

JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS
STANDARD AGREEMENT COVERSHEET

AGREEMENT NUMBER @
FEDERAL EMPLOYER ID @

1. This Agreement is between the Judicial Council of California, Administrative Office of the Courts (“AOC”), and @ (“Contractor”). AOC and Contractor may be individually referred to herein as “Party” or collectively referred to herein as “Parties.”

2. The term (“Term”) of this Agreement shall commence TBD, 2013 (the “Effective Date”) and expire on June 30, 2016.

3. The title of this Agreement is: **“Staff Augmentation Services Agreement - Phoenix System Consultants: 2013-2016”**. The title listed is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.

4. The parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement consists of the Contract Documents and any attachments thereto, and any subsequently executed Amendment(s). The following is the descending order of precedence that shall govern in interpretation of the Contract Documents, or in the event of a conflict between them: Standard Agreement Coversheets, Exhibits A, B, C, D, E and F. Any Amendment, starting with the most recently executed, shall take precedence over the previous Agreement, Amendment(s), and Contract Documents, but only to the extent specified in that Amendment.

6. The following documents are collectively referred to as the “Contract Documents”:
 - Standard Agreement Coversheets
 - Exhibit A, Standard Provisions;
 - Exhibit B, Special Provisions;
 - Exhibit C, Invoicing and Payment Provisions;
 - Exhibit D, Consultant Position Titles and Hourly Rates;
 - Exhibit E, Names of Initially Assigned Consultants;

AOC’S SIGNATURE	CONTRACTOR’S SIGNATURE
Judicial Council of California, Administrative Office of the Courts	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)</i> @
BY <i>(Authorized Signature)</i> ✍	BY <i>(Authorized Signature)</i> ✍
PRINTED NAME AND TITLE OF PERSON SIGNING Grant Walker, Senior Manager, Fiscal Services	PRINTED NAME AND TITLE OF PERSON SIGNING
ADDRESS Attn: Fiscal Services 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS @

EXHIBIT A
STANDARD PROVISIONS

1. Indemnification

- 1.1. The Contractor agrees to indemnify and hold harmless (collectively, “Indemnify”) the State, the Judicial Council of California, the Administrative Office of the Courts, the State’s trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their directors, officers, agents, representatives, volunteers and employees (individually, an “Indemnified Party”) from any and all claims, lawsuits, losses, costs, liabilities, and damages to the extent caused by any of the following:
 - 1.1.1. Contractor’s or Consultant’s(s’) negligence, or willful or intentional acts, omissions, or misconduct;
 - 1.1.2. Contractor’s breach of its obligations under this Agreement;
 - 1.1.3. Contractor’s or Consultant’s violation of any applicable law, rule, or regulation; and
 - 1.1.4. Claims or lawsuits by a third party, contractor, sub-consultant, supplier, worker, agent or any other person, firm, or corporation furnishing or supplying work, materials, or supplies who may be injured or damaged by the Contractor or the Consultant(s) when such claim arises from, is related to, or is in connection with the Contractor’s operations under this Agreement.
- 1.2. The Contractor’s defense obligation under this section is limited to reimbursement of any expenditure, including reasonable attorney fees and costs, incurred by an Indemnified Party in defending claims or lawsuits, ultimately determined to be due to negligence, or willful or intentional acts, omissions or misconduct of the Contractor or the Consultant(s).
- 1.3. This section does not require the Contractor to Indemnify an Indemnified Party for such portion of any loss, cost, liability, or damage that arises solely from the negligence, or willful or intentional acts or misconduct of an Indemnified Party.
- 1.4. This section shall not be construed to limit an Indemnified Party’s rights as an additional insured under a policy of insurance furnished pursuant to Exhibit B.
- 1.5. This section shall not be construed to limit the defense obligations of any insurance company to an Indemnified Party that is named as an additional insured under any policy described in Exhibit B.

2. Relationship of Parties

Contractor and the Consultant(s) it provides, in the performance of this Agreement, are acting as independent contractors and not as employees or agents of the AOC.

3. Cost Recovery - Termination for Cause

The AOC may terminate this Agreement in accordance with Exhibit B, Article 6 (“Termination”). If this Agreement is terminated for cause, or if Contractor fails to timely provide Consultants in accordance with Exhibit B, Article 12.10, AOC may proceed to obtain the services of equivalent workers in any manner it deems necessary and any costs to the AOC in excess of the amount(s) that would have been paid to Contractor for the Work of such workers shall be reimbursed to the AOC by the Contractor upon demand.

4. No Assignment

Contractor shall not voluntarily or involuntarily assign (e.g. assignment by operation of law), encumber, novate, or otherwise transfer or delegate ("Assign") all or any interest in this Agreement ("Assignment") without the prior advance written consent of the AOC. Any request from Contractor to Assign this Agreement shall be provided to AOC in the form of a Notice. The AOC shall have the right to impose any conditions upon an Assignment that the AOC considers necessary to maintain the full benefit of the bargain of the Agreement. The AOC's consent to Assignment shall be evidenced by a written agreement between the Parties which shall take the form of an Amendment to this Agreement. Any voluntary Assignment by Contractor or Assignment by operation of law (e.g. involuntarily assignment) of all or any portion of Contractor's interest in this Agreement shall be deemed a default allowing the AOC to exercise all remedies available to it under this Agreement and applicable law.

5. Time of Essence

Time is of the essence in this Agreement.

6. Validity of Alterations

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

7. Consideration

The Contractor shall be paid in accordance with the Payment Provisions set forth in Exhibit C. The AOC's payments to Contractor pursuant to this Agreement shall constitute full compensation for all of Contractor's time, materials, efforts, costs and expenses incurred in the performance of any obligation(s) or any other activities undertaken pursuant to this Agreement.

END OF EXHIBIT

EXHIBIT B

SPECIAL PROVISIONS

1. Definitions

1.1. The following defined terms shall apply to this Agreement.

- 1.1.1. "Amendment" means a Standard Agreement Coversheet and any documents it explicitly references, which, when executed by both Parties, shall modify the provisions of this Agreement.
- 1.1.2. "Business Day" means days of the week excluding Saturday and Sunday, and State holidays.
- 1.1.3. "Confidential Information" means trade secrets, financial, statistical, personnel, technical, or any other data or information relating to the AOC's, the Courts' or the State's business, or the business of its constituents; or the trade secrets, financial, statistical, personnel, technical, or any other data or information of Third Parties that has been disclosed to the AOC.
- 1.1.4. "Consultant(s)" means the employees of Contractor or employees of Contractor's Subcontractor(s) that are provided or that are to be provided to the AOC by Contractor in fulfillment of its obligations under this Agreement. When reference is made to Consultant(s) in this Agreement, it shall include every level and/or tier of employees of Contractor's Subcontractors provided to the AOC to perform Work under this Agreement.
- 1.1.5. "Contractor" means the firm contracting with the AOC as a Party to this Agreement.
- 1.1.6. "Court(s)" means one or more of the superior or appellate courts in the judicial branch of California.
- 1.1.7. "Day" means calendar day.
- 1.1.8. "Force Majeure" means a delay which impacts the timely performance of the Service(s) or otherwise delays the Service(s), for which neither Contractor, its Subcontractor(s) nor the AOC are liable because such delay or failure to perform was unforeseeable and beyond the control of the affected Party(ies). Acts of Force Majeure include, but are not limited to:
 - 1.1.8.1. Acts of God, natural disasters or the public enemy;
 - 1.1.8.2. Acts or omissions of any government entity;
 - 1.1.8.3. Fire or other casualty for which a Party is not responsible;
 - 1.1.8.4. Quarantine or epidemic;
 - 1.1.8.5. Strike or defensive lockout; and
 - 1.1.8.6. Unusually severe weather conditions.Force Majeure does not include failures or delays caused by Contractor and/or its Subcontractor(s).
- 1.1.9. "GAAP" means Generally Accepted Accounting Principles.
- 1.1.10. "Hourly Rate(s)" mean the amount(s) of money that shall be paid by the AOC per hour according to job description/classification of the individual performing the Work, as specified in Exhibit D.

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- 1.1.11. "Material(s)" means any includes any type of tangible or intangible thing(s) provided to the AOC by the Consultant(s) in the course of performance of the Work, including but not limited to, written reports and any form of computer code.
- 1.1.12. "Notice" means a written document provided in accordance with the provisions of the section entitled "Notice" set forth in Exhibit B.
- 1.1.13. "Phoenix System" means a system of software consisting of SAP and certain other Third Party software components used by the AOC to provide services to the Courts.
- 1.1.14. "Service(s)" means and includes action(s) performed or that shall be performed by the Consultant(s) and provided to the AOC.
- 1.1.15. "Standard Agreement Coversheet" means a document substantially in the format of the Standard Agreement Coversheet signed to effectuate this Agreement, which will be signed by the Parties to effectuate any Amendments to this Agreement.
- 1.1.16. "State" means the State of California.
- 1.1.17. "Subcontractor(s)" means and includes any individual, firm, partnership, agent, or corporation having a contract, purchase order, or agreement with the Contractor or with any of Contractor's Subcontractor of any tier for the provision of Consultant(s) to the AOC under this Agreement. When reference is made to a Subcontractor(s) in this Agreement, it shall include every level and/or tier, of Contractor's subcontractors, agents, suppliers, and/or materialmen.
- 1.1.18. "Third Party" means any individual, organization, agent, or any combination thereof that is not a party to this Agreement.
- 1.1.19. "Travel and Living Expense(s)" means expense(s) for travel and living costs actually incurred or that are expected to be incurred by Consultant(s) in the course of providing Services under this Agreement
- 1.1.20. "Work" includes Services, Data, and/or Materials provided to the AOC by Consultant(s).

2. Services to be Provided

Contractor shall provide Consultants (1) having educational background and work experience substantially equivalent to that described in the resumes for the Consultant Position Descriptions provided in Exhibit F, and (2) who are acceptable to the AOC. Contractor's Consultants shall assist the AOC in providing services to the Courts via the Phoenix System, providing knowledge transfer to the AOC, and assisting the AOC in maintaining the Phoenix System.

3. Quality of Services

- 3.1. Contractor warrants and represents that each of its Consultants assigned to perform any services under this Agreement shall have the skills, training and background reasonably commensurate with his or her responsibilities, as as to be able to perform in a competent and professional manner. Contractor further warrants and represents that the services shall be performed in good faith and in a competent and timely manner consistent with professional standards for such work, and warrants and represents that the services provided shall conform to the requirements of the AOC and this Agreement and will not infringe upon the rights of third parties.

4. **Work Guarantee**

- 4.1. Throughout the Term of this Agreement, Contractor guarantees that the Consultant's Work conforms to the standards and requirements specified in this Agreement and as established by the AOC in the course of Consultant's performance of Work. If the AOC identifies defect(s) or deficiencies in the Work Contractor shall, at the AOC's sole option and at no additional cost to the AOC, remedy the defect(s) and/or deficiencies to the satisfaction of the AOC. Contractor shall have a period of at least ten (10) Business Days, or such other longer period as the AOC Project Manager may in writing allow, following receipt of a written communication from the AOC's Project Manager informing Contractor of the existence of a defect or deficiency, in which to provide a cure. In no event shall the AOC be responsible for any costs or expenses incurred by Contractor to remedy any such defect(s) or deficiency(ies). All Work is subject to acceptance by the AOC and the AOC shall not be liable to Contractor for payment for Work it concludes is unacceptable, if such Work has not been corrected or re-performed by Contractor to the AOC's satisfaction and according to the process set forth in this provision.

5. **Disputes**

- 5.1.1. Informal Discussions. If the dispute does not involve an issue that requires submission of a Notice pursuant to the Section entitled "Notice" herein, each Party's Project Manager shall make a good faith attempt to promptly resolve the dispute by informal discussions with the other Party.
- 5.1.2. Demand. If the dispute involves an issue that requires submission of a Notice pursuant to Exhibit B, Article 17, , or if the dispute is not settled pursuant to informal discussions, the disputing Party (the "Submitting Party") shall submit a written demand ("Demand") in the form of a Notice to the other Party (the "Receiving Party"). The Demand must be submitted in compliance with Exhibit B, Article 17, and (i) be fully supported by detailed factual information and supporting documentation; (ii) state the specific Agreement provisions on which the Demand is based; and (iii) if the Demand regards 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 representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested accurately reflects the adjustment for which the Submitting Party thinks the Receiving Party is responsible.
- 5.1.3. Response to Demand. The Receiving Party shall within ten (10) Business Days, provide a written response ("Response"), in the form required by the Section entitled "Notice" herein, to the Submitting Party. The Response should state whether the Receiving Party accepts or rejects the Demand or whether the Receiving Party needs any additional information in order for it to fully analyze the Demand. The Submitting Party shall promptly comply with Receiving Party's request for additional information. Any delay caused by Submitting Party's failure to respond to a request for additional information shall extend the period within which the Receiving Party must provide the Response. In no event, however, shall the time period for a Response be extended beyond twenty (20) Business Days from the date the Receiving Party receives the Demand. Failure of the Receiving Party to provide a Response within the time period prescribed by this Section shall be deemed a rejection of the Demand by the Receiving Party.
- 5.1.4. Senior Level Negotiations. If the Demand remains unresolved after the time period for a Response, the Parties shall attempt to resolve the Demand by discussions between assigned representatives of the parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The Parties shall make a good faith effort to resolve the Demand within a period of thirty (30) Days after the time period for a Response.

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5.1.5. Mediation. If the Demand is not resolved by discussions between the Party's assigned representatives, the Parties shall submit the dispute to mediation prior to either Party initiating an action in court.

5.1.6. Litigation. If, after mediation as indicated above, the Parties have not resolved the dispute, either Party may initiate an action in state court located in San Francisco, California.

5.1.7. Confidentiality. All discussions and negotiations conducted pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code Section 1152 apply. Mediation shall be confidential and shall be subject to the provisions of California Evidence Code Sections 703.5 and 1115 through 1128.

5.2. Performance During Dispute and Claim Resolution Process. Contractor shall ensure that Consultant(s) shall diligently proceed with Work at the same time that disputes and claims are addressed under this Section. A failure of any Consultant(s) to diligently proceed with the Work in accordance with AOC's instructions will be considered a material breach of this Agreement.

6. Termination

6.1. Termination for Cause.

6.1.1. If the AOC determines that the Contractor has failed to provide the Work in accordance with the provisions of this Agreement or has otherwise materially failed to meet an obligation of this Agreement, and Contractor has not cured such failure to AOC's satisfaction within ten (10) business days after receiving a Notice of termination for cause from AOC specifying the reasons for Contractor's termination, the AOC may terminate this Agreement in full.

6.2. Termination for Non-Appropriation of Funds.

6.2.1. Funding for the Work contemplated by this Agreement is conditioned upon appropriation by the California Legislature and allocation by the Judicial Council of sufficient funds to support the provision of the Work.

6.2.2. By Notice to the Contractor the AOC shall have the right to terminate this Agreement in full for lack of appropriation of funds, or any other withdrawal, reduction or limitation imposed by the AOC's budget, funding or financial resources. Such termination for non-appropriation of funds or for lack of sufficient funds to continue shall not constitute a breach of the Agreement by the AOC.

6.3. Termination for Convenience.

6.3.1. The AOC shall have the option, at its sole discretion, to terminate this Agreement at any time, in whole or in part, during the term hereof for convenience and without cause, upon Notice to the Contractor.

7. Actions of the Contractor Upon Termination

7.1. Immediately upon receipt of a Notice of termination, Contractor shall, unless otherwise instructed in the Notice of termination by the AOC, proceed with diligence to take all actions necessary to effect the rapid and economical termination of its obligations under this Agreement and to minimize any liability of the Contractor and/or the AOC to any Third Party(s) that could result from such termination.

7.2. The AOC, at its sole discretion, may specify when and how the termination will be effected. Such actions may include but are not limited to, the following:

7.2.1. When termination is effective.

7.2.2. When Subcontractor(s) and Consultant(s) are to be notified of the termination.

7.2.3. Whether the AOC asserts an interest in any not yet complete Materials.

8. Effect of Termination

8.1. Termination for Cause.

If this Agreement is terminated for cause, non-appropriation, or convenience, the AOC's sole obligation shall be to make payment for any hours of conforming Work actually performed prior to the effective date of the termination as specified in the Notice of termination and any Travel and Living Expenses incurred in the course of termination of the Work, if incurred in accordance with the provisions of this Agreement.

9. Copyrights and Rights in Data and Materials

Contractor hereby assigns all copyrights and rights in any Data or Materials produced as a result of this Work provided as a result of this Agreement that may presumptively vest in Contractor or a Consultant. Upon request of the AOC, Contractor shall execute any additional instruments necessary to effectuate such assignment to the AOC. Consultant represents and warrants that it has the right to cause any and all of its Consultants and employees to execute such additional instruments.

10. Ownership of Data

- 10.1. Contractor agrees and shall ensure that everything created, developed or produced in the course of the Consultant's performance of the Work, including, without limitation, all software code, software configurations, drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and any other Material(s) or data (collectively, "Data") in any form, constitute works made for hire for the AOC and that said works shall be the sole property of the AOC without payment of any compensation to the Contractor or Contractor's Consultant(s) beyond the payment for hours of Work actually incurred in accordance with this Agreement.
- 10.2. Contractor shall ensure that the AOC shall own all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights").
- 10.3. To the extent that any Materials provided to the AOC by Contractor's Consultant's are not works for hire, Contractor hereby irrevocably assigns and shall ensure that the Consultant(s) shall assign all right(s), title and interest in and to all such Materials, and the Intellectual Property Rights therein, to the AOC.
- 10.4. At the AOC's request, the Contractor will assist and shall ensure that the Consultant(s) assist the AOC in the AOC's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. Contractor will, and shall ensure that the Consultants will appoint the AOC as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the AOC deems necessary to perfect the AOC's interest and Intellectual Property Rights in the Data as set forth herein.
- 10.5. The AOC shall be entitled to and Contractor shall ensure that the AOC has access to the Data in whatever form it exists, without limitation, at all times during and after the term of the Agreement. Any undelivered Data in the possession of any Consultant(s) shall be provided to the AOC before submission of Contractor's final invoice or immediately upon any termination of the Agreement. If any Data are lost, damaged or destroyed before final delivery to the AOC, Contractor shall replace them at its own expense and the Contractor assumes all risks of loss, damage or destruction of or to such Data.

11. Limitation on Publication

- 11.1. Contractor shall not, and shall ensure that the Consultants shall not, publish or submit for publication any article, press release, or other writing relating to this Agreement, relating to Contractor's Consultant(s), or relating to the Work being provided to the AOC without prior review and written approval by the AOC's Office of Communications.
- 11.2. Any request for a review of any such article, press release, or other writing shall be made to the AOC in the form of a Notice.
- 11.3. The AOC will endeavor to complete its review of the request within thirty (30) days of receipt of Notice by the AOC, and, if approval is denied, the AOC will provide reasons for its denial.

12. Provision and Replacement of Consultant(s)

- 12.1. Contractor shall, when authorized by the AOC, provide as many Consultant(s) as requested by the AOC. The initial individuals to be utilized as Consultant(s) are named in Exhibit E; however, Exhibit E need not be modified if additions or changes to the Consultants occur following execution of the Agreement.
- 12.2. Contractor shall provide Consultant(s) if and when requested in writing by the AOC Project Manager, and shall be utilized by the AOC only for the duration specified in that writing. The AOC Project Manager shall specify the regular AOC location to which this individual will report, or whether remote support is acceptable, in the request and establish any need for a background check of such individual prior to access to the AOC's or Court's systems or premises (See Article 14).
- 12.3. Contractor shall, unless otherwise allowed or requested in writing by the AOC, endeavor to maintain the same individuals as the Consultant(s) assigned to provide Work under this Agreement, throughout the full term of the Agreement.
- 12.4. If an existing Consultant is no longer available to work for the AOC, Contractor shall offer the AOC an alternative Consultant of substantially equivalent education and experience.
- 12.5. The AOC shall have the right, at its sole discretion, to require replacement of any Consultant(s) provided by Contractor, and Contractor shall comply with such requirement by providing a replacement acceptable to the AOC.
- 12.6. The AOC shall have the right, at its sole discretion, to disapprove of any Consultant(s) offered by Contractor, and Contractor shall comply with the exercise of such right by providing alternative Consultant(s) acceptable to the AOC.
- 12.7. The AOC Project Manager shall communicate their acceptance or rejection of Consultant(s), in writing.
- 12.8. Contractor shall ensure that, prior to the initiation of Work by Consultant(s), Contractor has bound Consultant(s) to the applicable provisions of Articles 9, 10, 11, and 25.
- 12.9. Should Consultant(s)' Work require involvement with any Third Party Software product or the confidential/prioprietary information of any Third Party, and should the AOC be required to bind Consultant(s) to confidentiality or use limitation provisions pertaining to the same, Contractor shall ensure that the Consultants will bind themselves to such provisions.
- 12.10. If the Contractor cannot furnish Consultant(s) acceptable to the AOC within ten (10) Business Days or such other period of time as the AOC Project Manager may in writing require, the AOC shall have the right to exercise its rights in accordance with Exhibit A, Article 3.

13. Project Managers

- 13.1. The Project Managers assigned by the AOC and Contractor, or their declared designees or superiors, are authorized to act as their respective Party's authorized representatives in the following capacities and shall:
 - 13.1.1. Serve as the primary contact with the other Party's Project Manager assigned to this Agreement;
 - 13.1.2. With respect to the AOC's Project Manager, manage or designate the management of the Consultants' day to day activities;
 - 13.1.3. Coordinate and authorize the provision or replacement of Consultants in accordance with Exhibit B, Article 12.
 - 13.1.4. Ensure cooperation with any Third Parties working for the AOC or the Courts as necessary to ensure successful execution of the Work;
 - 13.1.5. Cooperate to track the time worked by the Consultants.
- 13.2. With the exception of conditions that require a Notice, the Project Managers of the respective Parties are authorized to resolve issues and disputes relating to the provision and replacement of Consultant(s) and Consultant(s)' performance of the Work.
- 13.3. The AOC Project Manager for this Agreement is:
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- 13.4. Contractor's Project Manager for this Agreement is:
@
- 13.5. Any change in the identity of a Project Manager of either of the Parties must be specified in an Amendment to this Agreement.

14. Background Checks

- 14.1. If the Contractor assigns Consultant(s) to provide Work under this Agreement and at any time during the duration of the Work the AOC determines that Work requires that that individual have access to computer systems (whether on-site or by remote access) or access to the premises of the AOC or other Judicial Branch entities, the AOC shall have the right, but not the obligation, to conduct a background check or to require the Contractor to conduct a background check, as permitted by law, on all such persons before the AOC will grant such persons access.
- 14.2. Contractor shall ensure that Consultant(s) cooperate in carrying out the background check process and will promptly notify, in writing, the AOC Project Manager, of the identity of any person that refuses to undergo a background check.
- 14.3. If the AOC requires a background check and the Consultant refuses to undergo or fails the check, Contractor shall provide an alternate individual to perform the Work.
- 14.4. Contractor shall obtain all releases, waivers, or permission(s) necessary so that the Consultant's background information can be released to the AOC.

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14.5. Any costs or expenses incurred to obtain background checks or incurred in the course of working with the AOC to obtain proper clearance of Consultants for Work are the sole responsibility of the Contractor.

15. **Agreement Term**

15.1. The Term of this Agreement is set forth on the Standard Agreement Coversheet signed by the Parties to effectuate this Agreement.

16. **AOC's Payment Obligations / California State Budget**

16.1. Contractor shall be reimbursed for hours of Work actually performed, and for Travel and Living Expenses incurred in accordance with the provisions of this Agreement, as specified in Exhibit @.

16.2. Payments to be made under this Agreement will be paid by the California State Controller's Office (SCO) and are not made by the AOC. Notwithstanding anything in this Agreement to the contrary, it shall not be deemed an event of default if the SCO is unable to make any payment(s) as a result of the State of California's failure to timely approve and adopt a state budget. Should the SCO fail to make any payment as a result of the State of California's failure to timely approve and adopt a state budget, Contractor's Consultant(s) shall continue to provide Work and the SCO will promptly make any payment(s) owed for such Work upon approval and adoption of a budget by the State of California.

17. **Notice**

17.1. Notice must be provided in any of the following events:

17.1.1. In the event of any need or plan to assign, novate, or change the name of either Party to this Agreement;

17.1.2. In the event of any claim of any material breach of this Agreement; or

17.1.3. In the event that a Third Party claim or dispute alleging facts that would constitute a breach of this Agreement is brought or threatened against Contractor, its Subcontractor(s) or the Consultant(s).

17.2. A Notice must:

17.2.1. Be in writing;

17.2.2. Identify this Agreement, citing both the Agreement Name and Agreement Number given on the Standard Agreement Coversheet;

17.2.3. Unambiguously identify itself as a "Notice brought in accordance with the provisions of the Section Entitled "Notice" of Exhibit B of the Agreement;"

17.2.4. Be delivered in person, or pre-paid by a reputable express carrier, or by registered or certified mail (postage pre-paid). If delivered in person, the Notice must be delivered to the reception desk of the 6th Floor at 455 Golden Gate Ave, San Francisco, CA 94102; and must be

17.2.5. Addressed to the representative(s) of the Parties as follows:

If provided to the AOC:

Mr. Grant Walker
Senior Manager Fiscal Services
Fiscal Services Office

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455 Golden Gate Ave.
San Francisco, CA 94102-3660

With a copy to:

the AOC Project Manager(s) named in this Agreement.

If provided to the Contractor:

@

- 17.3. Notice is effective on the date of receipt; however, if the date of receipt does not occur upon a Business Day, Notice is effective on the first Business Day following the date of receipt.
- 17.4. Any correctly addressed Notice that is refused, lays unclaimed, or is not deliverable because of an act or omission of the Party to whom submitted will be deemed effective as of the date that the Notice was refused, unclaimed, or deemed undeliverable.

18. **Facilities**

- 18.1 The AOC shall, if a Consultant is to be located at an AOC location, provide suitable work space, appropriate network access, and access to the AOC's e-mail system for use by Consultant(s).
- 18.2 Contractor shall provide personal computer(s) for the Consultant(s)' use in performing Work for the AOC.

19. **Subcontracting**

- 19.1. Contractor shall have the right to utilize Subcontractor personnel to fulfill its obligation to provide Consultants to the AOC under this Agreement provided that such Subcontractor personnel are provided in accordance with the provisions of this Agreement.
- 19.2. No Party to this Agreement shall in any way contract on behalf of or in the name of another Party to this Agreement.
- 19.3. Contractor shall ensure that all Subcontractors and Consultants comply with the provisions of this Agreement applicable to Subcontractors and Consultants.
- 19.4. Contractor expressly acknowledges that neither its Subcontractor(s) nor Consultant(s) are third party beneficiaries of this Agreement.

20. **Changes and Amendments**

- 20.1. Amendments to the Agreement can be made only with prior written approval from the AOC by:

Mr. Grant Walker
Senior Manager, Fiscal Services
Judicial Council of California
Administrative Office of the Courts
Fiscal Services Office
455 Golden Gate Avenue
San Francisco, CA 94102

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- 20.2. Any request for a change in the terms and conditions of this Agreement must be submitted to the other Party in writing in the form of a Notice and must be accompanied by a narrative description of the proposed change and the reasons for the change.
- 20.3. After a review of the request, a written decision shall be provided to other Party.
- 20.4. Amendments to this Agreement shall be made only by bilateral execution of a Standard Agreement Coversheet.

21. Accounting System Requirement

Contractor shall maintain an adequate system of accounting and internal controls that meets GAAP.

22. Retention of Records and Audits

- 22.1. Contractor must retain and maintain easily available all Records pertaining to Contractor's, its Subcontractor(s), and Consultant(s) performance of obligations related to this Agreement.
- 22.2. Contractor shall ensure that its Subcontractor(s) retain and maintain easily available all Records pertaining to the performance of their employees provided as Consultant(s) under this Agreement.
- 22.3. Records ("Records") include but are not limited to any books, reports, accounts, estimates, documents, detailed financial information, certified payrolls, invoices, or any other documentation or evidence, as well as any documents utilized in the preparation of Proposals, Invoices, Disputes, litigation and any Claims. Records must be maintained in accordance with industry standards and GAAP and practices, consistently applied.
- 22.4. The provisions of this Section shall not apply to any work product that is the result of Contractor's or its Subcontractor's or Consultant(s') consultation with legal counsel or to any of Contractor's, or its Subcontractor(s') Consultant(s') confidential or proprietary information that does not fall within the definition of a Record as given above.
- 22.5. Contractor shall ensure that the AOC and/or its designated representative(s) will have access upon twenty-four (24) hours advance written notice, at all times during Contractor's normal business hours, to all Records for the purposes of inspection, audit, and copying. Contractor shall provide access and proper facilities for such purposes at no cost to AOC.
- 22.6. Contractor shall ensure that all Subcontractor(s) are bound to all provisions of this Section.
- 22.7. Records must be retained and available throughout the period of the term of this Agreement and for a period of five (5) years following the expiration date of this Agreement, or until five (5) years after final settlement of all Disputes, Claims, or litigation to which the Records relate, whichever date occurs later.
- 22.8. If an audit or AOC internal review reveals that the Contractor and/or its Subcontractor(s) have overcharged the AOC, Contractor will immediately pay to the AOC the overcharged amount plus interest from the date of receipt of overpayment. The rate of interest will be equal to eighteen percent (18%) per year or the maximum rate permitted by applicable law, whichever is less. The audit or AOC internal review will be conducted at the AOC's expense, unless the audit or review reveals that the Contractor and/or its Subcontractor(s) has overcharged the AOC by ten percent (10%) or more on any invoice, in which case the Contractor will reimburse the AOC for all costs and expenses incurred by the AOC in connection with such audit or review, including direct and indirect costs associated with AOC representatives.
- 22.9. The obligations of this Section shall survive the expiration of and any termination of this Agreement.

23. **Insurance**

- 23.1. **Insurance Required.** Without limiting the Contractor's indemnification obligation and in addition thereto, the Contractor shall secure and maintain in force throughout the term of this Agreement the following types of insurance with limits as shown. By requiring such minimum insurance, the AOC shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each policy, other than the Professional Liability policy, shall be written on an "occurrence" form. The Professional Liability policy may be written on a "claims made" form.
- 23.1.1. **Workers' Compensation:** Statutory workers' compensation coverage for all its employees who will be engaged in the performance of the Contract, and employer's liability with limits not less than \$1,000,000 for each accident \$1,000,000 disease policy limit, \$1,000,000 disease – each employee.
- 23.1.2. **Commercial General Liability Insurance—** Covering liability arising from premises, operations, independent Contractors, products and completed operations, personal injury and advertising injury, and liability assumed under contract. The policy shall provide limits of not less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate. The insurance must apply separately to each insured against whom a claim is made or lawsuit is brought, subject only to the insurance policy's limit of liability.
- 23.1.3. **Commercial or Business Automobile Liability Insurance—**Covering liability arising out of a motor vehicle, including owned, non-owned, leased, and hired vehicles assigned to or used in connection with the Contract. The policy shall provide combined single limits of not less than \$1,000,000 per accident or loss.
- 23.1.4. **Professional Liability Insurance; Errors and Omissions —**Covering the Contractor's acts, errors or omissions committed or alleged to have been committed which arise out of rendering or failure to render the Services provided under the terms of this Agreement. The policy shall provide limits of not less than \$1,000,000 per claim or per occurrence and \$1,000,000 annual aggregate. If the policy is written on a "claims made" form, the Contractor shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Services which are the subject of this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that Services commence pursuant to this Agreement.
- Commercial Crime Insurance - Indemnifying the State,** the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, or appellate courts utilizing the Phoenix System for loss sustained by the State, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, or appellate courts as a direct result of dishonest acts committed by any employee, or Subcontractor, of the Contractor, acting alone or in collusion with others, while being compensated by the Contractor, while providing Work for the AOC, or while providing Work at the direction of the AOC for other users of the Phoenix System. The policy shall provide limits of not less than \$1,000,000 per occurrence.
- 23.2. **Additional Insured Endorsements.** All policies required in this Section with the exception of Workers' Compensation and Professional Liability, must be endorsed to name the following as additional insureds, or indemnified parties, with respect to liabilities arising out of the Contractor's Work for the AOC under this Agreement: the State of California, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, appellate courts, justices, judges,

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subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers and employees.

- 23.3. Required Policy Provisions. Each policy required in subsection (a) above must provide that:
- 23.3.1. The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by the State of California, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, or appellate courts.
 - 23.3.2. The policy shall apply separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer's liability.
 - 23.3.3. The Contractor will provide the AOC with thirty (30) days' advance written notice of any change or cancellation, mailed to the following address (with a copy to the AOC Business Services Manager, Grant Walker):

Judicial Council of California
Administrative Office of the Courts
Fiscal Services Office
455 Golden Gate Avenue
San Francisco, CA 94102
- 23.4. Waiver of Claims: Contractor shall waive any right of recovery or subrogation it may have against any of the State of California, the Judicial Council of California, the Administrative Office of the Courts, or the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers or employees for loss or damage for any loss arising out of the Services performed by Contractor under this Agreement, and the Contractor will require any insurer providing insurance required under this Article 23 to do the same.
- 23.5. Qualifying Insurers. Contractor will maintain, or cause to be maintained, insurance issued by an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide, and are authorized to do business in the State of California.
- 23.6. Deductibles and Self-Insured Retentions. For all insurance policies required by this Agreement, Contractor will declare any deductible or self-insured retention (SIR). Contractor will be responsible for reimbursement of any deductible to its insurer. Contractor will administer any self-insurance program in a commercially reasonable manner that ensures sufficient funds are available to cover all losses Contractor must insure against under the terms of this Section.
- 23.7. Contractor is responsible for and may not recover from the State of California, the Judicial Council of California, the Administrative Office of the Courts, or any Superior Court of California, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, any deductible or self-insured retention that is connected to the insurance required under this Section.
- 23.8. If Contractor fails to keep in effect at all times the specified insurance coverage, the AOC may, in addition to any other remedies it may have, declare the Contract to be in breach and withhold all progress payments and retentions until the breach is cured, or terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- 23.9. No Reduction or Limit of the Contractor's Obligation. Insurance affected or procured by the Contractor shall not reduce or limit the Contractor's contractual obligation to indemnify and defend the AOC. Acceptance of the Contractor's insurance by the AOC shall not relieve or decrease the liability of the Contractor hereunder.

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- 23.10. Joint Ventures. If the Contractor is an association, partnership, or other joint business venture, the insurance required in subsection (a) above shall be provided by any one of the following methods:
- 23.10.1. Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured.
- 23.10.2. Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 23.11. Evidence of Coverage. Before commencing any work under this Agreement, the Contractor must furnish to the AOC certificates of insurance and applicable endorsements, in a form and with insurers satisfactory to the AOC, evidencing that all required insurance coverage is in effect. The required certificates and endorsements must be sent to:

Mr. Grant Walker

Senior Business Services Manager

Attn: Insurance Certificate, Contract # (Enter Contract Number from 1st page upper left of this Agreement)

Judicial Council of California

Administrative Office of the Courts

Fiscal Services Office

455 Golden Gate Avenue

San Francisco, CA 94102

24. Confidentiality

- 24.1. Both the AOC and Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the AOC may disclose AOC Confidential Information as well as that of Third Parties to Contractor and/or Consultant(s).
- 24.2. Contractor shall not disclose and shall ensure that Consultant(s) shall not disclose any such Confidential Information so disclosed to any Third Party and shall at a minimum exercise reasonable care to prevent such disclosure.
- 24.3. In the event that the AOC needs to disclose Third Party Confidential Information to Contractor and/or Consultant(s), Contractor agrees and shall ensure that Consultant(s) agree to execute a confidentiality agreement to require a duty of nondisclosure to Third Parties and that shall ensure that Consultant(s) do not use such Confidential Information for any purpose unrelated to performance of the Work.
- 24.4. Neither Contractor nor Consultant(s) shall acquire any right or title in or to the Confidential Information as a result of any disclosure contemplated hereunder. Notwithstanding the foregoing, Contractor and Consultant(s) may disclose such Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or applicable ruling; or (ii) as appropriate to respond to any summons or subpoena.
- 24.5. The AOC shall have the right, without any prior approval of Contractor or Consultant(s), to disclose all Data and Materials provided under this Agreement to Third Parties for the purpose of validation of the quality of Consultant's Work and to use such Data and Materials for their intended purpose(s).
- 24.6. Contractor agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

25. Trade Secret, Patent and Copyright Indemnification

- 25.1. Contractor shall hold the AOC, the Court(s), the State, and their officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, Article, or appliance furnished or used by Contractor or Consultants in connection with the performance of Work under this Agreement.
- 25.2. Contractor, at its own expense, shall defend any action brought against the AOC, the Court(s) and/or the State, and their officers, agents, and employees, to the extent that such action is based upon a claim that any Data or Materials supplied by Contractor or Consultant(s) infringes a United States patent or copyright or violates a trade secret. Contractor shall pay those costs and damages finally awarded against the AOC, the Courts, and/or the State and their officers, agents, and employees, in any such action. Such defense and payment shall be conditioned on the following:
- 25.2.1. That Contractor shall be notified within a reasonable time in writing by the AOC of any Notice of such claim; and,
- 25.2.2. That Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that when principles of government or public law are involved, the AOC, the Court(s) and/or the State shall have the option to participate in such action at its own expense.
- 25.3. Should any Data or Materials become the subject of a claim of infringement of a United States patent or copyright or a trade secret, the AOC shall permit Contractor at its option and sole cost and expense either to procure for the AOC and/ or the Court(s) the right to continue using the Data or Materials, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Data or Materials by the AOC and/or the Courts shall be prevented by injunction, Contractor agrees to take back such Data or Materials and make every reasonable effort to assist the AOC and/or the Courts, at Contractor's sole cost and expense, in procuring substitute Data or Materials. If, in the sole option of the AOC, the return of such infringing Data or Materials makes the retention of other Data or Materials acquired from Contractor under this Agreement impractical, the AOC shall then have the option of terminating the Work under which the Data or Materials were provided without penalty or termination charge. Contractor agrees to take back said Data or Materials and refund any sums that the AOC has paid Contractor for such Work, less a reasonable amount for use.

26. Conflict of Interest

- 26.1. Contractor shall ensure that neither its employees or officers, nor the Consultant(s) shall participate in proceedings that will result in decision making regarding the use of State funds encumbered or that may be encumbered under this Agreement if that person's partner, family, or organization has a financial interest in the outcome of the proceedings.
- 26.2. Contractor shall ensure that its employees, its officers and the Consultant(s) shall avoid actions resulting in or creating an the appearance that (1) an official position with the government was used for private gain; (2) preferential treatment was accorded to any particular person associated with this Agreement; (3) the independence or impartiality of the AOC or the Courts has been compromised; (4) decisions are made outside official channels; or (5) that adversely affects the confidence of the public in the integrity of the AOC or the Courts.
- 26.3. Contractor shall ensure that for a duration equivalent to two (2) years following the end of this Agreement, Contractor shall not award a contract to any AOC or Court officer or employee that had any role in the decision making process relevant to awarding this Agreement or any such individual involved in making decisions regarding the use of the State funds encumbered under this Agreement.

27. **Covenant Against Gratuities**

- 27.1. Contractor warrants that neither Contractor itself nor any of its Subcontractor(s) nor the Consultant(s) have provided or shall at any time provide any gratuity, in the form of money, tangible item(s), intangible benefit(s), or in any other form, to any officer, official, agent, or employee of the AOC or of the Court(s) for the purpose of securing or having secured award of this Agreement to Contractor.
- 27.2. Contractor warrants that neither Contractor itself nor any of its Subcontractor(s) nor the Consultant(s) have provided or shall at any time provide any gratuity in the form of money, tangible item(s), intangible benefit(s), or in any other form, to any officer, official, agent, or employee of the AOC or of the Court(s) for the purpose of securing an outcome favorable to the Contractor resulting from any decisions made regarding the use of the State funds encumbered or to be encumbered under this Agreement.
- 27.3. Contractor warrants that neither Contractor nor any of its Subcontractor(s) nor the Consultant(s) will, without immediate written Notice to the AOC, knowingly allow any Third Party to provide any gratuity in the form of money, tangible item(s), intangible benefit(s), or in any other form to any officer, official, agent, or employee of the AOC or of the Court(s) for the purpose of securing an outcome favorable to the Contractor, its Subcontractor(s) or the Consultant(s) resulting from any decisions made regarding the use of the State funds encumbered or to be encumbered under this Agreement.
- 27.4. For breach or violation of any of the aforesaid warranties, the AOC will have the right to terminate this Agreement, and any costs or expenses incurred by the AOC in procuring, on the open market, any Work which the Contractor has agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the AOC provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

28. **Submitting False Claims; Monetary Penalties**

The AOC shall be entitled to remedy any false claims, as defined in California Government Code Section 12650 et seq., made to the AOC by the Contractor under the standards set forth in Government Code Section 12650 et seq. If Contractor submits a false claim, Contractor shall be liable to the AOC for three times the amount of damages that the AOC sustains because of the false claim. If Contractor submits a false claim they shall also be liable to the AOC for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$10,000 for each false claim.

29. **Responsibility for Equipment, Real Property**

Neither the AOC nor the Court(s) shall be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by the Contractor or Consultant(s) even though such equipment is furnished, rented, or loaned to the Contractor or Consultants by the AOC or the Court(s).

30. **Independent Contractor**

The Contractor is and shall be an independent contractor. Contractor's Consultant(s) are not an employees or agents of the AOC, and the Consultant(s) are not covered by any employee benefit plans provided to AOC's employees. The Contractor is and shall be liable for its own acts and omissions as well as those of the Consultant(s). Nothing in this Agreement shall be construed as creating an employment or agency relationship between the AOC and the Contractor or between the AOC and any Consultant(s). The Contractor will be exercising full control over the employment, compensation and discharge of all Consultant(s) performing the Work. The Contractor shall be solely responsible for all matters relating to the payment of its Subcontractor(s) and the Consultant(s), including compliance with social security, withholding, any and all employee benefits, and all regulations governing such matters.

31. **Payment of Income Taxes**

The Contractor shall pay, when due, all applicable income taxes, including estimated taxes, incurred as a result of the compensation paid by the AOC to the Contractor for the Work. The AOC is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or Consultant's wages. The Contractor agrees to indemnify, defend and hold the AOC harmless for any claims, costs, losses, fees, penalties, interest or damages (including attorney fees and costs) suffered by the AOC resulting from the Contractor's failure to comply with this provision. The AOC may offset any taxes paid by the AOC as a result of the Contractor's breach of this provision against any amounts owed Contractor under this Agreement.

32. **National Labor Relations Board**

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

33. **Drug-Free Workplace**

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

34. **Certifications**

By executing this Agreement, Contractor certifies under penalty of perjury that the following are true at the time of execution of this Agreement and shall remain true during the performance of this Agreement:

- 34.1. Nondiscrimination. The Contractor not unlawfully discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, ancestry, physical or mental disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), medical condition, marital status, age (over 40), sex, sexual orientation, gender identity, or domestic partner status. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 34.2. No Harassment. The Contractor shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or Consultant(s) interact in the performance of this Agreement. The Contractor shall take all reasonable steps to prevent harassment from occurring.
- 34.3. FEHA. The Contractor shall comply with the provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- 34.4. Compliance with Americans with Disabilities Act. The Contractor complies with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Section 12101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.
- 34.5. Notice to Labor Organizations. The Contractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 34.6. Compliance. The Contractor shall include the nondiscrimination, no harassment, and compliance provisions of this Article in any and all subcontracts issued to perform Services under this Agreement. Contractor has, unless exempt, complied with the nondiscrimination program requirements. (Government Code, Section 12990 (subdivisions a-f) and CCR, Title 2, Section 8103 et seq.)

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- 34.7. Prohibited Financial Conflict of Interest. Neither the Contractor nor its Subcontractor(s) presently has an interest nor will either party acquire any interest which would present a conflict of interest pursuant to California Government Code Sections 1090 et seq. and 87100 et seq., during the performance of Services pursuant to this Agreement. The Contractor further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the AOC are now, nor in the future will they be, in any manner interested directly or indirectly in this Agreement, or in any profits expected to arise from this Agreement, as set forth in California Government Code Sections 1090 et seq., and 87100 et seq.
- 34.8. Drug-Free Workplace. The Contractor will provide a drug-free workplace as required by California Government Code Sections 8355 through 8357.
- 34.9. National Labor Relations Board. No more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.
- 34.10. Brokerage or Contingent Fees. No person or selling agency has been employed or retained to solicit or secure this Agreement upon an understanding or agreement for a commission, percentage, brokerage or contingent fee.
- 34.11. Computer Software Use. Contractor has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

35. **Force Majeure**

Neither Party shall be liable for damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is due to an act of Force Majeure.

36. **Americans with Disabilities Act**

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

37. **General**

- 37.1. Survival. The termination or expiration of this Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or because of such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or because of such termination or expiration, except as expressly provided for herein.
- 37.2. Remedies Cumulative. All remedies provided for in this Agreement are cumulative and may be exercised individually or in combination with any other remedy available hereunder.
- 37.3. Waiver.
- 37.3.1. Any waiver of any term or condition of this Agreement must be made in the form of an Amendment and executed by an authorized representative of the waiving party and any such waiver shall not be construed as a waiver of any succeeding breach of the same or other term or condition of this Agreement.
- 37.3.2. The omission by either Party at any time to remedy any default or enforce any right, or to require performance in accordance with the terms and conditions of this Agreement at the time

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designated shall not act as a waiver of the default or right, nor shall it affect the right of that party to enforce those provisions at a later date.

- 37.4. Severability. The provisions of this Agreement are separate and severable. Should any court hold that any provision of this Agreement is invalid, void or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the reasonable intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.
- 37.5. Governing Law; Jurisdiction
- 37.5.1. This Agreement, and all of the rights and duties of Contractor and the AOC arising out of or related to this agreement or to the relationship of Contractor and the AOC, are governed by the laws of the State of California without regard to its conflicts of law rules. This provision applies to all claims and causes of action that Contractor has or may acquire against the AOC, whether based on contract, tort, statute, or anything else.
- 37.5.2. Contractor agrees that any claims that it has or may acquire against the AOC shall be commenced in and decided exclusively by a state court located in San Francisco, California, which shall have personal and exclusive jurisdiction over the Parties in any such proceedings.
- 37.6. Agreement Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Words used in this Agreement that are either singular or plural shall be construed to include the other where appropriate. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.
- 37.7. Public Contract Code References. Public Contract Code references create duties of the Contractor under this Agreement.
- 37.8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as regards its subject matter, and supersedes all previous agreements, proposals, negotiations, representations and commitments, whether oral or written, with regard thereto.

END OF EXHIBIT

EXHIBIT C
INVOICING
And PAYMENT

1. Invoicing

- 1.1. Contractor shall be paid for hours of Work actually expended by Consultants in the course of performing Work, as directed by the AOC.
- 1.2. The AOC will not pay for, and Contractor shall not invoice AOC for any hours of non-productive time expended by the Contractor's Consultants when spent traveling to or from a location where Work is performed.
- 1.3. Contractor shall be paid at the Hourly Rates corresponding to the Job Titles set forth in Exhibit D.
- 1.4. Contractor shall, not more frequently than once monthly, submit to the AOC's Project Manager, a pro-forma invoice that specifies the following, in separate sections:
 - 1.4.1. A section entitled "Hourly Rates Invoiced Work" that specifies, for each job title as given in Exhibit D and being invoiced:
 - 1.4.1.1.1. The applicable job title / individual name;
 - 1.4.1.1.2. The number of hours actually worked during the previous month;
 - 1.4.1.1.3. The applicable Hourly Rate, as specified in Exhibit D
 - 1.4.1.1.4. The extended price; and
 - 1.4.1.1.5. A total for all Work being invoiced for that job title.
 - 1.4.2. A detailed accounting of hours against specific issues and tasks, either by reference to the AOC tracking number, or via written description of the activity performed.
 - 1.4.3. A total for all Hours of Work being invoiced for all Job Titles.
 - 1.4.4. A section entitled "Travel and Living Expenses" that specifies, for each individual for whom such charges are being invoiced:
 - 1.4.4.1.1. The name of the individual to whom the expenses apply;
 - 1.4.4.1.2. Date(s) of any travel or living expense;
 - 1.4.4.1.3. Actual cost of travel or living expense incurred during the previous month, but not to exceed the allowance specified in the AOC's Travel and Living Expense Guidelines; and
 - 1.4.4.1.4. A total for all Travel and Living Expenses ("Travel and Living Expenses") being invoiced for that individual.
 - 1.4.5. A total for all Travel and Living Expenses being invoiced for all Job Title(s)
 - 1.4.6. A grand total including all Hours of Work Being Invoiced and all Travel and Living Expenses Being Invoiced.

2. AOC Travel and Living Expenses Guidelines

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- 2.1. The AOC shall reimburse Contractor for reasonable transportation, meals, and lodging expenses actually incurred by Consultant(s) when the expenditure of such expense is authorized in advance, in writing, by the AOC's Project Manager, and incurred in the course of the performance of the Work, but subject to the following:
 - 2.1.1. The AOC shall not reimburse Contractor for any travel and/or living expenses incurred by Consultants when such expenses are incurred on trips between Consultant's domicile and the AOC designated regular location to which the Consultant reports.
 - 2.1.2. If air transportation is authorized, the AOC will reimburse Contractor only at the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) Days prior to travel, unless the Project Manager agrees in writing to a shorter period in writing.
 - 2.1.3. If overnight lodging expense is authorized, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the AOC will reimburse Contractor only (i) for hotel room rental at the actual cost, but not to exceed \$110.00 per Day, plus occupancy tax and/or energy surcharge; and (ii) for meals, at the actual cost but not to exceed the following maximum amounts per person per Day: breakfast \$6.00; lunch \$10.00; dinner \$18.00; and incidentals \$6.00.
 - 2.1.4. If private vehicle ground transportation expense is authorized, the AOC will reimburse Contractor at \$0.555 per mile.
 - 2.1.5. Travel and Living Expenses shall be billed to the AOC at Contractor's actual cost, including any discounts or rebates accorded to Contractor or its Subcontractor(s), and are not subject to any markup, administrative or other fee, or other charge.

3. **Taxes**

The AOC is exempt from federal excise taxes and no payment will be made for any taxes levied on Contractor's Consultant(s)' wages. The AOC will pay for any applicable State of California or local sales or use taxes on any Materials provided or Services rendered pursuant to this Agreement.

4. **Invoice Submission and Approval**

- 4.1. Prior to submitting an invoice to the AOC's Accounts Payable Department, Contractor shall provide the AOC Project Manager a detailed accounting of the hours worked and work activities actually performed, accompanied by a pro-forma invoice as specified in this Exhibit C Article 1.4, for approval.
- 4.2. The AOC Project Manager shall review the accounting and the pro-forma invoice provided. If there are errors, discrepancies or other issues regarding the services that the AOC Project Manager identifies in the accounting or the invoice, the Project Managers of the respective Parties shall collaborate to resolve such errors, discrepancies and issues.
- 4.3. Upon receipt of written approval of the pro-forma invoice from the AOC Project Manager, Contractor shall submit one (1) original and two (2) copies of the actual invoice to:

Judicial Council of California
Administrative Office of the Courts
c/o Fiscal Services Office, Accounts Payable
455 Golden Gate Avenue
San Francisco, CA 94102-3660

5. **No Retention**

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5.1. The AOC shall not withhold retention in its payments made for invoices submitted.

6. Payment

6.1. The AOC will make payment for invoices within sixty (60) days after receipt by the AOC Accounts Payable Department of a correct, itemized invoice. In no event shall the AOC be liable for interest or late charges for any late payments.

6.2. Payment shall be made by the AOC to the Contractor at the address specified on the invoice.

6.3. The AOC may withhold full or partial payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

7. Disallowance

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

8. Payment Does Not Imply Acceptance of Work

Payment by the AOC, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct unsatisfactory Work in connection with this Agreement.

9. Release of Claims

9.1. The acceptance by Contractor of its final payment due shall be and shall operate as a release of the AOC, the Court(s) and the State from all claims and all liability to the Contractor for everything done or furnished in connection with this Agreement, including every act or omission of the AOC and or the Court(s).

9.2. Contractor shall, on the face of Contractor's final invoice submitted for payment, expressly identify as outstanding any claim that it has. Contractor's failure to identify any such claims shall operate as a release of all claims.

END OF EXHIBIT

EXHIBIT D

CONSULTANT POSITION TITLES AND HOURLY RATES

CONSULTANT POSTION DESCRIPTIONS

1. **Consultant Position Titles and Hourly Rates:**

Position Title	Hourly Rate *

* The Hourly Rates shall remain fixed and are not subject to change throughout the term of this Agreement.

END OF EXHIBIT

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Exhibit E

Names of Initially Assigned Consultants

END OF EXHIBIT

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Exhibit F
Consultant Position Descriptions and Resumes

(Position Descriptions from Final Version of the RFP)

(Resumes from Proposal)

**END OF EXHIBIT
END OF AGREEMENT**