection (ii) above. No Change Request shall have any contractually binding effect until the Parties have reached mutual agreement regarding the Change Request and this Agreement is amended to reflect the applicable Change; provided, however, that if the AOC accepts Vendor’s pricing proposal for the requested Change as described above, Vendor may not refuse to accept such Change Request and the Parties shall promptly amend this Agreement to reflect such Change. If a proposed Change Request results in a reduction of the total estimated costs needed to perform the Services, the Parties shall equitably adjust the amounts payable hereunder to reflect such reduction in costs. Any additional fees for all Change Requests will be subject to written agreement. Unless and until replaced, the AOC’s representative empowered to bind the AOC with respect to Change Requests shall be the AOC’s Business Services Manager;

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provided, however, that the Vendor Project Manager and AOC Project Manager shall be empowered by each of the Parties to update the schedule in the Project Plan. Any dispute relating to the Parties' inability or unwillingness to make a Change in accordance with the procedures set forth in this Section 2.5(b) shall be resolved in accordance with Section 4.15.

(c) Third Party or AOC Services. Notwithstanding any request made to Vendor by the AOC pursuant to Section 2.5(b), the AOC shall have the right to perform or contract with a third party to perform any service within or outside the scope of the Services, including services to augment or supplement the Services or to interface with the IT Infrastructure of the AOC Group or AOC Contractors. In the event the AOC performs or contracts with a third party to perform any such service, Vendor shall cooperate in good faith with the AOC Group and any such third party, to the extent reasonably required by the AOC, and the AOC shall reimburse Vendor for its actual out-of-pocket costs and personnel time based on the discounted rate table set forth in Exhibit C, in each case, as incurred in providing such assistance. Such cooperation shall include, without limitation, providing such information as a person with reasonable commercial skills and expertise would find reasonably necessary for the AOC or a third party to perform its work relating to the Services.

2.6 AOC Service Locations and Other Resources.

(a) Generally. Vendor shall provide the Services to and from only the (1) AOC Service Locations, and (2) Designated Vendor Service Locations. The Services may not be performed outside of the United States.

(b) AOC Service Locations. The AOC Service Locations, including all space, furnishings and fixtures therein, made available by the AOC Group to Vendor will have adequate furniture, telephone, electric power, lighting, heat and air conditioning to provide the Services to such AOC Service Locations, as set forth in the Statement of Work. Except as expressly provided in this Section 2.6(b) above, the AOC Service Locations are provided "AS IS" and "WHERE IS." Vendor shall use the AOC Service Locations for the sole purpose of providing the Services and shall use the AOC Service Locations in an efficient manner. Vendor shall be responsible for damages to and fines imposed as a result of Vendor's negligent use of the AOC Service Locations caused by Vendor, its Vendor Contractors, employees or invitees. The AOC Group and AOC Contractors shall be free to enter into those portions of the AOC Service Locations occupied by the Project Staff at any time. When the AOC Service Locations are no longer required for performance of the Services, Vendor shall return the AOC Service Locations to the AOC in substantially the same condition as when Vendor began use of the AOC Service Locations, subject to reasonable wear and tear.

(c) Other Resources. Except as set forth in Section 2.6(b) and the Statement of Work, Vendor is responsible for providing any and all facilities, assets and resources (including personnel, equipment and software) necessary and appropriate for delivery of the Services and to meet Vendor's obligations under this Agreement.

2.7 Data and Security.

(a) Safety and Security Procedures. Vendor shall maintain and enforce, at the Designated Vendor Service Locations, the safety and physical security policies and procedures set forth in Exhibit K ("VSL Policies and Procedures"). Subject to the foregoing, any requests by the AOC for material changes to the VSL Policies and Procedures shall be subject to the Change Control Procedures. While at each AOC Service Location, Vendor shall comply with the safety and security policies and procedures in effect at such AOC Service Location ("ASL Policies and Procedures").

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(b) Data Security. Unless otherwise agreed in writing by the AOC, Vendor shall comply with the safeguards against the destruction, loss or alteration of the AOC Data in the possession of Vendor that are set forth in Exhibit L (the “Data Safeguards”). Vendor personnel and Vendor Contractors shall not attempt to access, and shall not allow access to the AOC Data that is not required for the performance of the Services by such personnel or Vendor Contractors. Vendor shall revise the Data Safeguards as mutually agreed upon in writing by the Parties. In the event Vendor intends to implement a change to the Data Safeguards (including pursuant to the AOC’s request), Vendor shall notify the AOC and, upon the AOC’s approval, implement such change. In the event Vendor or a Vendor Contractor discovers or is notified of a breach or potential breach of security relating to the AOC Data, Vendor shall promptly: (i) notify the AOC Project Manager of such breach or potential breach; and (ii) if the applicable AOC Data was in the possession of Vendor or Vendor Contractors at the time of such breach or potential breach, Vendor shall (1) investigate and cure the breach or potential breach and (2) provide the AOC with assurance satisfactory to the AOC that such breach or potential breach will not recur.

(c) Security Assessments. Vendor shall, at its expense, perform, or cause to have performed, once each Contract Year, assessments of Vendor’s compliance with the security policies set forth in Exhibit K and Exhibit L at each of the Designated Vendor Service Locations during the immediately preceding twelve (12) month period. Vendor shall provide to the AOC the results, including any findings and recommendations made by Vendor’s assessors, of such assessment. The AOC and AOC Contractors may, pursuant to Section 4.5(a) and at the AOC’s expense, perform the assessments described in this Section and “snap” assessments (e.g., safety and data/physical security assessments) of the AOC Service Locations.

2.8 Project Staff.

(a) AOC Project Manager. The AOC shall appoint an individual (the “AOC Project Manager”) within thirty (30) calendar days after the Effective Date to communicate directly with the Vendor Project Manager. The AOC Project Manager will be responsible for the ongoing management of this Agreement, including review of billing activities. The AOC may change the AOC Project Manager upon written notice to Vendor.

(b) Vendor Project Manager. The Vendor employee identified in Exhibit G as the Vendor project manager (the “Vendor Project Manager”) shall serve, from the Effective Date, as the Vendor project manager and primary Vendor representative under this Agreement. The Vendor Project Manager shall serve on a full-time basis under this Agreement. Any change in the Vendor Project Manager shall be subject to the AOC’s prior written approval. Before assigning an individual as a Vendor Project Manager, whether as an initial assignment or a subsequent assignment, Vendor shall notify the AOC of the proposed assignment, introduce the individual to appropriate AOC representatives and provide the AOC with a résumé and other information about the individual reasonably requested by the AOC. The Vendor Project Manager shall (i) have overall responsibility for managing and coordinating the performance of Vendor’s obligations under this Agreement, including the performance of all Vendor Contractors, and (ii) be authorized to act for and bind Vendor and Vendor Contractors in connection with all aspects of this Agreement. The Vendor Project Manager shall respond promptly and fully to all inquiries from the AOC Project Manager during the term of this Agreement and the Termination Assistance Period. The Vendor Project Manager responsibilities shall include: (1) preparing meeting documentation and making on-going project presentations on project status and other related project topics as identified by the AOC; (2) providing administrative, supervisory, and technical direction to Project Staff; (3) monitoring performance hereunder for accuracy, timeliness, efficiency and adherence to the terms and conditions of this Agreement; and (4) coordinating the resolution of Agreement issues and the implementation and enforcement of problem escalation procedures.

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(c) Vendor Key Personnel. Vendor Key Personnel will be dedicated to providing the Services to the AOC on a full-time basis unless otherwise specified in Exhibit G or otherwise agreed in writing by the Parties. The AOC reserves the right to interview and approve proposed Vendor Key Personnel prior to their assignment to the AOC. The Vendor Project Manager shall be considered a member of the Vendor Key Personnel. Vendor shall not replace or reassign a member of the Vendor Key Personnel during the term of this Agreement or Termination Assistance Period, unless the AOC consents in advance in writing to reassignment or replacement or such member of the Vendor Key Personnel (i) voluntarily resigns or takes a leave of absence from Vendor, (ii) has his/her employment, professional or other for-hire relationship terminated by Vendor, (iii) fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) dies or is unable to work due to his or her disability. If Vendor needs to replace Vendor Key Personnel for any of the foregoing reasons, Vendor shall (1) notify the AOC promptly, (2) provide resumes for proposed replacement Vendor Key Personnel within two (2) Business Days after so notifying the AOC, and (3) be responsible for all costs and expenses associated with any replacement of any Vendor Key Personnel member (including, without limitation, any costs and expenses associated with training, project orientation or knowledge transfer reasonably required for replacement personnel to provide the applicable Services).

(d) Subcontractors.

(i) Vendor shall not subcontract or delegate any of the obligations under this Agreement except as approved by the AOC Business Services Manager in writing in advance. The AOC hereby approves those subcontractors identified in Exhibit D, to the extent that such subcontractors continue to provide the services specified in Exhibit D. The AOC may withdraw its approval of a subcontractor if the AOC determines in good faith that the subcontractor is, or will be, unable to effectively perform its responsibilities. If the AOC rejects any proposed subcontractor in writing, Vendor will assume the proposed subcontractor's responsibilities. Vendor may propose another subcontractor if it does not jeopardize the effectiveness or efficiency of this Agreement.

(ii) No subcontracting shall release Vendor from its responsibility for performance of its obligations under this Agreement. Vendor shall remain fully responsible for the performance of Vendor Contractors hereunder, including, without limitation, all work and activities of Vendor Contractors providing services to Vendor in connection with Vendor's provision of the Services. Vendor shall be the sole point of contact with Vendor Contractors under this Agreement, and Vendor shall be solely responsible for Vendor Contractors, including, without limitation, payment of any and all charges resulting from the cost of any subcontract between Vendor and Vendor Contractors. To ensure Vendor Contractors' performance, Vendor shall include the AOC as a direct and intended third party beneficiary to each such subcontract; provided that, except as the foregoing could rise to the same, nothing contained in this Agreement will create or be construed as creating any contractual relationship between any subcontractor and the AOC.

(iii) Vendor shall promptly pay for all services, materials, equipment and labor used by Vendor in providing the Services and shall keep the premises of the AOC Group free of all liens that may arise through the acts or omissions of Vendor or Vendor Contractors. In the event of a lien on any premises of the AOC Group through the acts or omissions of Vendor or Vendor Contractors, Vendor shall promptly acquire an unconditional lien release for such lien.

(e) Project Staff. Vendor shall appoint to the Project Staff (i) individuals with suitable training and skills to perform the Services, and (ii) sufficient technical support personnel to adequately provide the Services. At the end of every ninety (90) calendar day period after the Effective Date, Vendor shall provide the AOC with a list of all individuals on the Project Staff who are located at an AOC Service Location, and the

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location to which each such individual is assigned. At no time shall the personnel of Vendor and Vendor Contractors located on the AOC Group's premises provide services on such premises, except services that support the AOC Group's operations. Vendor shall promptly notify the AOC after terminating the employment of or reassigning any member of the Project Staff whose normal work location is an AOC Service Location. Without limiting Vendor's obligations under Sections 2.8(b), 2.8(c) or 2.8(d), Vendor agrees to make commercially reasonable efforts consistent with sound business practices to honor the specific request of the AOC with regard to assignment of its employees. Without limiting Vendor's obligations under Sections 2.8(b), 2.8(c) or 2.8(d), if a Vendor employee is unable to perform due to illness, resignation, or other factors, Vendor shall provide suitable substitute personnel. The AOC shall have the right at any time to require Vendor to remove any personnel from the Project Staff that interact with any personnel of the AOC Group or AOC Contractors (including, without limitation, the Vendor Project Manager) upon providing to Vendor a reason for such required removal; provided that such required removal may not be for an illegal purpose. Vendor may, at its option, continue to retain such member of the Project Staff in a role that does not interact with any personnel of the AOC Group or AOC Contractors. The Vendor Project Manager and the AOC Project Manager shall work together to mitigate any impact on the schedule and Project Plan caused by any replacement of a Project Staff member. Vendor shall be responsible for all costs and expenses associated with any replacement of any Project Staff member (including, without limitation, any costs and expenses associated with training, project orientation or knowledge transfer reasonably required for replacement personnel to provide the applicable Services). Vendor shall conduct the replacement procedures for the Project Staff in such a manner so as to assure an orderly and prompt succession for any Project Staff member who is replaced.

(f) Conduct of Project Staff.

(i) While at the AOC Service Locations, Vendor shall, and shall cause Vendor Contractors to, (1) comply with the requests, standard rules and regulations and policies and procedures of the AOC Group regarding safety and health, security, personal and professional conduct (including the wearing of an identification badge or personal protective equipment and adhering to site regulations and general safety practices or procedures) generally applicable to such AOC Service Locations, and (2) otherwise conduct themselves in a businesslike manner.

(ii) Vendor shall: (A) enter into an agreement substantially in the form set forth in Exhibit E, binding all Project Staff (including, without limitation, Vendor Contractors) to non-use and non-disclosure requirements at least as protective as those applied to Vendor with respect to the AOC's Confidential Information in connection with Vendor's provision of the Services (to the extent that such agreements do not already exist); (B) cause each Vendor Contractor to enter into such agreement with its employees who are performing Services hereunder (to the extent that such agreements do not already exist); and (C) cause the Project Staff to maintain and enforce the confidentiality provisions of this Agreement and such agreements both during and after their assignment to the Services. Vendor further shall enter into an agreement with each of the members of the Project Staff which assigns, transfers and conveys to Vendor all of such Project Staff member's right, title and interest in and to any Developed Works, including all Intellectual Property Rights in and to Developed Works (to the extent that agreements effecting the same results do not already exist).

(iii) The AOC shall have the right, but not the obligation, to conduct a background check, as permitted by law and at its expense, on all persons granted access to confidential information of the AOC Group or AOC Contractors, the premises or IT Infrastructure of the AOC Group or those of an AOC Contractor. Any such background check shall be no greater in scope than background checks conducted for AOC employees pursuant to the AOC's policy in effect as of the Effective Date. Alternatively, Vendor shall perform criminal background checks at the AOC's request subject to reimbursement of Vendor's out-of-pocket costs and

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expenses actually incurred by Vendor in performing such criminal background checks. Such criminal background checks shall inquire if a member of the Project Staff has a federal or state misdemeanor or felony conviction reportable under the AOC's policy, for the ten (10) years immediately prior to the check being conducted, for the counties of residence, work, and school. The Parties agree that the following are not reportable under the AOC's policy: minor traffic violations for which the fine was one hundred dollars (\$100) or less; offenses that were finally settled in a juvenile court under a welfare youth offender law; offenses that resulted in successful completion of a diversion program and subsequent dismissal; offenses for which the record of the conviction has been sealed in accordance with Penal Code sections 851.7, 851.8, 1203.45, and Welfare and Institutions Code sections 389 and 781; and offenses for which the record of the conviction has been expunged or is expungable pursuant to Health and Safety Code section 11361.5. Vendor may disclose to the AOC whether and when a background check has previously been conducted on an individual, and the AOC may accept such prior background check in lieu of a new background check. The Parties shall establish a schedule for performing background checks reasonably acceptable to the AOC. Vendor shall remove from the Project Staff any person refusing to undergo such background checks and any other person whose background check results are unacceptable to Vendor or that, after disclosure to the AOC, the AOC advises are unacceptable to the AOC or the AOC Group; alternatively, Vendor shall reassign such persons to another area reasonably satisfactory to the AOC. To the extent permitted by and in accordance with Applicable Law, Vendor shall reasonably cooperate with the AOC Group in performing such background checks and shall promptly notify the AOC of any such person refusing to undergo such background checks. To the extent permitted by and in accordance with Applicable Law and Vendor written policy, Vendor shall obtain all releases, waivers, or permissions required for the release of such information to the AOC or the AOC Group. The AOC and AOC Group shall not disclose to any third party the information obtained from such background check and shall use information obtained from such background checks solely for the purpose of approving Vendor employees and Vendor Contractors to provide services hereunder.

2.9 Representations and Warranties.

(a) Compliance with Laws and Regulations; Consents. Vendor represents and warrants to the AOC that it shall ensure that all facilities used by Vendor or Vendor Contractors to provide the Services (other than AOC Service Locations) comply with all Applicable Laws.

(b) Work Standards. Vendor represents and warrants to the AOC 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. During the term of this Agreement and the Termination Assistance Period, Vendor shall, at its sole cost, correct any breach of this representation and warranty and do so as expeditiously as possible.

(c) Efficiency and Cost Effectiveness. Vendor represents and warrants to the AOC 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.

(d) Works. Vendor represents and warrants to the AOC that it is and will be either the owner of, or authorized to use for its own and the AOC Group's benefit, all Vendor Works and Third Party Works used and to be used in connection with the Services.



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2.10 Intellectual Property.

(a) AOC Works. As of the Effective Date, Vendor will be granted a limited, non-exclusive, royalty-free license during the term of the Agreement to use, access, copy, maintain, modify, enhance and create derivative works of AOC Works solely as necessary for and for the sole purpose of providing the Services. Except as expressly provided in this Section 2.10(a), Vendor may not use AOC Works for any other purpose, and may not sublicense any rights with respect to such Works. Vendor will cease use of such Works upon expiration or termination of the Agreement.

(b) Vendor Works. The AOC shall have the right to approve in writing the introduction of any Vendor Works into any Deliverable prior to such introduction. Upon introduction of any Vendor Works into any Deliverable, Vendor grants to the AOC Group, together with all AOC Contractors, without additional charge, a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, non-exclusive license to use, reproduce, perform, display, transmit, distribute, modify, create derivative works of, make, have made, sell, offer for sale and import Vendor Works (and with respect to Vendor Works that are Software, Source Code for such Software) and to sublicense such rights to other entities, in each case for the purpose of conducting the AOC Group's business.

(c) Third Party Works. The AOC shall have the right to approve in writing the introduction of any Third Party Works into any Deliverable prior to such introduction. Unless otherwise agreed by the Parties in writing, prior to installation of any Third Party Works, Vendor shall obtain the right to grant and shall grant the AOC Group, together with all AOC Contractors, without additional charge, a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, non-exclusive license to use, reproduce, perform, display, transmit, distribute, modify, create derivative works of, make, have made, sell, offer for sale and import such Third Party Works (and with respect to Third Party Works that are Software, copies of Source Code for such Software) and to sublicense such rights to other entities for the purpose of conducting the AOC Group's business.

(d) Rights in Developed Works Vendor hereby irrevocably assigns, transfers and conveys to the AOC without further consideration all worldwide right, title and interest in and to the Developed Works, including all Intellectual Property Rights therein. Vendor further agrees to execute any documents or take any other actions as may be reasonably necessary or convenient to perfect the AOC's or its designee's ownership of any Developed Works and to obtain and enforce Intellectual Property Rights in or relating to Developed Works. Vendor may use Developed Works solely to provide the Services during the term of this Agreement.

(e) Notice of Development. Vendor shall promptly notify the AOC upon the completion of the development, creation or reduction to practice of any and all Developed Works and submit to the AOC any patent disclosure statements applicable to the Developed Works.

2.11 Licenses, Approvals, Permits and Authorizations Required by Applicable Law. Vendor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by Applicable Laws for the performance of the Services. Vendor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations. Vendor shall be responsible for any fines and penalties arising from its noncompliance with any Applicable Law, to the extent such noncompliance was not caused by the AOC.

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**SECTION 3**

**Maintenance and Support Services**

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3.1 Service Terms. The terms and conditions of Sections 2.3, 2.6(c), 2.7, 2.8, 2.9, 2.10 and 2.11 shall apply to any maintenance and support services contract awarded under this RFP.

3.2 Definitions.

(a) “Level 1 Support” means qualifying and logging all Technical Support Incidents, answering technical inquiries regarding the Licensed Software and/or Deliverables and performing limited diagnostic services.

(b) “Level 2 Support” means, with the use of technical support specialists: (i) performing Defect isolation, Defect replication and interoperability testing; (ii) performing remote diagnostic services and on-site troubleshooting, if required; (iii) identifying the source of Defects; (iv) developing a reproducible test case for any Defect and documenting the details of such Defect for escalation to Level 3 Support; and (v) developing and implementing Workarounds where reasonably possible.

(c) “Level 3 Support” means, with the use of backup engineering and technical support staff, isolating Defects and developing Defect corrections including, without limitation, Upgrades.

(d) “Reporting Date” means the date that the AOC reports the Defect at issue.

(e) “Resolution Period” means the period of time elapsed from Vendor’s receipt of a report of a Defect until the time such Defect is resolved and normal production functionality has been achieved, excluding any time of the AOC to perform acceptance testing on the applicable Defect correction.

(f) “Severity Level” means the actual impact of a Defect on a user’s operational environment as further described in the table below.

(g) “Standard M&S Hours” means 7am to 7 pm Pacific Time on all Business Days.

(h) “Technical Support Incident” means a single, indivisible problem reported or technical inquiry made regarding the Licensed Software and/or any Deliverable, including without limitation user questions or Defect reports. A Technical Support Incident is only closed when mutually agreed by the parties.

(i) “Upgrades” means all new versions and releases of, and bug fixes, error corrections and Workarounds for, the Licensed Software, Deliverables and/or Documentation.

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(j) **“Workaround”** means a temporary modification to or change in operating procedures for the Licensed Software and/or any Deliverable that: (i) circumvents or effectively mitigates the adverse effects of a Defect so that the Licensed Software and/or such Deliverable complies with and performs in accordance with the applicable Specifications and Documentation; (ii) does not require substantial reconfiguration of the Licensed Software and/or such Deliverable or any reloading of data; and (iii) does not otherwise impose any requirements that would impede an end user’s efficient use of the Licensed Software and/or such Deliverable.

3.3 **Maintenance.** Vendor shall promptly provide the AOC with all Upgrades to the Licensed Software and/or Deliverables. Without limiting any other obligation of Vendor under this Agreement, Vendor represents and warrants under the Agreement that it will maintain equipment and software to the extent that Vendor has maintenance responsibility for such assets so that they operate in accordance with their specifications and documentation including, without limitation, performing software maintenance in accordance with the applicable software vendor’s documentation and recommendations.

3.4 **Support Obligations.**

(a) **Response.** Without limiting Vendor’s obligations under Section 3.4(a) below, with respect to each Technical Support Incident not covered under Section 3.4(a) below, Vendor shall respond to the AOC within four (4) hours after the AOC reports a Technical Support Incident (such hours all occurring during Standard M&S Hours) to Vendor or within the applicable Response Periods, whichever is shorter.

(b) **Services and Monthly Support Case Report.** Vendor shall (i) provide the AOC with Level 1 Support, Level 2 Support and Level 3 Support (provided that Level 1 Support shall be at the AOC’s option and election pursuant to this RFP), and (ii) deliver to the AOC Project Manager a monthly report summarizing Technical Support Incidents opened, continuing, or closed during the preceding calendar month. Without limiting the foregoing, Vendor shall respond to and resolve all Defects in accordance with the Severity Levels determined by the AOC for each Defect and the table set forth below.

<b>Severity Level</b>	<b>Description</b>	<b>Resolution Hours</b>	<b>Response Period</b>	<b>Resolution Period</b>
Severity Level 1	<ul style="list-style-type: none"> <li>A Severity Level 1 Defect is generated if a critical component or the entire application has stopped or is so severely impacted that the Licensed Software or component cannot reasonably continue to operate and there is no Workaround available.</li> <li>A Severity Level 1 Defect is generated if data is corrupted or data integrity issues related to security/confidentiality that leads to noncompliance with legal requirements or</li> </ul>	24 hours per day, 7 days per week	30 minutes	2 hours

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<b>Severity Level</b>	<b>Description</b>	<b>Resolution Hours</b>	<b>Response Period</b>	<b>Resolution Period</b>
	regulations.			
Severity Level 2	<ul style="list-style-type: none"> <li>• A Severity Level 2 Defect is generated if a critical component of the Licensed Software is unavailable or will not work but a Workaround is available.</li> <li>• A Severity Level 2 Defect is generated if a non-critical component of the Licensed Software is unavailable or will not work and there is no Workaround.</li> </ul>	<p>Standard M&amp;S Hours</p> <p>Standard M&amp;S Hours</p>	30 minutes	4 hours
Severity Level 3	<ul style="list-style-type: none"> <li>• A Severity Level 3 Defect is generated if the non-critical component result is not as expected but a Workaround is available and there is no significant impact to the end user.</li> </ul>	Standard M&S Hours	2 hours	120 hours
Severity Level 4	<ul style="list-style-type: none"> <li>• All Defects other than Severity Level 1 Defects, Severity Level 2 Defects and Severity Level 3 Defects (e.g., minor or cosmetic Defects). Workarounds are available.</li> </ul>	Standard M&S Hours	2 hours	30 days

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**SECTION 4**

**Miscellaneous Terms and Conditions**

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4.1 Definitions.

(a) “AOC Contractors” means the agents, subcontractors and other representatives of the AOC Group, other than Vendor and Vendor Contractors.

(b) “AOC Data” means all data and information submitted to Vendor or Vendor Contractors by or on behalf of the AOC Group or AOC Contractors, including all such data and information relating to the AOC Group and their respective contractors, agents, employees, technology, operations, facilities, markets, products, capacities, systems, procedures, security practices, court records, court proceedings, 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.

(c) “AOC Group” means, collectively, (a) the Judicial Council, (b) the AOC and (c) the Courts.

(d) “AOC Project Manager” has the meaning set forth in Section 2.8(a).

(e) “AOC Service Locations” means any AOC Group service location(s) set forth in Exhibit M.

(f) “AOC Works” means Works made, conceived, or reduced to practice solely by the AOC Group or independently of this Agreement by the AOC Group, and all modifications, enhancements and derivative works thereof, including all Intellectual Property Rights in any of the foregoing.

(g) “Applicable Law” means any federal, state and local laws, codes, legislative acts, regulations, ordinances, rules, rules of court and orders, as applicable.

(h) “Business Day” means any day other than Saturday, Sunday or a scheduled AOC holiday.

(i) “Change(s)” means any change, modification or addition to the Services or this Agreement, including changes, modifications or additions to the Statement of Work or the Specifications.

(j) “Change Control Procedures” means the change control procedures applicable to any Changes under this Agreement, as set forth in Section 2.5(b).

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- (k) “Change Request” has the meaning set forth in Section 2.5(b).
- (l) “Confidential Information” has the meaning set forth in Section 4.9.
- (m) “Contract Year” means each 12-month period commencing on the Effective Date and thereafter upon each 12-month anniversary of the Effective Date.
- (n) “Courts” means the Supreme Court, and the Courts of Appeal of the State of California.
- (o) “Critical Deliverables” means the Deliverables identified as “Critical Deliverables” in the applicable Statement of Work, including those identified in Section [ ] of Exhibit A.
- (p) “Data Safeguards” has the meaning set forth in Section 2.7(b).
- (q) “Defect” shall mean any failure by the Licensed Software or any Deliverable to conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation.
- (r) “Deliverables” means any Developed Works, Vendor Works and Third Party Works, or any combination thereof, identified as “Deliverables” in a Statement of Work, together with all Upgrades thereto.
- (s) “Designated Vendor Service Location(s)” means any Vendor service location set forth in Exhibit J.
- (t) “Developed Works” means Works created, made, or developed by Vendor or Vendor Contractors, either solely or jointly with the AOC Group or AOC Contractors, in the course of the performance of the Services under this Agreement, and all Intellectual Property Rights therein and thereto, including, without limitation, (i) all work-in-process, data or information, (ii) all modifications, enhancements and derivative works made to Vendor Works, and (iii) all drafts and final copies of Deliverables; provided, however, that Developed Works do not include Vendor Works.
- (u) “Development Services” has the meaning set forth in Section 2.1.
- (v) “Documentation” means (i) all documentation published by Vendor for the Licensed Software, and (ii) all technical architecture documents, technical manuals, user manuals, flow diagrams, operations guides, file descriptions, training materials and other documentation related to the Deliverables; together with all Upgrades thereto.
- (w) “Effective Date” has the meaning set forth on the “Standard Agreement” signature page to which this Agreement is attached.
- (x) “Exit Consents” means all licenses, consents, authorizations and approvals that are necessary to allow Vendor and Vendor Contractors to perform under Section 4.7.
- (y) “Fees” means, collectively, License Fees and Service Fees.
- (z) “Force Majeure Event” has the meaning set forth in Section 4.14.
- (aa) “Implementation/Configuration Services” has the meaning set forth in Section 2.2.

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(bb) “Intellectual Property Rights” means any and all (i) United States or foreign patent rights or any application therefor and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (ii) invention disclosures, trade secrets, and proprietary information; (iii) copyrights, copyright registrations and applications therefor in the United States or any foreign country, and all other rights corresponding thereto throughout the world; and (iv) any other proprietary rights anywhere in the world.

(cc) “Interest” means either (i) the interest rate in effect on the first day the applicable amounts become subject to interest payments hereunder as publicly announced from time to time by Bank of America, N.A. in San Francisco, California as its “prime rate”, or (ii) the maximum rate allowed under law, whichever is lower.

(dd) “IT Infrastructure” means software and all computers and related equipment, including, as applicable, central processing units and other processors, controllers, modems, communications and telecommunications equipment and other hardware and peripherals.

(ee) “License Fees” has the meaning set forth in Section 4.3(a).

(ff) “Licensed Software” means Vendor’s commercially available Software applications identified in Schedule [ ] of Exhibit C, together with all Upgrades thereto.

(gg) “Maintenance and Support Services” means the services provided by Vendor pursuant to Section 3.

(hh) “Malicious Code” means any (i) program routine, device or other feature or hidden file, including any time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm the Software or any of the AOC Group’s hardware, software, data or other programs, and (ii) hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.

(ii) “Management Committee” has the meaning set forth in Section 2.5(a).

(jj) “Maximum Amount Payable” has the meaning set forth on the “Standard Agreement” signature page to which this Agreement is attached.

(kk) “Parties” means the AOC and Vendor, collectively.

(ll) “Party” means either the AOC or Vendor, as the case may be.

(mm) “Project Plan” means the project plan set forth in the applicable Statement of Work.

(nn) “Project Staff” means the personnel of Vendor and Vendor Contractors who provide the Services.

(oo) “Service Fees” has the meaning set forth in Section 4.3(a).

(pp) “Service Location(s)” means any AOC Service Location or Designated Vendor Service Location, as applicable.

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(qq) “Services” means, collectively, the Development Services, Implementation/Configuration Services, Maintenance and Support Services and Termination Assistance Services.

(rr) “Software” means Source Code and object code versions of applications programs, operating system software, computer software languages, utilities, and other computer programs, together with all Documentation, in whatever form or media, including the tangible media upon which such software and Documentation are recorded or printed, together with all Upgrades thereto.

(ss) “Source Code” means human-readable program statements written by a programmer or developer in a high-level or assembly language that are not directly readable by a computer and that need to be compiled into object code before they can be executed by a computer.

(tt) “Specifications” means (i) with respect to the Licensed Software, all specifications published by Vendor for the Licensed Software, and (ii) with respect to each Deliverable, the specifications agreed upon in writing by the Parties.

(uu) “Statement of Work” means a statement of work attached to this Agreement as Exhibit A for the Development Services or Implementation/Configuration Services, as applicable.

(vv) “Termination Assistance Period” has the meaning set forth in Section 4.7(a)(i).

(ww) “Termination Assistance Services” has the meaning set forth in Section 4.7(a)(i).

(xx) “Third Party” means any person or entity other than the AOC Group or Vendor.

(yy) “Third Party Works” means Works owned or controlled by any Third Party, where “control” means having the right to license such Work to the AOC for use by the AOC Group.

(zz) “Upgrades” means all new versions, bug fixes, error-corrections, workarounds, patches and new releases of Software and/or Documentation.

(aaa) “Vendor Communications” means Vendor’s and Vendor Contractors’ e-mail communications to the AOC, exclusive of (i) attached documents, (ii) work-in-process, data or information that is resident on the AOC’s or any shared AOC-Vendor server and records relating to this Agreement, and (iii) drafts and final copies of Deliverables.

(bbb) “Vendor Contractor(s)” means the agents, subcontractors and other representatives of Vendor performing Services hereunder who are not employees of Vendor.

(ccc) “Vendor Key Personnel” means those Project Staff members identified as “Key Personnel” as set forth in Exhibit G.

(ddd) “Vendor Project Manager” has the meaning set forth in Section 2.8(b).

(eee) “Vendor Works” means (a) Works developed or otherwise obtained by or for Vendor independently of this Agreement, including all Works and Intellectual Property Rights owned by Vendor as of the Effective Date of the Agreement; and (b) Vendor Communications.



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(fff) “Works” means all inventions (whether patentable or not), discoveries, literary works and other works of authorship (including Software), designations, designs, know-how, ideas and information.

4.2 Delivery and Acceptance.

(a) Delivery. Vendor shall deliver to the AOC the Licensed Software, Deliverables and Developed Works in accordance with the Project Plan in the Statement of Work.

(b) Acceptance. Acceptance by the AOC is required for the Licensed Software and each Deliverable delivered by Vendor pursuant to this Agreement.

(i) Licensed Software. Acceptance of the Licensed Software shall occur only upon the AOC’s written acceptance of the Licensed Software after implementation and configuration of the Licensed Software in accordance with all requirements of the contract awarded under this RFP for Implementation/Configuration Services. If the AOC rejects the Licensed Software, the AOC shall provide, at the time of rejection, a written statement to Vendor that identifies in reasonable detail the deficiencies of the Licensed Software. If the AOC provides Vendor a notice of rejection for the Licensed Software, Vendor shall modify the Licensed Software and/or the implementation and/or configuration of the Licensed Software at no expense to the AOC to correct the relevant deficiencies set forth in the AOC’s written notice of rejection and shall redeliver the implemented and configured Licensed Software within ten (10) Business Days after Vendor’s receipt of such notice of rejection, unless otherwise agreed in writing by the Parties. Thereafter, the Parties shall repeat the process set forth in this Section 4.2(b)(i) until Vendor’s receipt of the AOC’s written acceptance of such corrected Licensed Software (such AOC written acceptance referred to as “Licensed Software Acceptance”); provided, however, that if the AOC rejects the Licensed Software on at least two (2) occasions, the AOC may terminate that portion of this Agreement which relates to the rejected Licensed Software and the implementation and configuration services therefor at no expense to the AOC.

(ii) Deliverables. Acceptance of each Deliverable shall occur only upon the AOC’s written acceptance of such Deliverable. If the AOC rejects any Deliverable, the AOC shall provide, at the time of rejection, a written statement to Vendor that identifies in reasonable detail the deficiencies of such Deliverable. If the AOC provides Vendor a notice of rejection for any Deliverable, Vendor shall modify such rejected Deliverable at no expense to the AOC to correct the relevant deficiencies set forth in the AOC’s written notice of rejection and shall redeliver such Deliverable to the AOC within ten (10) Business Days after Vendor’s receipt of such notice of rejection, unless otherwise agreed in writing by the Parties. Thereafter, the Parties shall repeat the process set forth in this Section 4.2(b)(ii) until Vendor’s receipt of the AOC’s written acceptance of such corrected Deliverable (each such AOC written acceptance of each Deliverable referred to as “Deliverable Acceptance”); provided, however, that if the AOC rejects any Deliverable on at least two (2) occasions, the AOC may terminate that portion of this Agreement which relates to the rejected Deliverable at no expense to the AOC.

4.3 Fees and Payment Terms.

(a) Fees. In consideration for the license and rights granted by Vendor pursuant to Section 1.1, the AOC shall pay to Vendor the time and materials rates set forth in Exhibit C (“License Fees”). Subject to performance of the Services hereunder, in consideration of Vendor providing the Services, the AOC shall pay to Vendor the time and materials rates set forth in Exhibit C (“Service Fees”). Except as expressly set forth in this Agreement, all expenses relating to the Services are included in the Service Fees and shall not be reimbursed by the AOC. The maximum amount payable to Vendor under this Agreement will not exceed the Maximum Amount Payable. The Maximum Amount Payable may be changed only by amendment to this Agreement.

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(b) Right of Set-Off. With respect to any amount that is payable to the AOC by Vendor under this Agreement, the AOC may deduct such entire amount payable by Vendor from the charges otherwise payable or expenses owed to Vendor by the AOC under this Agreement.

(c) Taxes. Unless otherwise required by law, the AOC is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Vendor or on any taxes levied on employee wages. The AOC shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the AOC pursuant to this Agreement.

(d) Competitive Pricing. The fees paid by the AOC to Vendor shall be at least as low as those fees charged by Vendor to its other customers in local and state government that are receiving services substantially similar to the Services or receiving the Licensed Software, as applicable (“Government Contract”). If, during the term of this Agreement or the Termination Assistance Period, Vendor enters into a Government Contract that contradicts the foregoing sentence, Vendor 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, which shall take effect on the effective date of the relevant Government Contract. At least once each Contract Year, or upon the AOC’s request, an officer of Vendor shall certify to the AOC that this obligation has not been contradicted by any transaction entered into by Vendor since the later of the (1) Effective Date and (2) date of the most recent certification provided by Vendor pursuant to this obligation.

(e) Time of Payment and Detailed Invoices. Vendor shall invoice the AOC for the applicable Service Fees upon acceptance of each Deliverable by the AOC pursuant to this Agreement and for the applicable License Fees upon acceptance of the Licensed Software pursuant to this Agreement. The AOC will not make any advance payment for Services. Vendor shall provide invoices with the level of detail reasonably requested by the AOC. Subject to Section 4.3(f), the AOC will pay each correct, itemized invoice from Vendor submitted after acceptance, in accordance with the terms hereof by the AOC, of the Licensed Software, Services and Deliverables covered under such invoice after the AOC’s receipt of such invoice. The AOC may appoint one (1) or more Courts as the AOC’s payment agent hereunder.

(f) Retention Amount. Notwithstanding the terms of this Section 4.3, and without limiting the rights of the AOC under Section 4.3(a), the AOC shall have the right at the time of Deliverable Acceptance, with respect to those Deliverables in each Statement of Work, on a Statement of Work-by-Statement of Work basis, to withhold fifteen percent (15%) from the amounts to be paid by the AOC to Vendor therefor, until Deliverable Acceptance of the final Deliverable under such Statement of Work.

(g) Disputes. If the parties disagree as to the amounts owed as full and final payment for the Licensed Software or a specific Deliverable, the amounts owed for the Licensed Software and such Deliverable shall be determined in accordance with Section 4.14.

4.4 Termination.

(a) Termination for Convenience.

(i) The AOC may terminate this Agreement for convenience, in whole or in part, upon thirty (30) calendar days prior written notice to Vendor specifying the extent of termination and the effective date thereof (“Notice of Termination for Convenience”). The AOC’s notice obligations under the foregoing sentence shall not apply to any stop work orders issued by the AOC under Section 2.4 above. Vendor agrees that,

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as to the terminated portion of the Services under this Agreement, this Agreement will be deemed to remain in effect until such time as the termination settlement, if any, is concluded and this Agreement will not be void.

(ii) After receipt of a Notice of Termination for Convenience, and except as otherwise directed by the AOC, Vendor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this Section 4.4. Vendor shall: (1) stop work as specified in the Notice of Termination for Convenience; (2) place no further subcontracts, except as necessary to complete the continued portion of this Agreement; (3) terminate all subcontracts to the extent they related to the work terminated; and (4) settle all outstanding liabilities and termination settlement proposals arising from the termination of the subcontracts or portion thereof, the approval or ratification of which will be final for purposes of this Section 4.4(a).

(iii) Upon termination for convenience under this Section 4.4(a), the AOC shall pay Vendor amounts due for (1) all Deliverables that have been accepted by the AOC in accordance with Section 4.2(b), (2) the reasonable and necessary non-cancelable costs incurred by Vendor in winding-down contract performance, as mutually agreed in advance in writing by the Parties, and (3) the reasonable and necessary non-cancelable costs incurred by Vendor in performing Services prior to the effective date of termination other than on Deliverables that have been accepted by the AOC in accordance with Section 4.2(b). Vendor shall submit a termination settlement proposal in accordance with Section 4.4(d) below, with a complete statement of all such costs, including the costs of terminating any subcontracts.

(b) Termination for Cause.

(i) The AOC may terminate this Agreement, in whole or in part, if Vendor materially breaches any provision of this Agreement, and does not cure such breach within thirty (30) calendar days after receipt of a notice of breach stating the AOC's intent to terminate. The AOC may also terminate this Agreement if, as of the date occurring thirty (30) calendar days immediately following the expiration of the date delivery is required for a Critical Deliverable under Section 4.2(a), Vendor has not delivered such Critical Deliverable as required hereunder.

(ii) Vendor may, by written notice of breach to the AOC, terminate this Agreement if the AOC materially breaches the provisions of Section 2.10 with respect to misuse of Vendor's Intellectual Property Rights or the provisions of Section 4.9 with respect to misuse or unauthorized disclosure of Vendor's Confidential Information, and does not cure such breach within sixty (60) calendar days after receipt of a notice of breach stating Vendor's intent to terminate.

(iii) Except as expressly provided in this Section 4.4(b), Vendor shall have no other right to terminate this Agreement. With respect to breaches of this Agreement that relate solely to the inability of the AOC Group or AOC Contractors to provide resources (such as subject matter experts, hardware, personnel and facilities), Vendor shall not have the right to file any claim, action or proceeding for such breaches other than for breach of Section 2.3 and, instead, will rely solely upon its right to receive equitable adjustments pursuant to Section 2.3.

(iv) If the AOC terminates this Agreement, in whole or in part, pursuant to Section 4.4(b), the AOC shall pay Vendor amounts due for all Deliverables that have been accepted by the AOC in accordance with Section 4.2(b)(ii). Vendor shall submit a termination settlement proposal in accordance with Section 4.4(d) below, with a complete statement of all applicable costs. If, after termination by the AOC for Vendor's breach, it is determined that Vendor was not in breach, or that the breach was excusable, the rights and

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obligations of the Parties will be the same as if the termination had been issued for the convenience of the AOC. Except as expressly provided in this Section 4.4, the AOC Group and AOC Contractors shall incur no liability by virtue of terminating for Vendor's breach in accordance with the termination provisions of this Agreement.

(c) Termination for Non-Appropriation of Funds. Vendor 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 upon written notice to Vendor without prejudice to any right or remedy of the AOC Group 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 Vendor. 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 as if it had terminated for convenience under Section 4.4(a); and (ii) Vendor shall be released from any obligation to provide further Services pursuant to this Agreement to the extent affected by such termination.

(d) Rights and Remedies of the AOC.

(i) If the AOC terminates this Agreement in whole or in part under Section 4.4(b), the AOC may acquire from third parties, under the terms and in the manner the AOC considers appropriate, goods or services equivalent to those terminated, and Vendor shall be liable to the AOC for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the AOC Group for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the AOC or AOC Group. Vendor shall continue the work not terminated hereunder.

(ii) Upon expiration or termination of this Agreement for any reason other than by the AOC pursuant to Section 4.4(b), the Parties shall mutually agree upon an amount to be paid by the AOC for partially completed Deliverables that the AOC has taken possession of pursuant to Section 4.4(d)(iii) below. If the Parties are unable to agree on such amounts, the dispute shall be subject to the dispute resolution process set forth under Section 4.15. In no event will the AOC be required to pay for any Deliverables submitted for acceptance under Section 4.2(b) that have not met the criteria for acceptance by the AOC as provided under Section 4.2(b).

(iii) Upon expiration or termination for any reason, and full and final payment of amounts due and payable in the event of termination by the AOC pursuant to Section 4.4(a) or 4.4(c), or termination by either Party pursuant to Section 4.4(b), the AOC shall have the right to take possession of any partially completed Deliverables. In such event, Vendor shall (1) deliver to the AOC any and all materials or work product relating to such partially completed Deliverables, and (2) with respect to Vendor Works, Third Party Works and Developed Works comprising such partially completed Deliverables, be deemed to have granted to the AOC the rights and licenses as set forth in Sections 2.10(b), 2.10(c) and 2.10(d), respectively.

(e) Survival. 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 expiration or termination. Except as otherwise specifically set forth in this Agreement, the following sections shall survive the expiration or termination of this Agreement for any reason, whether in whole or in part: (a) Sections 1.1, 2.10, 4.1, 4.4, 4.5(b), 4.5(c), 4.6(a), 4.6(f), 4.6(g), 4.6(i), 4.6(j), 4.8, 4.9, 4.10, 4.11, 4.12 and 4.14 through 4.41; (b) Sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.9, 2.11, 3.2, 3.3, 3.4, 4.2, 4.3, 4.5(a), 4.6(b), 4.6(c), 4.6(d), 4.6(e), 4.6(h) and 4.7 (these Sections shall survive only with respect to those

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Services under this Agreement that Vendor continues to be obligated to provide); and (c) Sections 2.8 and 4.13 (these Sections shall survive only for so long as Vendor is obligated to provide some Services). All other sections shall terminate upon the expiration or termination of this Agreement for any reason

4.5 Audits.

(a) Services. Except with respect to records and supporting documentation subject to Section 4.5(b) below, upon reasonable prior notice from the AOC (except with respect to “snap” audits (e.g., safety and data/physical security audits) of the AOC Service Locations), Vendor shall provide, and shall cause Vendor Contractors to provide, the AOC Group, AOC Contractors and any regulatory entity access to and any assistance that they may require, at the AOC’s expense, with respect to the Service Locations for the purpose of performing audits or inspections of the Services and related operational processes and procedures relating to the Services, including intellectual property audits. If any audit by an auditor designated by the AOC, an AOC Contractor or a regulatory authority determines that Vendor or any Vendor Contractor is not in compliance with this Agreement, any applicable audit requirement or any Applicable Law, Vendor shall, and shall cause Vendor Contractors to, promptly take actions to comply as directed by the AOC upon receipt of notice of such determination.

(b) Records.

(i) Vendor agrees that, upon the AOC’s reasonable prior notice and request, the AOC or its designated representative shall have the right to audit and copy any records and supporting documentation pertaining to performance under this Agreement in accordance with California Government Code Section 77206(c) (but excluding any cost information or internal financial audit reports except to the extent necessary to confirm the accuracy of payments made under this Agreement). Vendor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated by Applicable Law. Vendor 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, Vendor agrees to include a similar right of the AOC to audit records and interview staff in any subcontract related to performance of this Agreement.

(ii) If, as a result of an audit hereunder, the AOC determines that Vendor has overcharged the AOC, it shall notify Vendor of the amount of such overcharge and Vendor shall promptly pay to the AOC the amount of the overcharge, plus Interest, calculated from the date of receipt by Vendor of the overcharged amount until the date of payment to the AOC.

(iii) In addition to the AOC’s rights set forth in subsection (b) above, in the event any such audit correctly identifies an overcharge to the AOC of five percent (5%) or more for the Services provided during the time period subject to audit, Vendor shall, at the AOC’s option, issue to the AOC a credit against the Fees, or reimburse the AOC, in an amount equal to the cost of such audit.

(iv) Vendor shall make available promptly to the AOC the results of a review or audit conducted by Vendor, Vendor Contractors or their respective contractors, agents or representatives (including internal and external auditors), relating to Vendor’s operating practices and procedures to the extent relevant to the Services or the AOC.

(c) Facilities. Vendor shall provide to the AOC Group and AOC Contractors, on Vendor’s premises (or, if the audit is being performed of an Vendor Contractor, Vendor Contractor’s premises if necessary),

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space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office-related equipment and duplicating services as the AOC Group or such AOC Contractors may reasonably require to perform the audits described in this Article.

4.6 Representations and Warranties.

(a) Duration of Representations and Warranties. Except as otherwise expressly stated in this Section 4.6, each Party agrees that the representations and warranties such Party makes in this Section 4.6 shall be true and accurate as of the Effective Date, during the term of this Agreement and the Termination Assistance Period, and thereafter as set forth in the survival provision of this Agreement.

(b) Compliance with Laws and Regulations; Consents. Vendor represents and warrants to the AOC that it shall (i) comply with all Applicable Laws, and (ii) obtain all Exit Consents.

(c) Authorization. Vendor represents and warrants to the AOC that: (i) it has full power and authority to enter into this Agreement, to grant the rights and licenses 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 Vendor; and (iii) Vendor shall not and shall cause Vendor Contractors not to enter into any arrangement with any third party which could reasonably be expected to abridge any rights of the AOC Group under this Agreement. Vendor represents and warrants to the AOC that its execution, delivery and performance of this Agreement will not constitute: (1) a violation of any judgment, order or decree; (2) a material breach under any contract by which it or any of its assets material to this Agreement are bound; or (3) an event that would, with notice or lapse of time, or both, constitute such a breach.

(d) Inducements. Vendor represents and warrants to the AOC that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor, to any officer or employee of the AOC Group 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 this Section, 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 Group in procuring on the open market any items or services which Vendor agreed to supply will be borne and paid for by Vendor. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the AOC Group of such items or services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the AOC or AOC Group.

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

(f) Non-Infringement. Vendor represents and warrants to the AOC that Vendor shall perform its responsibilities under this Agreement in a manner that, and the Licensed Software, each Deliverable and each Developed Work and any portion thereof (as applicable to Vendor), does not infringe, or constitute an infringement, misappropriation or violation of, any patent, copyright, trademark, trade secret or other proprietary rights of any third party.

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(g) Licensed Software and Deliverables.

(i) Licensed Software. Vendor represents and warrants to the AOC that the Licensed Software will conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation. The foregoing representation and warranty in this Section 4.6(g)(i) shall commence upon the AOC's acceptance of the Licensed Software pursuant to Section 4.2(b)(i), and shall continue until the expiration of a period of **18 (eighteen) months following the delivery of each software component** ("Licensed Software Warranty Period"). If the Licensed Software does not conform to the provisions of this Section 4.6(g)(i) during the Licensed Software Warranty Period, Vendor shall respond and correct all Defects with the License Software within the timeframes set forth in Exhibit C.

(ii) Deliverables. Vendor represents and warrants to the AOC that each Deliverable will conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation. For each such Deliverable, the foregoing representation and warranty in this Section 4.6(g)(ii) shall commence for such Deliverable upon the AOC's acceptance of such Deliverable pursuant to Section 4.2(b)(ii), and shall continue until the expiration of a period of **one year after acceptance of each Deliverable** ("Deliverable Warranty Period"). In the event any Deliverable does not conform to the foregoing provisions of this Section 4.6(g)(ii) which is reported during the applicable Deliverable Warranty Period, Vendor shall respond to and correct all Defects with such Deliverable within the timeframes set forth in Exhibit C.

(h) Malicious Code. Vendor represents and warrants to the AOC that Vendor shall employ the most current available anti-virus programs and policies to reduce the risk to the maximum extent reasonably possible that no forms of Malicious Code are introduced into the Licensed Software, Deliverables or Developed Works or the IT Infrastructure of the AOC Group or AOC Contractors (as applicable to Vendor). Vendor represents and warrants to the AOC that it shall not incorporate Malicious Code into the Licensed Software, Deliverables, Developed Works or IT Infrastructure of the AOC Group or AOC Contractors (as applicable to Vendor). Vendor represents and warrants that it shall not invoke any hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions) at any time, whether implemented by electronic or other means. To the extent Vendor is aware of any Malicious Code introduced into the Licensed Software, Deliverables, Developed Works or IT Infrastructure of the AOC Group or AOC Contractors (as applicable to Vendor), Vendor shall promptly notify the AOC in writing of such introduction. Without limiting any other right or remedy of the AOC, if any Malicious Code is found by Vendor to have been introduced into the Licensed Software, Deliverables, Developed Works or IT Infrastructure of the AOC Group or AOC Contractors (as applicable to Vendor) due to a breach of this Section 4.6(h), Vendor shall assist the AOC in reducing the effects of such Malicious Code, and if the Malicious Code causes an interruption of, or otherwise a loss of, operational efficiency or data in the Licensed Software, Deliverables, Developed Works, or IT Infrastructure of the AOC Group or AOC Contractors (as applicable to Vendor) or operations of the AOC business operations generally, Vendor shall restore operational efficiency and to the maximum extent possible, restore data or, when not possible, mitigate losses to the maximum extent possible.

(i) Effect of Breach of Representations and Warranties The rights and remedies of the AOC provided in this Section 4.6 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

(j) DISCLAIMER EXCEPT AS SPECIFIED IN THIS AGREEMENT, NEITHER THE AOC NOR VENDOR MAKES ANY WARRANTIES HEREUNDER WITH RESPECT TO THE SERVICES, LICENSED SOFTWARE, DELIVERABLES OR IT INFRASTRUCTURE OF THE AOC GROUP OR AOC CONTRACTORS, OR ANY PART THEREOF, AND EACH EXPLICITLY DISCLAIMS ALL OTHER

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WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A SPECIFIC PURPOSE.

4.7 Termination Assistance Services.

(a) Termination Assistance Services.

(i) Termination Assistance. At the AOC's request and option, during the period commencing upon the date of expiration or earlier termination of this Agreement and expiring six (6) months thereafter ("Termination Assistance Period"), Vendor shall provide, at the fees set forth in Exhibit C, to the AOC or to its designee (collectively, "Successor") the services described in Exhibit I ("Termination Assistance Services Schedule") and any other services reasonably necessary to enable the AOC to obtain from another vendor, or to provide for itself, services to substitute for or replace the services provided by Vendor under this Agreement, together with all other services to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to the Successor (collectively, the "Termination Assistance Services"). Termination Assistance Services will be provided to the AOC by Vendor regardless of the reason for termination or expiration. At the AOC's option and election, the AOC may extend the Termination Assistance Period for an additional six (6) months.

(ii) Transfer of Know-How. Vendor shall deliver to the AOC the information set forth in Exhibit H at no additional charge. At the AOC's request and option upon expiration or earlier termination of this Agreement, Vendor shall train the AOC Group at the rates set forth in Exhibit C in the use of the subject matter set forth in Exhibit H regarding the Licensed Software, Deliverables, Developed Works and Services ("Know-How") to the AOC and/or Successors, to enable the AOC to become self-reliant with respect to the functions, features, deployment, operation, support and maintenance of the Licensed Software, Deliverables, Developed Works and Services. Vendor shall provide to the AOC and its designees during the Termination Assistance Period sufficient technical assistance to transfer Know-How with the aim of enabling the AOC to become self-reliant with respect to the functions, features, deployment, operation, support and maintenance of the Licensed Software and Services, all as further described in Exhibit H ("Know-How Transfer Schedule").

(b) Breach of Termination Assistance Services. If Vendor breaches (or attempts or threatens to breach) its obligations to provide the AOC with Termination Assistance Services or services provided under Section 4.7(a)(ii), the AOC will be irreparably harmed and may proceed directly to court. If a court should find that Vendor has breached (or attempted or threatened to breach) any such obligations, Vendor agrees that without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an order compelling performance by Vendor and restraining it from any further breaches (or attempted or threatened breaches).

4.8 Intellectual Property.

(a) AOC Works. As between Vendor (on the one hand) and the AOC Group (on the other hand), except as expressly provided herein, the AOC retains all of its rights, title and interest in and to AOC Works.

(b) Vendor Works. As between Vendor (on the one hand) and the AOC (on the other hand), except as expressly provided herein, Vendor retains all of its rights, title and interest in and to all Vendor Works.



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4.9 Confidentiality.

(a) General Obligations. All financial, statistical, personal, technical and other data and information which are designated confidential by a Party ("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 to the other Party ("Receiving Party") in order to carry out the Agreement, or which become available to the Receiving Party in carrying out the Agreement ("Confidential Information") will remain the property of the Disclosing Party. All Deliverables, Developed Works and AOC Data shall be deemed Confidential Information of the AOC, the individual Courts, or each AOC Agent, as applicable. 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 it employs with respect to its own information of a similar nature. Notwithstanding any other provision of this Agreement, with respect to disclosures to the AOC Group and the AOC Contractors, the AOC's compliance with this Section 4.9(a) shall (i) be subject to the AOC Group's and each AOC Contractor's compliance with all Applicable Laws, and (ii) only apply if the AOC's Business Services Manager consents in writing in advance, on a disclosure-by-disclosure basis, that the disclosure will be protected as set forth in this Section 4.9, which consent shall not be unreasonably withheld. The Receiving Party shall require that its employees, agents and subcontractors comply with the confidentiality restrictions of this Agreement. Subject to the provisions of this Section 4.9, the AOC may disclose Vendor Confidential Information to AOC Contractors as reasonably necessary for the conduct of the AOC Group's business, provided that such AOC Contractor enters into a nondisclosure agreement that is as protective of Vendor's Confidential Information as the nondisclosure agreement is with respect to the AOC Group's Confidential Information and Vendor may disclose AOC Confidential Information to Vendor Contractors as reasonably necessary for Vendor to perform its obligations under this Agreement provided that such Vendor Contractors enter into a nondisclosure agreement as required pursuant to Section 2.8(f)(ii). The obligations in this Section shall not restrict any disclosure pursuant to any applicable law or by order of any court or government agency (provided that the Receiving Party shall 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 Recipient'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 Recipient's written records, and the Receiving Party has no obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements entered into before the Effective Date between AOC and Vendor, (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.

(b) Unauthorized Acts. Without limiting either Party's rights in respect of a breach of this Article, the Receiving Party shall:

(i) promptly notify the Disclosing Party of any unauthorized possession, use or knowledge, or attempt thereof, of the Confidential Information by any person or entity that may become known to the Receiving Party;

(ii) promptly furnish to the Disclosing Party, at the Disclosing Party's expense, the details of the unauthorized possession, use or knowledge, or attempt thereof, known by the Receiving Party and assist the Disclosing Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;

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(iii) cooperate with the Disclosing Party in any litigation and investigation against third parties deemed necessary by the Disclosing Party to protect its proprietary rights; and

(iv) promptly use its commercially reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information.

(c) Breach of Confidentiality. Vendor acknowledges that, due to the unique nature of the Confidential Information of the AOC, there can be no adequate remedy at law for any breach of Vendor's obligations hereunder, that any such breach will likely result in irreparable harm to the AOC Group, and therefore, that upon any breach or threatened breach of the confidentiality obligations in this section, the AOC shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

(d) Return of Confidential Information. From time to time and upon the AOC's request, the Confidential Information of the AOC, including copies thereof, will be returned to the AOC Group, or if the AOC so elects, will be destroyed; provided that Vendor may retain a copy of such Confidential Information solely for archival purposes.

4.10 Indemnification.

(a) General Indemnity. Vendor shall indemnify, defend and save harmless the AOC, AOC Group, AOC Contractors and their respective officers, agents and employees from and against any and all losses, costs (including reasonable attorneys' fees), liabilities, damages and deficiencies, including interest, penalties and settlement amounts entered into, in each case with respect to any and all third party claims (i) directly caused by or resulting in whole or in part from Vendor's acts or omissions constituting bad faith, willful misconduct, negligence or reckless disregard of its duties under this Agreement; (ii) directly caused by or resulting in whole or in part from the nonpayment of sums allegedly due and owing to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation ("vendors") furnishing or supplying work, services, materials or supplies; (iii) arising out of or related to Vendor's breach of its confidentiality obligations under this Agreement; (iv) arising out of any violation by Vendor or its employees or Vendor's vendors of any Applicable Law; or (v) are arising out of or related to a breach of representations and warranties set forth in Sections 4.6(b), 4.6(c), 4.6(d) or 4.6(e).

(b) Intellectual Property Indemnity.

(i) Vendor shall indemnify, defend and save harmless the AOC, AOC Group, AOC Contractors and their respective officers, agents and employees from and against any and all losses, costs (including reasonable attorneys' fees), liabilities, damages and deficiencies, including interest, penalties and settlement amounts entered into, in each case with respect to any and all third party claims which arise out of any claim of infringement or misappropriation of any patent, trade secret, copyright or other proprietary rights by the manner in which Vendor performs its responsibilities under this Agreement, or by (including use of) the Licensed Software, Deliverables, Developed Works, software, systems or other resources provided by Vendor or Vendor Contractors to the AOC or the AOC Group (collectively, the "Covered Items").

(ii) If any Covered Items become, or in Vendor's reasonable opinion are likely to become, the subject of an infringement or misappropriation claim or proceeding, in addition to the Vendor's indemnification obligations, Vendor shall promptly at Vendor's expense take the following actions in the following priority order: (1) secure for the AOC Group (including their respective subcontractors) the right to

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continue using such Covered Items; or (2) replace or modify such Covered Items to make them non-infringing, provided that the replacement materials or modified Covered Items will not degrade the performance or quality of the affected component of the Services or Covered Items in any material way and in each case at no incremental cost or expense to the AOC Group. If, in the sole opinion of the AOC, the return of such infringing Covered Item makes the use of the Services or the retention of other goods or software acquired from Vendor under the Agreement impractical, the AOC shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge. The foregoing intellectual property indemnities do not apply to the extent the infringement is caused by any of the following: (i) the use by the AOC of a superseded or altered release or modified version of any Covered Items if the infringement could have been avoided by the use of the current unaltered release or unmodified version of such Covered Items that Vendor provided to the AOC and the AOC and Vendor agreed in writing in advance to have installed prior to the date of the alleged infringement; (ii) the use of such Covered Items by the AOC other than in accordance with their published specifications as delivered in writing in advance to the AOC by Vendor, (iii) use of information or materials not provided by Vendor or Vendor Contractors with the Covered Items (unless such information or materials were approved by Vendor or Vendor Contractors or the Covered Items were intended to be used with such information or materials), if the infringement could have been avoided by the use of the Covered Items alone; or (iv) the infringement necessarily resulted from, and could not reasonably have been avoided in implementing, those technical specifications, if any, provided by the AOC hereunder without Vendor input (as such specifications may have been modified by the AOC via a Change Request). The provisions of Section 4.6(f) and this Section set forth the entire obligation of Vendor, and the AOC's sole remedy(ies), with respect to any claim or matter with regard to intellectual property or proprietary rights infringement by the Covered Items.

(c) Personal Injury and Tangible Property Damage by Vendor. Vendor shall indemnify, defend and save harmless the AOC, AOC Group, AOC Contractors, and their respective officers, agents and employees from any and all third party liability of any nature or kind, including any and all losses, costs (including reasonable attorneys' fees), liabilities, damages, and deficiencies, including interest, penalties and settlement amounts entered into, in each case for personal injuries, death, or damage to tangible personal or real property in connection with or arising out of the negligent act or omission or willful misconduct of Vendor or Vendor Contractors.

(d) Control of Defense and Settlement.

(i) Any defense counsel retained by Vendor to defend an indemnified party in any claim, action, suit or proceeding covered under Vendor's indemnity obligations ("Claim" or "Claims") shall be subject to the reasonable approval of the AOC. Vendor shall keep the AOC informed of any Claims and shall provide periodic written reports to the AOC of any significant developments. "Significant developments" include all settlement offers with plaintiffs or with other parties joined by way of cross-complaint, all situations which contemplate the dismissal of any parties, and all such other circumstances which may occur that reasonably warrant assessment by the AOC of its liability exposures. The AOC shall provide Vendor with prompt notice of any Claim for which indemnification will be required; provided that failure to provide prompt notice with respect to a Claim shall not relieve Vendor of its obligations under this Section 4.10 except to the extent failure to notify prejudices Vendor's ability to defend and/or settle the Claim.

(ii) Vendor shall control the defense and/or settlement of each Claim; provided that (1) Vendor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind the an indemnified party, without the AOC's prior written consent, which consent shall not be unreasonably withheld; and (2) the AOC shall have the right, at its

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option and expense, to participate in the defense and/or settlement of such Claim through counsel of its own choosing.

4.11 Limitation of Liability.

(a) Consequential Damages. EXCEPT AS SET FORTH IN SECTION 4.11(c) BELOW, IN NO EVENT WILL THE AOC GROUP, AOC CONTRACTORS, VENDOR OR VENDOR CONTRACTORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), INCLUDING WITHOUT LIMITATION LOST DATA (OTHER THAN BASED ON A BREACH BY VENDOR OR VENDOR CONTRACTORS OF SECTION 4.6(h)), PROFITS, AND REVENUES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Direct Damages. IN NO EVENT WILL THE AOC GROUP'S AGGREGATE LIABILITY FOR DIRECT DAMAGES 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 PAID AND PAYABLE TO VENDOR BY THE AOC UNDER THIS AGREEMENT.

(c) Defined Exceptions. THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 4.11 WILL NOT APPLY TO VENDOR'S LIABILITY WITH RESPECT TO: (A) CLAIMS FOR DAMAGES OCCASIONED BY THE FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF VENDOR; (B) LIABILITY ARISING UNDER SECTION 4.10; AND (C) DAMAGES OCCASIONED BY THE BREACH OF VENDOR'S CONFIDENTIALITY OBLIGATIONS.

4.12 Escrow.

(a) Escrow Account. Upon the Effective Date, Vendor agrees to enter into a mutually agreed upon escrow agreement ("Escrow Agreement") with a third party escrow agent to be mutually agreed upon by the Parties ("Escrow Agent"). Vendor shall be responsible for establishment, administration and cost of the escrow account. Upon execution of the Escrow Agreement, Vendor shall deliver to the Escrow Agent a copy of the Source Code for the Licensed Software, together with all supporting information, tools, notes and other information necessary and sufficient to allow a reasonably qualified person to support, maintain, modify and prepare derivative works of the Licensed Software and Deliverables (collectively the "Source Code Materials").

(b) Release Conditions. The Escrow Agreement shall provide that release of the Source Code Materials to the AOC shall occur if any of the following occur (each, a "Release Condition"):

(i) Vendor materially breaches any of its obligations under Section 3 above;

(ii) Vendor dissolves, becomes insolvent or ceases to conduct business as a going concern;

(iii) Vendor makes a general assignment for the benefit of creditors or commences any case, proceeding or other action seeking to have an order for relief entered on Vendor's behalf as a debtor or to adjudicate Vendor as bankrupt or insolvent, or seeks a reorganization, liquidation, dissolution or composition of Vendor or Vendor's debts under any law relating to bankruptcy, insolvency, or relief of debtors or seeking

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appointment of a receiver, trustee, custodian or similar official for Vendor or for all or any substantial portion of Vendor's assets that relate to this Agreement; or

(iv) any case, proceeding or similar action is brought against Vendor seeking to have an order for relief entered against it to adjudicate it as bankrupt or insolvent, or seeking reorganization, liquidation, dissolution or composition of Vendor or Vendor's debts under any law relating to bankruptcy, insolvency, reorganization or the relief of debtors or seeking appointment of a receiver, trustee, custodian or similar official for Vendor or for all or any substantial portion of Vendor's assets that relate to this Agreement, and such case, proceeding or other action (1) results in the entry of an order for relief against Vendor which is not fully stayed within sixty (60) calendar days after the entry thereof or (ii) remains undismissed for a period of sixty (60) calendar days.

(c) License. Vendor hereby grants the AOC Group a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, fully paid-up, nonexclusive license to use, reproduce, modify and create derivative works of the Licensed Software (in Source Code and object code form) for the purpose of maintaining and supporting the Licensed Software for use in accordance with the terms of this Agreement. Notwithstanding any other provision in this Agreement, AOC Contractors may exercise the license rights granted to the AOC Group pursuant to this Section 4.12(c) for the benefit of the AOC Group.

4.13 Insurance, Risk of Loss and Performance Bond.

(a) Insurance. When performing work on property in the care, custody or control of the AOC, Vendor shall maintain the following insurance:

(i) 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;

(ii) Workers' 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;

(iii) Business auto liability, including coverage for all owned, hired and non-owned automobiles used in connection with delivery of the Services, with limits of not less than one million dollars (\$1,000,000) each accident; and

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

Vendor shall furnish separate certificates of insurance for each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Section 4.13(a) shall be subject to all of the requirements stated herein except for professional errors and omissions liability insurance.

All insurance which Vendor is obligated to carry pursuant to this Agreement, shall (i) with respect to commercial general liability insurance, be endorsed to name the AOC Group as additional insureds, and (ii) require the insurer to provide at least thirty (30) calendar 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

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professional liability, errors and omissions when required, may be acceptable on a “claims made” form. Vendor shall cause its insurers to issue to the AOC on or before the Effective Date certificates of insurance evidencing that the coverages required under this Agreement are maintained in force. The insurers selected by Vendor shall be reputable and financially responsible insurance carriers, with a Best’s minimum rating of “A+” (or any future equivalent).

(b) Risk of Loss. Each Party will be responsible for the risk of loss of, and damage to, any equipment, software, facilities and other materials while in its possession or under its control.

(c) Performance Bond. Upon execution of this Agreement by Vendor, Vendor shall provide a performance bond to the AOC in an amount not less than one hundred percent (100%) of the total price for the Development Services (“Performance Bond”). The Performance Bond shall guarantee Vendor’s faithful performance of the Development Services in compliance with all terms, conditions, and requirements specified in this Agreement. The Performance Bond shall remain in full force and effect during the term of this Agreement, during the Termination Assistance Period and for two (2) years thereafter. The Performance Bond shall be in a form acceptable to the AOC and executed as surety by a corporation or corporations admitted and authorized to issue surety bonds in the State of California. All alterations, extensions of time, extra and additional work, and other changes authorized by the AOC may be made without securing the consent of the surety or sureties. Full compensation for furnishing the Performance Bond shall be deemed included in the Fees set forth in Exhibit E and no separate payment will be made for the Performance Bond. In the AOC’s sole discretion, the AOC may allow Vendor to provide an irrevocable standby letter of credit in a form and with a bank satisfactory to the AOC as security for Vendor’s performance in lieu of the Performance Bond.

4.14 Continued Provision of Services.

(a) Force Majeure. If a Party’s performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by any cause or condition beyond its reasonable control, such as fire, flood, earthquake, elements of nature or acts of God, acts of war, riots, rebellions or revolutions but in all events excluding nonperformance or failures of Vendor Contractors (each, a “Force Majeure Event”), such Party shall use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. To the extent a Party’s performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by a Force Majeure Event and such non-performance, hindrance or delay could not have been reasonably prevented, then the non-performing, hindered or delayed Party shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as the Force Majeure Event continues and such Party continues to use its best efforts to recommence performance pursuant to the foregoing sentence. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall promptly notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event.

(b) Alternate Source. If a Force Majeure Event continues to prevent, hinder or delay performance of any of the Services for more than thirty (30) calendar days, the AOC may terminate this Agreement, in whole or in part, as of a date specified by the AOC in a termination notice to Vendor. Vendor will not have the right to any additional payments from the AOC as a result of any Force Majeure Event.

(c) Continuation of Services. A non-performing Party shall be obligated to mitigate the impact of its non-performance notwithstanding the Force Majeure Event.

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(d) Allocation of Leveraged Resources. Whenever a Force Majeure Event causes Vendor to allocate leveraged resources between or among Vendor's customers, the AOC Group and Services shall receive at least the same priority as they received immediately prior to the Force Majeure Event and no other Vendor customer shall receive higher priority in respect of such leveraged resources.

4.15 Dispute Resolution.

(a) Notice of Dispute. The Parties shall attempt in good faith to resolve potential disputes informally and promptly. If a dispute persists, either Party may submit a written demand to the other Party through the Management Committee at the earliest practicable time that the dispute is identified (the "Demand"). The Demand shall: (i) be fully supported by detailed factual information; (ii) state the specific Agreement provisions on which the Demand is based; and (iii) if the Demand involves a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand. The Demand shall include a written statement signed by an authorized person indicating that the Demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the adjustment for which the submitting Party believes the other Party is responsible. To assist the other Party in its review of the Demand, the submitting Party shall comply with reasonable requests for additional information. The receiving Party shall provide a written response to the submitting Party's Demand stating a decision as to whether the receiving Party accepts or rejects the Demand. Failure by the receiving Party to provide such a response shall be deemed a decision by the receiving Party constituting a rejection of the Demand.

(b) Senior Level Negotiations. Upon written request by either Party after the receipt of a Demand, the Parties shall attempt to resolve the dispute by negotiations between Vendor's **[senior executive to be identified]** and the designated representative of the AOC. Vendor's **[senior executive to be identified]** and the designated representative of the AOC shall meet as often as they deem reasonably necessary to exchange information and attempt to resolve the Demand within thirty (30) calendar days after the Demand was initially delivered.

(c) Mediation. If the senior level negotiations do not result in resolution of the dispute within thirty (30) calendar days after the Demand was received by the AOC, the Parties agree to mediation prior to any Party initiating an action in court. All statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to any party's legal position, and are undiscoverable and inadmissible for any purpose in any legal, administrative, or other proceeding.

(d) Litigation. If, after mediation pursuant to Section 4.15(c), the Parties have not resolved the dispute, the receiving Party's decision made pursuant to Section 4.15(a) will be conclusive and binding regarding the dispute unless the submitting Party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) calendar days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later.

(e) Confidentiality. All negotiations conducted pursuant to this provision are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code Section 1152 applies. The mediation shall be confidential and shall be subject to the provisions of California Evidence Code Sections 703.5 and 1115 through 1128.

(f) Continuation of Work. Pending the final resolution of any dispute arising under, related to or involving this Agreement, Vendor agrees to diligently proceed with the performance of this Agreement, including the delivery of Deliverables or providing of Services in accordance with the AOC's instructions.

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Vendor's failure to diligently proceed in accordance with the requirements of this Agreement will be considered a material breach of this Agreement. The foregoing provisions of this Section 4.15 shall be subject to each Party's rights of termination under Section 4.4.

4.16 References. In this Agreement and the Exhibits:

(a) the Exhibits shall be incorporated into and deemed part of this Agreement and all references to this Agreement shall include the Exhibits;

(b) references to any Applicable Law means references to such Applicable Law in changed or supplemented form or to a newly adopted Applicable Law replacing a previous Applicable Law; and

(c) references to and mentions of the word "including" or the phrase "e.g." means "including, without limitation."

4.17 Headings. The Article and Section headings and the Table of Contents are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

4.18 Interpretation of Documents. In the event of a conflict between this Agreement and the terms of any of the Exhibits, the terms of this Agreement shall prevail.

4.19 Assignment of Antitrust Actions. The following provisions of California Government Code Section 4552, 4553, and 4554 (Statutes of 1978, Ch. 414) will be applicable to Vendor:

(a) In submitting a bid to the State of California, the supplier offers and agrees that if the bid is accepted, it will assign to the State 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 State of California pursuant to the solicitation. Such assignment will be made and become effective at the time the State of California tenders final payment to the supplier.

(b) If the State of California 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 State of California any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State of California as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

(c) 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 (i) the assignee has not been injured thereby, or (ii) the assignee declines to file a court action for the cause of action.

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



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provision is required by, and will be construed in accordance with California Public Contract Code (PCC) Section 10296.

4.21 Nondiscrimination Clause. During the performance of this Agreement, Vendor and Vendor Contractors shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition, age, marital status, or request for family care leave. Vendor and Vendor Contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. During the performance of this Agreement, Vendor and Vendor's Contractors: (i) shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Vendor or any of Vendor's Contractors interacts in the performance of this Agreement; and (ii) shall take all reasonable steps to prevent such harassment from occurring. Vendor and Vendor Contractors shall comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12990 *et seq.*) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code Section 12990(a-f) set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations is incorporated into this Agreement by reference and made a part hereof as if set forth in full. Vendor and Vendor Contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other contract. Vendor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

4.22 Americans with Disabilities Act. Vendor shall assure the AOC that it complies with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) ("ADA") which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

4.23 Union Organizing. Vendor acknowledges the applicability of California Government Code Section 16645 through Section 16649 to this Agreement:

(a) Vendor shall not assist, promote or deter union organizing by employees performing work on an AOC service contract, including a public works contract.

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

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

(d) If Vendor incurs costs, or makes expenditures to assist, promote or deter union organizing, Vendor shall maintain records sufficient to show that no reimbursement from AOC funds has been sought for these costs, and Vendor shall provide those records to the State of California Attorney General upon request.

4.24 Disabled Veteran Business Participation Review. Vendor 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,

**ATTACHMENT 2  
MINIMUM CONTRACT TERMS**

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 California Public Contract Code section 10115 *et seq.* Vendor further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

4.25 Public Contract Code References. References to the California Public Contract Code herein are provided for Vendor’s convenience only and shall not imply that the California Public Contract Code applies to the AOC, but rather shall be used when referenced to define Vendor’s obligations under the particular provision in which such code section is referenced.

4.26 Time of the Essence. Time of performance is of the essence in the performance of Services by Vendor under this Agreement.

4.27 No Solicitation. During the term of this Agreement and the Termination Assistance Period, Vendor shall not solicit or recruit any employees (including contract employees) of the AOC Group or AOC Contractors, and Vendor shall cause Vendor Contractors to not solicit or recruit any employees (including contract employees) of Vendor or the AOC Group or AOC Contractors.

4.28 Assignment. The Agreement will not be assignable by Vendor in whole or in part (whether by operation of law or otherwise) without the prior written consent of the AOC. Any assignment made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the Parties and their permitted successors and assigns.

4.29 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth below:

<b>If to Vendor:</b>	<b>If to the AOC:</b>
<hr/> <hr/> <hr/> <hr/>	Judicial Council of California Administrative Office of the Courts Attention: _____ 455 Golden Gate Ave. San Francisco, CA 94102
With a copy to: <hr/> <hr/> <hr/> <hr/>	With a copy to: Judicial Council of California Administrative Office of the Courts Attention: _____ 455 Golden Gate Ave. San Francisco, CA 94102

Either Party may change its address for notification purposes by giving the other Party written notice of the new address in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) Business Days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

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4.30 Independent Contractors. Vendor and Vendor Contractors in the performance of this Agreement shall act in an independent capacity and not as officers or employees or agents of the AOC Group or AOC Contractors. 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. Neither Party shall have any right, power or authority, express or implied, to bind the other.

4.31 Consents and Approvals. All consents and approvals to be given by either Party under this Agreement shall 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.

4.32 Covenant of Further Assurances. Vendor covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, Vendor shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

4.33 Severability. The provisions of this Agreement shall be effective in all cases unless otherwise prohibited by Applicable Law. The provisions of this Agreement are separate and severable. The invalidity of any Article, Section, provision, paragraph, sentence or portion of this Agreement shall not affect the validity of the remainder of this Agreement.

4.34 Waiver of Rights. Any action or inaction by either Party or the failure of either Party on any occasion, to enforce any right or provision of this Agreement, will not be construed to be a waiver by such Party of its rights under this Agreement and will not prevent such Party from enforcing such provision or right on any future occasion. Except as set forth herein, the rights and remedies of each Party under this Agreement will be cumulative and in addition to any other rights or remedies that such Party may have at law or in equity.

4.35 Publicity. News releases and other public disclosures pertaining to this Agreement will not be made by Vendor without prior written approval of the AOC's Business Services Manager.

4.36 Third Party Beneficiaries. Except as otherwise provided by this Agreement with respect to the AOC Group and AOC Contractors, each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties.

4.37 Governing Law; Jurisdiction; and Venue. This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions and Vendor hereby irrevocably submits to the exclusive jurisdiction and venue of the state and federal district courts located in San Francisco, California in any legal action concerning or relating to this Agreement.

4.38 Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

4.39 Amendments. Except as provided in Section 4.33, alteration or variation of the terms of this Agreement shall not be valid unless made pursuant to a Standard Agreement form (STD.2) signed by the Parties, and any oral understanding or agreement that is not so incorporated shall not be binding on any of the Parties. To be effective, proposed changes or amendments to this Agreement must be (i) submitted in writing,

**ATTACHMENT 2**  
**MINIMUM CONTRACT TERMS**

(ii) accompanied by a narrative description of the proposed change and the reasons for the change, and  
(iii) approved in writing by both Parties pursuant to a Standard Agreement form (STD.2).

4.40 Entire Agreement. This Agreement, the Standard Agreement form (STD.2) attached hereto and the Exhibits to this Agreement constitute the entire agreement and final understanding of the Parties with respect to the subject matter hereof and supersede and terminate 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.

4.41 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.

*Remainder of page left blank intentionally.*

**ATTACHMENT 2  
MINIMUM CONTRACT TERMS**

**EXHIBIT A  
Statement of Work**

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*{Exhibit A, Statement of Work, is not set forth in the RFP's Attachment 2, Minimum Contract Terms, as it will be proposed and negotiated.}*

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**EXHIBIT B**  
**Requirements**

*Page left blank intentionally.*

*{Exhibit B, Requirements, is not set forth in the RFP's Attachment 2, Minimum Contract Terms, as it will be proposed and negotiated.}*

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**EXHIBIT C**  
**Licensed Software and Fees**

*Page left blank intentionally.*

*{Exhibit C, Licensed Software and Fees, is not set forth in the RFP's Attachment 2, Minimum Contract Terms, as it will be proposed and negotiated.}*

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**EXHIBIT D  
Subcontractors**

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*{Exhibit D, Subcontractors, is not set forth in the RFP's Attachment 2, Minimum Contract Terms, as it will be proposed and negotiated.}*



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**EXHIBIT E**  
**Form of Nondisclosure Agreement**

**CONFIDENTIALITY AGREEMENT**

THIS CONFIDENTIALITY AGREEMENT ("Confidentiality Agreement"), effective as of [REDACTED] ("Confidentiality Agreement Effective Date"), is entered into by and between [REDACTED] a [REDACTED], with offices at [REDACTED] (hereinafter "Vendor") and [REDACTED], a [REDACTED] corporation, with its principal address at [REDACTED], (hereinafter the "Company").

WHEREAS, Vendor is the owner of and/or has received from third parties including the Client as defined below ("Providers") certain technical, financial and personnel information, software, inventions whether patented or unpatented, research and development information, business plans, and/or other information which are not generally known to either the public or to the industry (collectively, the "Information"), which Information has been obtained and developed through substantial expenditures of time, effort and money, and which, if made available to the third parties, could seriously damage the business and activities of Vendor and/or Providers (all such Information, whether verbal or written and in whatever form, and whether or not such Information bears a legend indicating its confidential or proprietary nature are hereinafter called the "Secret Information");

WHEREAS, Vendor and Company wish to enter into an agreement pursuant to which Company shall support Vendor's performance of certain services for the State of California, Judicial Council of California, Administrative Office of the Courts (the "Client") (hereinafter referred to as the "Agreement");

WHEREAS, Vendor wishes to afford itself certain protections regarding the Secret Information which Vendor may disclose (i) during business discussions with Company and (ii) pursuant to the Agreement;

WHEREAS, Vendor and Company wish to set forth the terms and conditions that will govern the protection by Company of Secret Information received by Company both prior to and after execution of the Agreement; and

WHEREAS, Vendor is willing to disclose the Secret Information to Company only on the terms and conditions set forth below, and Company agrees to receive the Secret Information from Vendor only on said terms and conditions;

NOW THEREFORE, in consideration of the promises and of the mutual promises and agreements herein contained, it is agreed by and between the parties hereto as follows:

1. All Secret Information disclosed by Vendor to Company shall be received in confidence by Company. Company agrees that it shall undertake all necessary and appropriate steps to ensure that the secrecy of the Secret Information in its possession shall be maintained. Company also agrees that it shall treat the Secret Information with not less than the same degree of care and confidentiality with which it treats its own confidential information, but in no event less than reasonable care. Company agrees that access to the Secret Information shall be given by it only to those of its employees who have a need to know to engage in

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the business relationship contemplated by this Confidentiality Agreement and who have signed a non-use and non-disclosure agreement in content at least as protective of the Secret Information as the provisions hereof, prior to any disclosure of the Secret Information to such employees.

2. Company shall not (i) use any portion of the Secret Information for any purpose not contemplated by this Confidentiality Agreement or (ii) disclose the Secret Information or any part of it to any third party without the prior written consent of Vendor; provided, however, that Secret Information shall not include any information of Vendor that: (a) is already properly known to Company, on a non-confidential basis, at the time of its disclosure as shown by the Company's files and records immediately prior to the time of disclosure by Vendor to Company; (b) is or becomes publicly known through no action or inaction of Company including disclosures by Company in breach of this Confidentiality Agreement; (c) is received by Company from a third party free to disclose it to Company, on a non-confidential basis; (d) is independently developed by the Company without use of or reference to the Secret Information, as shown by documents and other competent evidence in Company's possession; or (e) is communicated to a third party with express written consent of Vendor. Nothing in this Confidentiality Agreement shall prevent Company from disclosing Secret Information to a governmental agency or as otherwise lawfully required by an order of a court of competent jurisdiction, administrative agency or governmental body, provided that Company gives Vendor prompt written notice of such order before making such disclosure and Company gives Vendor an adequate opportunity and assistance to interpose an objection or take action to assure confidential handling of such Secret Information.

3. Except as otherwise provided in the Agreement, Company agrees that it shall return to Vendor upon request, at any time, all documents, records, notebooks, computer media or other stored information of any form or type whatsoever containing any Secret Information, including all copies thereof, then in its possession or control (directly or indirectly), whether prepared by it or others and it shall at such time immediately discontinue all use of the Secret Information.

4. Nothing in this Confidentiality Agreement is intended to grant any rights to either party under any patent, trademark or copyright, nor shall this Confidentiality Agreement grant any other rights in or to the Secret Information, except as expressly set forth herein.

5. Any software and other technical information disclosed under this Confidentiality Agreement may be subject to restrictions and controls imposed by the Export Administration Act, Export Administration Regulations and other laws and regulations of the United States and any other applicable government or jurisdiction, as enacted from time to time (the "Acts"). Each party agrees to comply with all restrictions and controls imposed by the Acts.

6. ALL SECRET INFORMATION IS PROVIDED "AS IS." EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

7. The parties acknowledge and agree that the Secret Information and rights related thereto being protected by Vendor hereunder are of a special, unique, unusual and extraordinary character, which gives them a peculiar value, the loss of which may not be adequately or reasonably compensated for in damages in an action at law, and further agree that the breach by Company of any of the provisions of this Confidentiality Agreement shall cause the other party irreparable injury and damage. In such event, the party alleging breach of this Confidentiality Agreement shall be entitled, as a matter of right, without further notice,

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to require of the other party specific performance of all of the acts and undertakings required of the other party hereunder and to obtain injunctive and other equitable relief in any competent court to prevent the violation or threatened violation of any of the provisions of this Confidentiality Agreement by the other party. Neither this provision nor any exercise by either party of its rights to equitable relief or specific performance herein granted shall constitute a waiver by either party of any other rights which it may have to, damages or otherwise. If either party brings suit to enforce the terms hereof, the successful party in such suit shall be entitled to receive all of its reasonable costs of litigation, including attorneys' fees.

8. If any provision of this Confidentiality Agreement is declared void, or otherwise unenforceable, to any extent, the parties shall endeavor in good faith to agree to such amendments that shall preserve, as far as possible, the intentions expressed in this Confidentiality Agreement. If the parties fail to agree on such an amendment, such provision shall be deemed to have been severed from this Confidentiality Agreement, which shall otherwise remain in full force and effect.

9. This Confidentiality Agreement contains the sole and entire agreement between the parties relating to the subject hereof and any representation, promise or condition not contained herein, or any amendment hereto or waiver hereunder shall not be binding on either party unless in writing and signed by an authorized representative of the party to be bound thereby.

10. This Confidentiality Agreement and all rights and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors, affiliates, agents, employees and assigns. Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party. This Confidentiality Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California without regard to choice of law principles.

11. This Confidentiality Agreement shall survive until such time as all Secret Information disclosed hereunder becomes publicly known and made generally available through no action or inaction of Company. All rights and obligations hereunder shall survive with respect to Secret Information disclosed prior to such termination.

12. The State of California, acting through the Judicial Council of California, Administrative Office of the Courts, and Siemens Business Services, Inc., a Delaware corporation, are intended third party beneficiaries of this Agreement and shall have the right to enforce provisions of this Agreement directly against Company.

IN WITNESS WHEREOF, the parties have caused this Confidentiality Agreement to be executed by their duly authorized representatives as of the Confidentiality Agreement Effective Date.

Vendor  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Company  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT F**  
**Management Committee Representatives**

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*{Exhibit F, Management Committee Representatives, will be determined prior to award.}*

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**EXHIBIT G**  
**Vendor Key Personnel**

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*{Exhibit G, Vendor Key Personnel, is not set forth in the RFP's Attachment 2, Minimum Contract Terms, as it will be proposed and negotiated.}*

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**EXHIBIT H**  
**Know-How Transfer Schedule**

Vendor's transfer of Know-How shall include the following information, documentation, programs, tools, and other materials reasonably necessary (excluding Source Code except as provided in this Agreement and commercially available third party software):

- (a) Data files, file and data definitions and relationships, data definition specifications, data models, APIs, program architecture, design concepts, program structure, sequence and organization, screen displays and report layouts, reference manuals, user and operating guides and manuals, design specifications, functional specifications, use listing or manuals relating to error corrections, fixes and workarounds, and file and program cross-reference information relating to the Deliverables, in both paper and electronic form;
- (b) Maintenance and support tools, utilities, diagnostic programs and supporting programs utilized by Vendor in the support and maintenance of the Deliverables;
- (c) Deliverables management and troubleshooting tools;
- (d) Maximizing the use of the Deliverables to perform key operational functions, including, without limitation, data backups and application administration;
- (e) The implementation of the Deliverables and all interfaces between and among the components that comprise the Deliverables;
- (f) Sub-programs, routines, program files, data files, file and data definitions and relationships, data definition specifications, data models, program and logic, interfaces, algorithms, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts relating to the Deliverables, but not including Source Code except as provided in this Agreement;
- (g) Available documented procedures that address workload balancing, segmentation, capacity planning, routing and Deliverables performance analysis;
- (h) Updated, changed or revised written policies, practices, procedures, processes and/or techniques with respect to the knowledge transferred to the AOC hereunder;
- (i) Available documented installation configuration and maintenance procedures for the development and test infrastructure environments hosted by Vendor; and
- (j) Available documented installation, configuration and maintenance procedures for the development and test infrastructure environments hosted by the AOC.

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**EXHIBIT I**  
**Termination Assistance Services**

The Termination Assistance Services to be provided by Vendor to the AOC or its designee shall include some or all of the following, as requested by the AOC:

- (a) developing, with the assistance of the AOC or its designee, a plan for the transition of the operation of from Vendor to the AOC or its designee;
- (b) reviewing completed and partially completed Deliverables with the AOC or its designee and transitioning Deliverables ownership to the AOC or its designee, including, without limitation, a recommended sequence for review and establishment of a series of briefings to accomplish knowledge transfer;
- (c) providing copies of the completed and partially completed Deliverables, including, without limitation, indexing and defining location and form (electronic, paper copy, etc.) of such Deliverables;
- (d) providing overall project workplan status at point of termination with AOC project management or its designee;
- (e) conducting meetings to discuss status and work-in progress/to-do's with individual team leads;
- (f) reviewing status of project risks, issues, and corresponding action plans with AOC project management or its designee;
- (g) providing all information about configuration of software and other systems or services to the AOC or its designee;
- (h) transitioning Vendor's responsibilities hereunder to the AOC or its designee, including, without limitation, conducting transition briefings by each team lead and team member with the AOC or its designee focusing on describing work completed and work in process;
- (i) providing information and assistance as the AOC or its designee may reasonably request relating to the function of each of the Project Staff members employed or contracted by Vendor to perform the Services under this Agreement;
- (j) providing bi-weekly status reports during transition period - task oriented status reports including, without limitation: week back and week forward status of tasks and other commitments, resolved and unresolved issues and risks, resource availability; and
- (k) assessing the status of all work in progress at the time of the applicable termination including, without limitation, identifying the status of the Deliverables that are in process, identifying the extent of completion of the partially completed Deliverables, estimating requirements to complete the Deliverables and identifying the contingencies or dependencies of the Deliverables on other currently on-going or completed Deliverables.

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**EXHIBIT J**  
**Designated Vendor Service Locations**

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*{Exhibit J, Designated Vendor Service Locations, is not set forth in the RFP's Attachment 2, Minimum Contract Terms, as it will be proposed and negotiated.}*



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**EXHIBIT K**  
**VSL Policies and Procedures**

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*{Exhibit K, VSL Policies and Procedures, is not set forth in the RFP's Attachment 2, Minimum Contract Terms, as it will be proposed and negotiated.}*

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**EXHIBIT L**  
**Data Safeguards**

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*{Exhibit L, Data Safeguards, is not set forth in the RFP's Attachment 2, Minimum Contract Terms, as it will be proposed and negotiated.}*

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**EXHIBIT M  
AOC Service Locations**

**Administrative Office of the Courts - Address List**

**1 Headquarters and Bay Area/Northern Coastal Regional Office**

455 Golden Gate Avenue  
San Francisco, CA 94102-3688

**2 California Courts Technology Center – Production System**

Tempe, AZ

**3 California Courts Technology Center – Staging and Testing Systems**

Omaha, NE

*END OF ATTACHMENT*