



# Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

FINANCE DIVISION

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-7960 • Fax 415-865-4325 • TDD 415-865-4272

RONALD M. GEORGE  
*Chief Justice of California  
Chair of the Judicial Council*

WILLIAM C. VICKREY  
*Administrative Director of the Courts*

RONALD G. OVERHOLT  
*Chief Deputy Director*

CHRISTINE M. HANSEN  
*Director, Finance Division*

**TO:** POTENTIAL BIDDERS

**FROM:** Administrative Office of the Courts  
Office of Court Construction and Management

**DATE:** December 29, 2003

**SUBJECT/PURPOSE  
OF MEMO:** REQUEST FOR PROPOSALS  
TITLE, ESCROW, AND RELATED SERVICES

**ACTION REQUIRED:** You are invited to review and respond to the attached Request for Proposals ("RFP"):  
  
Project Title: Title, escrow, and related services  
RFP Number: OCCM-TE-12-03

**DEADLINE:** Potential bidders **MUST** participate in a mandatory pre-bid telephone conference call on **January 9, 2004 at 2:00 p.m.** (call-in number **800-644-1484**). Proposals must be received by **5 p.m. on January 27, 2004**

**SUBMISSION OF  
PROPOSAL:** Proposals should be sent to:  
**Judicial Council of California  
Administrative Office of the Courts  
Attn: Nadine McFadden  
455 Golden Gate Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94102**

**CONTACT FOR  
FURTHER  
INFORMATION:**

<b>NAME:</b>	<b>TEL:</b>	<b>FAX:</b>	<b>E-MAIL:</b>
Robert Emerson	415-865-7981	415-865-7524	<i>Robert.Emerson@jud.ca.gov</i>

## **1.0 GENERAL INFORMATION**

### **1.1 Background**

The Judicial Council of California (Council), chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system. The California Constitution directs the Council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The Council also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law. The Administrative Office of the Courts (AOC) is the staff agency for the Council and assists both the Council and its chair in performing their duties.

### **1.2 The Trial Court Facilities Act of 2002**

Effective as of January 1, 2003, the Trial Court Facilities Act of 2002 (Stats. 2002, ch. 1082) (SB 1732) is landmark legislation that will shift the governance of California's more than 450 courthouse facilities from the Counties to the State of California (State). SB 1732 implements the key recommendation of the statewide Task Force on Court Facilities – that the State assume full responsibility for the ownership and maintenance of court facilities. Specific task force recommendations implemented by SB 1732 include: establishment of a process for the transfer of responsibility for court facilities from counties to the State over a three-year period; establishment of a process for calculating county facility payments to the State for transferred buildings; establishment of a State Court Facilities Construction Fund to be used for the acquisition, rehabilitation, or construction of court facilities; creation of a new statewide filing fee surcharge for courthouse construction; and, setting the local penalty assessment for courthouse construction funds at \$5.00. The full text of SB 1732 is available at [www.leginfo.ca.gov](http://www.leginfo.ca.gov). The task force reports are available at [www.courtinfo.ca.gov/reference/specialreports](http://www.courtinfo.ca.gov/reference/specialreports).

### **1.3. SB 1732 Implementation Program**

Under SB 1732, the Council and the AOC have statutorily prescribed duties to acquire, manage and operate court facilities for the State. The proposals in response to this RFP will enable the AOC to identify and select competent, qualified service providers to assist with the conveyance of Court Properties to the State of California by issuing preliminary title reports ("PTR's) for Court Properties; assisting the AOC, its consultants and the counties to resolve issues affecting marketable title to the Court Properties; assisting the AOC and its consultants to prepare legal descriptions for Court Properties, where needed; issuance of appropriate title policy endorsements; issuance of owners' policies of title insurance for each Court Property conveyed to the State of California; developing, if feasible, an aggregate "blanket" form of ALTA extended-coverage owner's policy of title insurance covering all or a majority of Court Properties

transferred to the State of California; assisting the AOC to determine the appropriate amount of title insurance coverage for each Court Property; recording the instruments and agreements required with respect to the transfer of each Court Property; distributing closing documents to the parties; disbursing funds; and preparing closing settlement statements.

## **2.0 PURPOSE OF THIS RFP**

The AOC seeks to identify and retain one or more qualified title insurance companies or escrow companies to assist the AOC in the implementation of the Trial Court Facilities Act of 2002 (SB 1732 – Escutia). This RFP is the means for prospective service providers to submit their qualifications to the AOC and request selection as a service provider.

Under SB 1732, the Council and the AOC, on behalf of the State of California, have statutorily prescribed duties to acquire, manage and operate court facilities located throughout all 58 counties in the State. This RFP is issued to identify one or more qualified title insurance companies and/or escrow companies to assist with the transfer of responsibility for court facilities and the conveyance to the State of California of fee title to the real properties on which the counties' trial court facilities are located (each, a "Court Property" and collectively, "Court Properties") by assisting the AOC to develop an aggregate "blanket" ALTA extended-coverage form of owner's title insurance policy to cover all or most of the Court Properties acquired by the State, including coverage limits for each Court Property based on a per occurrence or claims made basis; issuing preliminary title reports; assisting in the development of strategies and methods for resolving issues affecting marketable title to each Court Property; developing legal descriptions for Court Properties, where needed; providing document recording and distribution services, disbursing funds associated with each Court Property transfer; preparing closing settlement statements for the Court Property transfer transactions; and providing other title and escrow services as required for each Court Property transfer.

The proposal in response to this RFP should indicate what services your company proposes to perform and, if your proposal has geographic or other limitations on some or all of the services offered, these limitations should be clearly described. The AOC may select, based on the responses to this RFP, service providers qualified to provide assistance to the AOC and the trial courts. Service providers may be selected from different geographical areas of the State.

The AOC may contract with service providers using a single agreement for a specific project or under a master agreement that sets out the overall scope of the services to be provided, the obligations of the parties, and the general fee agreement. If a master agreement is utilized, each assignment will be reflected in a separate work order under the master agreement. Each single agreement or work order will include details about the nature of the assignment the service provider will perform for the AOC, the timeline for

completion of the assignment, a firm fixed or time and materials not-to-exceed price, reporting guidelines, and other information.

The AOC cannot guarantee the amount or duration of work or number of assignments that may be given to a service provider. Work assignments will be given to particular service providers based upon the evaluation of the service provider's qualifications, cost proposal for the assignment, and geographical considerations.

### **3.0 SCOPE OF SERVICES**

- 3.1. Services may be provided to the AOC on a nonexclusive and as-needed basis, from the period from execution of the contract to the end of the fiscal year (the AOC's fiscal year ends on June 30<sup>th</sup>). Agreements may be renewed for additional fiscal years.
- 3.2. The service provider will be asked to:
  - 3.2.1 Issuance of preliminary title reports and copies of underlying exception documents and providing, as requested, other related information and documents of record concerning title to each Court Property (by way of example only, copies of applicable vesting deeds; chain of title reports; parcel maps/tract maps; FEMA flood zone designations);
  - 3.2.2 Assisting with development of legal descriptions for: (i) Court Properties; (ii) parking areas dedicated to court use; and (iii) unrecorded easements, rights of way or other apparent encumbrances or rights granted by the respective counties;
  - 3.2.3 Assisting the AOC, its consultants and the counties to resolve issues affecting marketable title to the Court Properties through, among other things, recordation of corrective instruments and/or other appropriate means;
  - 3.2.4 Issuance of ALTA extended-coverage owner's policies of title insurance for each Court Property conveyed to the State of California together with appropriate title policy endorsements;
  - 3.2.5 Assisting the AOC and its consultants to determine the feasibility of developing a form of aggregate title insurance policy covering all or a majority of the Court Properties under one master ALTA extended – coverage owner's or leasehold policy, whether through issuance of an ALTA Owner's Aggregation Endorsement aggregating the coverages of the title policies issued for all (or a majority of) Court Properties acquired by the State or by other means. In connection with such a title insurance product, the service provider's proposal

should include (i) the process for adding Court Properties to the policy as title or a leasehold interest to each additional Court Property is acquired by the State; (ii) the premiums for such aggregate policy coverage per each \$1,000 of coverage and the process for payment of premiums as Court Properties are added to the policy; (iii) a general description of any terms and conditions that would disqualify a Court Property from being included in the policy's coverage; (iv) any other terms, conditions or limitations that the service provider would require in connection with such a policy;

- 3.2.6 Assisting the AOC to determine the appropriate amount of title insurance coverage for each Court Property taking into account that SB 1732 provides for the transfer of the Court Properties to the State without payment of any monetary consideration;
- 3.2.7 Recording the grant deeds, certificates of acceptance, memoranda of agreements and related documents required with respect to the transfer of each Court Property in the office of the County Recorder for the county in which the Court Property is located;
- 3.2.8 Distributing to the parties originals or copies (as appropriate) of executed and/or recorded closing documents;
- 3.2.9 Disbursing to the Controller of the State of California the County's first pro-rated installment of the County Facilities Payment required by SB 1732 and disbursing to the party or parties entitled thereto other amounts required to be disbursed in connection with the closing of each Court Property transfer transaction;
- 3.2.10 Preparing closing settlement statements reflecting pro-rations and funds disbursed through escrow in each Court Property transfer transaction.

#### **4.0 SPECIFICS OF A RESPONSIVE PROPOSAL**

The following information shall be included in the proposal:

- 4.1 Name, address, telephone and fax numbers, and social security number or federal tax identification number.
- 4.2 Five copies of the proposal signed by an authorized representative of the company, including name, title, address, and telephone number of one individual who is the responder's designated representative.
- 4.3 Resumes describing the background and experience of key staff, as well as each individual's ability and experience in conducting the proposed activities.

- 4.4 Describe key staff's knowledge of the requirements necessary to complete this project.
- 4.5 Names, addresses, and telephone numbers of a minimum of five (5) clients for whom the service provider has conducted similar services. The AOC may check references listed by the service provider.
- 4.6 Responsive proposals should provide straightforward, concise information that satisfies the requirements noted above. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the state's instructions, requirements of this RFP, and completeness and clarity of content.
- 4.7 Overall plan with time estimates for completion of all work required.
- 4.8 The proposal should indicate which services the service provider proposes to perform and, if the service provider's proposal has geographic or other limitations on some or all of the services offered, these limitations should be clearly described.

## **5.0 COST PROPOSAL**

- 5.1 The proposal must include the service provider's proposed fee schedule for title and escrow services and premiums for title insurance policies. It is expected that all service providers responding to this proposal will offer the service provider's government or comparable favorite rates.
- 5.2 Pursuant to SB 1732, the State of California will pay no monetary consideration to the counties in exchange for conveyance to the State of title to the Court Properties; for that reason, the proposal must include a schedule of title insurance premiums per each \$1,000 of coverage, and should reflect any difference in the amount of the premium depending upon whether the title policy is an aggregate "blanket" ALTA extended-coverage owner's policy covering all or a majority of the Court Properties or individual ALTA extended-coverage owner's policies of title insurance.
- 5.3 The proposal must specify whether there will be any difference in the fees or premiums charged for any part of the Scope of Services depending upon whether the AOC or a county is able to provide a copy of an existing PTR or title insurance policy for the Court Properties.

## **6.0 RIGHTS**

The AOC reserves the right to reject any and all proposals, in whole or in part, as well as the right to issue similar RFPs in the future. This RFP is in no way an agreement, obligation, or contract and in no way is the AOC or the State of California responsible for the cost of preparing the proposal. One copy of a submitted proposal will be retained for official files and becomes a public record.

Only written responses will be accepted. Responses should be sent by registered or certified mail or by hand delivery. The service provider may send the AOC an advance copy by facsimile to the Project Manager at the fax number listed in Section 7.0, below. However, sending an advance copy by fax does not satisfy the submission requirements of Section 4.0.

## **7.0 PROJECT MANAGEMENT**

The Project Manager for this RFP process is:

Robert Emerson  
Office of Court Construction and Management  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660  
415-865-7981 (direct)  
415-865-7524 (fax)  
Robert.Emerson@jud.ca.gov

## **8.0 EVALUATION OF PROPOSALS**

Proposals will be evaluated by the AOC using the following criteria, each to be weighted equally:

- a. Quality of work plan submitted
- b. Experience on similar assignments and capacity to reliably provide required insurance
- c. Credentials of staff to be assigned to the project
- d. Ability to meet timing requirements to complete the project
- e. Reasonableness of fee proposal

## **9.0 ADDITIONAL REQUIREMENTS**

It may be necessary to interview prospective service providers to clarify aspects of their submittal. If conducted, interviews may be conducted in person or by telephone

conference call. The AOC will notify prospective service providers regarding any interview arrangements.

#### **10.0 PROPOSED CONTRACT TERMS AND ADMINISTRATIVE RULES**

Contracts with successful firms will be signed by the parties on a State of California Standard Agreement form and will include terms appropriate for this project. Terms and conditions typical for the requested services are attached in Attachment B.

Incorporated in this RFP, and attached as Attachment A, is a document entitled "Administrative Rules Governing Requests for Proposals. Service providers shall follow these rules in preparation of their proposals.

#### **11.0 CONFIDENTIAL OR PROPRIETARY INFORMATION**

The Administrative Office of the Courts policy is to follow the intent of the California Public Records Act (PRA). If a vendor's proposal contains material noted or marked as confidential and/or proprietary that, in the AOC's sole opinion, meets the disclosure exemption requirements of the PRA, then that information will not be disclosed pursuant to a request for public documents. If the AOC does not consider such material to be exempt from disclosure under the PRA, the material will be made available to the public, regardless of the notation or markings. If a vendor is unsure if its confidential and/or proprietary material meets the disclosure exemption requirements of the PRA, then it should not include such information in its proposal.



**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

**ADMINISTRATIVE RULES GOVERNING REQUESTS FOR PROPOSALS**

**A. General**

1. This solicitation document, the evaluation of proposals, and the award of any contract shall conform with current competitive bidding procedures as they relate to the procurement of goods and services. A vendor's proposal is an irrevocable offer for 30 days following the deadline for its submission.
2. A nondiscrimination clause will be included in any contract that ensues from this solicitation document.
3. In addition to explaining the Administrative Office of the Courts' (AOC's) requirements, the solicitation document includes instructions which prescribe the format and content of proposals.

**B. Errors in the solicitation document**

1. If a vendor submitting a proposal discovers any ambiguity, conflict, discrepancy, omission, or other error in this solicitation document, the vendor shall immediately provide the AOC with written notice of the problem and request that the solicitation document be clarified or modified. Without disclosing the source of the request, the AOC may modify the solicitation document prior to the date fixed for submission of proposals by issuing an addendum to all vendors to whom the solicitation document was sent.
2. If prior to the date fixed for submission of proposals a vendor submitting a proposal knows of or should have known of an error in the solicitation document but fails to notify the AOC of the error, the vendor shall bid at its own risk, and if the vendor is awarded the contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

**C. Questions regarding the solicitation document**

1. If a vendor's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the vendor may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the vendor must submit a statement explaining why the question is sensitive.

## Attachment A

If the AOC concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the AOC does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the vendor will be notified.

2. If a vendor submitting a proposal believes that one or more of the solicitation document's requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, the vendor may submit a written request that the solicitation document be changed. The request must set forth the recommended change and vendor's reasons for proposing the change. Any such request must be submitted to **Robert Emerson** at the Administrative Office of the Courts by **5:00 p.m.** on **January 10, 2004**.

### **D. Addenda**

1. The AOC may modify the solicitation document prior to the date fixed for submission of proposals by faxing an addendum to the vendors to whom the solicitation document was sent and posting the addendum on the AOC's Request for Proposals website. If any vendor determines that an addendum unnecessarily restricts its ability to bid, it must notify Robert Emerson at the Administrative Office of the Courts no later than one day following the receipt of the addendum.

### **E. Withdrawal and resubmission/modification of proposals**

1. A vendor may withdraw its proposal at any time prior to the deadline for submitting proposals by notifying the AOC in writing of its withdrawal. The notice must be signed by the vendor. The vendor may thereafter submit a new or modified proposal, provided that it is received at the Administrative Office of the Courts no later than 5:00 p.m. on January 20, 2004. Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after 5:00 p.m. on January 20, 2004.

### **F. Evaluation process**

1. An evaluation team will review in detail all proposals that are received to determine the extent to which they comply with solicitation document requirements.
2. If a proposal fails to meet a material solicitation document requirement, the proposal may be rejected. A deviation is material to the extent that a response is not in substantial accord with solicitation document

requirements. Material deviations cannot be waived. Immaterial deviations may cause a bid to be rejected.

3. Proposals that contain false or misleading statements may be rejected if in the AOC's opinion the information was intended to mislead the AOC regarding a requirement of the solicitation document.
4. Cost sheets will be checked only if a proposal is determined to be otherwise qualified. All figures entered on the cost sheets must be clearly legible.
5. During the evaluation process, the AOC may require a vendor's representative to answer questions with regard to the vendor's proposal. Failure of a vendor to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal nonresponsive.

**G. Rejection of bids**

1. The AOC may reject any or all proposals and may or may not waive an immaterial deviation or defect in a bid. The AOC's waiver of an immaterial deviation or defect shall in no way modify the solicitation document or excuse a vendor from full compliance with solicitation document specifications. The AOC reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual vendors if it is deemed in the AOC's best interest. Moreover, the AOC reserves the right to make no selection if proposals are deemed to be outside the fiscal constraint or against the best interest of the government.

**H. Award of contract**

1. Award of contract, if made, will be in accordance with the solicitation document to a responsible vendor submitting a proposal compliant with all the requirements of the solicitation document and any addenda thereto, except for such immaterial defects as may be waived by the AOC.
2. The AOC reserves the right to determine the suitability of proposals for contracts on the basis of a proposal's meeting administrative requirements, technical requirements, its assessment of the quality of service and performance of items proposed, and cost.

**I. Decision**

1. Questions regarding the AOC's award of any business on the basis of proposals submitted in response to this solicitation document, or on any related matter, should be addressed to Robert Emerson at the AOC.

**J. Execution of contracts**

1. The AOC will make a reasonable effort to execute any contract based on this solicitation document within 30 days of selecting a proposal that best meets its requirements. However, exceptions taken by a vendor may delay execution of a contract.
2. A vendor submitting a proposal must be prepared to use a standard state contract form rather than its own contract form.

**K. Protest procedure**

1. The AOC intends to be completely open and fair to all vendors in selecting the best possible system within budgetary and other constraints described in the solicitation document. In applying evaluation criteria and making the selection, members of the evaluation team will exercise their best judgment.
2. A vendor submitting a proposal may protest the award if it meets all the following conditions:
  - a. the vendor has submitted a proposal which it believes to be responsive to the solicitation document;
  - b. the vendor believes that its proposal meets the AOC's administrative requirements and technical requirements, proposes items of proven quality and performance, and offers a competitive cost to the State; and
  - c. the vendor believes that the AOC has incorrectly selected another vendor submitting a proposal for an award.
3. A vendor submitting a proposal who is qualified to protest should contact the Contract Officer at the Administrative Office of the Courts at the address given below or call him at 415-865-7989.

Stephen Saddler  
Contracts Officer  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660

4. If the Contract Officer is unable to resolve the protest to the vendor's satisfaction, the vendor should file a written protest within five working days of the contract award notification. The written protest must state the facts surrounding the issue and the reasons the vendor believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

Grant Walker  
Business Services Manager  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660

A receipt should be requested for hand-delivered material.

**L. News releases**

1. News releases pertaining to the award of a contract may not be made without prior written approval of the Business Services Manager of the Administrative Office of the Courts.

**M. Disposition of materials**

1. All materials submitted in response to this solicitation document will become the property of the State of California and will be returned only at the AOC's option and at the expense of the vendor submitting the proposal. One copy of a submitted proposal will be retained for official files and become a public record. However, any confidential material submitted by a vendor that was clearly marked as such will be returned upon request.

**N. Payment**

1. Payment terms will be specified in any agreement that may ensue as a result of this solicitation document.
2. **THE STATE DOES NOT MAKE ANY ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon completion of tasks as provide in the agreement between the AOC and the selected vendor. The AOC may withhold ten percent of each invoice until receipt and acceptance of the final product. The amount of the withhold may depend upon the length of the project and the payment schedule provide in the agreement between the AOC and the selected vendor.

## STANDARD PROVISIONS

1. Indemnification

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

2. Relationship of Parties

The Contractor and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

3. Termination for Cause

The State may terminate this Agreement and be relieved of the payment of any consideration to the Contractor if the Contractor fails to perform the provisions of this Agreement at the time and in the manner provided. If the Agreement is terminated, the State may proceed with the Work in any manner it deems proper. The cost to the State to perform this Agreement shall be deducted from any sum due the Contractor under this Agreement or any other agreement, and the balance, if any, shall be paid to the Contractor upon demand.

4. No Assignment

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

5. Time of Essence

Time is of the essence in this Agreement.

6. Validity of Alterations

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

7. Consideration

The consideration to be paid to the Contractor under this Agreement shall be compensation for all the Contractor's expenses incurred in the performance of this Agreement, including travel and per diem, unless otherwise expressly provided.

**SPECIAL PROVISIONS**

1. Definitions

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

- A. "**Administrative Director**" refers to that individual, or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- B. "**Amendment**" means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (1) a change in the Work; (2) a change in Contract Amount; (3) a change in time allotted for performance; and/or (4) an adjustment to the Agreement terms.
- C. "**Confidential Information**" means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State's business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- D. The "**Contract**" or "**Contract Documents**" constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms "**Contract**" or "**Contract Documents**" may be used interchangeably with the term "**Agreement.**"
- E. "**Contract Amount**" means the total amount encumbered under this Agreement for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.

- F. **“Contract Counterpart”** means the several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, each representing this Agreement.
- G. The **“Contractor”** means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.
- H. **“Data”** means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- I. **“Day”** means calendar day, unless otherwise specified.
- J. **“Deliverable(s)”** or **“Submittal(s)”** means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- K. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
  - i. Acts of God or the public enemy;
  - ii. Acts or omissions of any government entity;
  - iii. Fire or other casualty for which a party is not responsible;
  - iv. Quarantine or epidemic;
  - v. Strike or defensive lockout; and,
  - vi. Unusually severe weather conditions.
- L. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- M. **“Notice”** means a written document initiated by the authorized representative of either party to this Agreement and given by:
  - i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
  - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.



## Attachment B

- N. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.
- O. The **“State”** refers to the Judicial Council of California / Administrative Office of the Courts (**“AOC”**). The State is one of the parties to this Agreement. The term State shall also include any individual designated to perform technical and/or administrative functions, as set forth herein.
- P. **“State Standard Agreement”** means the form used by the State to enter into agreements with other parties.
- Q. **“Stop Work Order”** means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this Exhibit B.
- R. **“Subcontractor”** shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term Subcontractor includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
- S. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- T. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the State or the Contractor, which is not a party to this Agreement.
- U. **“Work”** or **“Work to be Performed”** or **“Contract Work”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

## Attachment B

### 2. Manner of Performance of Work

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction and in compliance with the Nondiscrimination Clause, as set forth in this Exhibit B.

### 3. Termination Other Than for Cause

- A. In addition to termination for cause under Exhibit A, Standard Provisions paragraph 3, the State may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.
- B. If the State terminates all or a portion of this Agreement other than for cause, the State shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.

### 4. State's Obligation Subject to Availability of Funds

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

of the current appropriation year. The appropriation year ends on June 30 of each year.

5. Stop Work

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

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- D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

6. Agreement Administration/Communication

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

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

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

[Insert vendor contact information]

7. Standard of Professionalism

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

8. Acceptance of the Work

- A. The State's Project Manager shall be responsible for the sign-off acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the State's Project Manager will apply the acceptance criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.

- B. Acceptance Criteria for Work ("**Criteria**") provided by the Contractor pursuant to this Agreement:

- i. Timeliness: The Work was delivered on time;
- ii. Completeness: The Work contained the Data, Materials, and features required in the Contract; and

## Attachment B

- iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the State, in accordance with direction from the State's Project Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The State's Project Manager shall use the Acceptance and Signoff Form, provided as Attachment 1 in Exhibit F of this Agreement, to notify the Contractor of the Work's acceptability.
- D. If the State rejects the Work provided, the State's Project Manager shall submit to the Contractor a written rejection using Attachment 1, the Acceptance and Signoff Form, describing in detail the failure of the Work as measured against the Criteria. If the State rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- E. If the State's Project Manager requests further change, the Contractor shall meet with the State's Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.
- F. If agreement cannot be reached between the State's Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the State may terminate this Agreement pursuant to the terms of Standard Provisions paragraph 3, as set forth in Exhibit A. Termination does not relieve the State of liability for wrongfully rejected Work.
- G. The State's acceptance of the Work shall not relieve the Contractor from its responsibility for the Work. The State's acceptance shall not be

deemed to be a waiver of its rights should any claims arise from the performance of the Contractor's Work.

9. Contractor's Personnel and Replacement of Personnel

- A. The Contractor shall provide for the staffing requirements as set forth in Exhibit D, Work Order Administration, and each Work Order, if any, prior to commencing any Work pertaining to the staffing requirements.
- B. The State has the right to review resumes of the Contractor's proposed personnel prior to commencement of the Work of this Agreement. If, in the State's reasonable opinion, any of the proposed personnel is unsatisfactory or does not meet the State's requirements, the Contractor shall submit a different candidate for consideration.
- C. The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the State under this Agreement if, in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. The State agrees to provide Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- D. If any of the Contractor's Key Personnel, identified in Exhibit E, become unavailable during the Term(s) of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills; any substitute will be acceptable to the State's Project Manager.
- E. The Contractor shall endeavor to retain the same individuals on the Project during the performance of the Work of this Agreement. However, the Contractor may, with approval of the State's Project Manager, introduce personnel to the Project with specific skill sets or release personnel from the Project whose skill set is not needed at the time, except for the Contractor's Project Contact.
- F. If any of the Contractor's Key Personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the State, the State may terminate this Agreement for cause pursuant to Standard Provisions paragraph 3, as set forth in Exhibit A.

10. Subcontracting

The Contractor shall not subcontract this Agreement or services provided under this Agreement, unless the State agrees to the subcontracting in writing. Any authorized subcontract(s) shall be executed in the same manner as this

## Attachment B

Agreement. No party to this Agreement shall in any way contract on behalf of or in the name of another party to this Agreement.

### 11. Services Warranty

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

### 12. Accounting System Requirement

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

### 13. Retention of Records

The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with State and Federal law, a minimum retention period being no less than three (3) years. The retention period starts from the date of the submission of the final payment request. The Contractor is also obligated to protect Data adequately against fire or other damage.

### 14. Audit

The Contractor shall permit the authorized representative of the State or its designee or both at any reasonable time to inspect or audit all Data relating to performance and billing to the State under this Agreement. The Contractor further agrees to maintain such Data for a period of three (3) years after final payment under this Agreement.

### 15. Changes and Amendments

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Project Manager. Requests for changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to

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an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After the Project Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

### 16. Insurance Requirements

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the State shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an “occurrence” form; excepting that insurance for professional liability, when required, may be acceptable on a “claims made” form. If coverage is approved and purchased on a “claims made” basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.
- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
- i. Workers' Compensation at statutory requirements of the State of residency.
  - ii. Employers' Liability with limits not less than \$1,000,000.00 for each accident.
  - iii. Commercial General Liability Insurance with limits not less than \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage, with aggregate limits at \$2,000,000.00.
  - iv. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
  - v. Professional Liability: Errors and Omissions; \$1,000,000.00 single occurrence and \$2,000,000.00 aggregate limit.



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- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the State. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the State and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
  - i. The State, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
  - ii. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the State, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the State, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way,
  - iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the State certificates of insurance satisfactory to the State evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the State's request.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the State, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the State, the Contractor shall, upon Notice to that effect from the State, promptly obtain a new policy, and shall submit the same to the State, with the appropriate certificates and endorsements, for approval.
- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Judicial Council, Administrative Office of the Courts, Contracting Officer, 455 Golden Gate Ave., 7<sup>th</sup> Floor, San Francisco, CA 94104.

## 17. Confidentiality

## Attachment B

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

### 18. Copyrights and Rights in Data

All copyrights and rights in the Data produced with funding from this Agreement that may presumptively vest in the Contractor shall be transferred to the State.

### 19. Ownership of Results

Any interest of the Contractor in Data in any form, or other documents and/or recordings prepared by the Contractor for performance of services under this Agreement shall become the property of the State. Upon the State's written request, the Contractor shall provide the State with all this Data within thirty (30) Days of the request.

The Contractor agrees not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole, or part, or any manner or form, or authorize others to do so without the written consent of the State.

### 20. Limitation on Publication

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The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the State without prior review and written permission by the State.

### 21. Limitation on State's Liability

The State shall not be responsible for loss of or damage to any non-State equipment arising from causes beyond the State's control.

### 22. Conflict of Interest

A. The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of (1) use of an official position with the government for private gain; (2) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (3) loss of independence or impartiality; (4) a decision made outside official channels; or (5) adverse effects on the confidence of the public in the integrity of the government or this Agreement.

B. The Contractor certifies and shall require any Subcontractor to certify to the following:

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

### 23. Covenant Against Gratuities

The Contractor warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this provision shall

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not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

24. National Labor Relations Board

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

25. Drug-Free Workplace

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

26. Nondiscrimination Clause

- A. During the performance of this Agreement, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. The Contractor shall comply with applicable 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.
- C. The Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- D. The Contractor shall include the nondiscrimination and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

27. Americans with Disabilities Act

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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.

### 28. Public Contract Code References

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

### 29. California Law

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

### 30. Permits and Licenses

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

### 31. Severability

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

### 32. Waiver

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

### 33. Signature Authority

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

### 34. Survival

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

### 35. Entire Agreement

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