

Standard Agreement Appendices

APPENDIX A

Statement of Work

1. Contractor's Duties

The contractor, with expertise in training mediators, will conduct fundamental appellate mediation training sessions for no more than 24 applicants to the Court's mediation panel. The training must include a segment on the appellate process and standards of review and reversal rates on appeal, as well as role playing exercises based on hypothetical appeals. The contractor will be asked to:

- A. Provide a detailed project outline with a methodology that includes a description of the format, duration, materials, and curriculum for the training program, which should include:
 - A comparison of the appellate process and the mediation process;
 - Standards of appellate review;
 - Ethical standards for mediators;
 - Confidentiality;
 - Negotiated problem solving;
 - Communication skills;
 - Risk analysis;
 - Structuring the mediation;
 - Understanding the dispute from each party's perspective;
 - Defining problems to be solved;
 - Caucusing;
 - Generating and testing options;
 - Reaching resolution; and
 - Drafting a memorandum of understanding.
- B. Describe the faculty, and their qualifications, who will participate in conducting the training sessions, with a desired faculty to student ratio of 6 to 1;
- C. Meet and work with the Mediation Program Coordinator or other designated staff to review development of the training program;
- D. Submit the proposed training program to the Mediation Program Committee for approval;
- E. Secure approved credit for the training from the State Bar of California as continuing legal education;

- F. Provide the proposed training at a location in Sacramento, California, as determined by the Court by June 30, 2020.

1.1 Description of Services. Contractor shall perform the services (“Services”) by the end of June 2020. The Court contemplates a training model consisting of a total of 32.5 hours, including one half-day session and four all-day sessions. Classes should be structured to encourage participation and may include weekends.

1.2 Contractor’s Personnel.

- A. Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor’s services. If the Court is dissatisfied with any of Contractor’s personnel, for any reason or no reason, Contractor shall replace them with qualified personnel.
- B. Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to this project. Any additional personnel are subject to approval by the Court.
- C. Contractor shall cooperate with the Court if the Court wishes to perform any background checks on Contractor’s personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Court may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Court of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Court and performed by Contractor.
- D. If this Agreement provides for the payment of \$5,000 or more for Services performed for the Court, Contractor has attached to this Agreement resumes of each Contractor participant who will exercise a major administrative role or major policy or consultative role.

2. Project Managers

The project manager for the mediation training is René Ackerman, Mediation Program Coordinator or designee, Court of Appeal, Appellate Mediation Program, 2890 Gateway Oaks Drive, Suite 210, Sacramento, CA 95833, (916) 643-7084.

3. Special Provisions for Agreements for Equipment, Materials, or Supplies; Loss Leader Prohibition.

If this Agreement involves the furnishing of equipment, materials, or supplies, Contractor shall not sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

APPENDIX B

Pricing and Payment

1. General

1. Subject to the terms of this Agreement, Contractor shall invoice the Court, and the Court shall compensate Contractor under this Agreement as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the Court shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature which Contractor incurs.

2. Compensation

- 2.1 A full explanation of all budget line items in a narrative entitled "Budget Justification."
- 2.2 The total cost for services will not exceed thirty-five thousand dollars (\$35,000), inclusive of personnel, materials, computer support, travel, lodging, per diem, and overhead rates.
- 2.3 The method of payment to the Contractor will be by cost reimbursement.

3. Expenses

- 3.1 **Allowable Expenses.** Contractor may submit for reimbursement, without mark-up, only the following categories of expense: personnel, materials, computer support, travel, lodging, per diem, and overhead rates.
- 3.2 **Limit on Travel Expenses.** Travel will be reimbursed in accordance with the Court's travel rate guidelines (see attachment 5 to the RFP). All travel is subject to preauthorization and approval by the Court.
- 3.3 **Expense Limit.** Contractor shall not invoice the Court, and the Court shall not reimburse Contractor, for expenses of any type that exceed in the aggregate during the Term the amount of \$35,000.
- 3.4 **Required Certification.** Contractor must include with any request for reimbursement from the Court a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the Court was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

4. Invoicing and Payment

- 4.1 Invoicing.** Contractor shall submit invoices to the Court in arrears no more frequently than monthly. Contractor's invoices must include information and supporting documentation acceptable to the Court. Contractor shall adhere to reasonable billing guidelines issued by the Court from time to time.
- 4.2 Payment.** The Court will pay each correct, itemized invoice received from Contractor after acceptance of applicable Goods, Services, or Deliverables, in accordance with the terms of this Agreement.
- 4.3 No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice, Goods, Services, or Deliverables. Contractor shall immediately refund any payment made in error. The Court shall have the right at any time to set off any amount owing from Contractor to the Court against any amount payable by the Court to Contractor under this Agreement.
- 4.4 Termination Due to Non-availability of Funds.** The Court's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. Upon notice, the Court may terminate this Agreement in whole or in part, without prejudice to any right or remedy of the Court, if expected or actual funding is withdrawn, reduced, or limited in any way. If this Agreement is terminated for non-availability of funds, the Court will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.
- 5. Taxes.** Unless otherwise required by law, the Court is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The Court shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the Court.

Standard Agreement Appendices

APPENDIX C

General Terms and Conditions

1. Provisions Applicable to Services

1.1 *Qualifications.* Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the Court is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.

1.2 *Background Checks.* Contractor shall cooperate with the Court if the Court wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Court may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Court of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Court and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the Court: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the Court, the Court advises are unacceptable to the Court.

2. Contractor Certification Clauses. Contractor certifies that the following representations and warranties are true. Contractor shall cause these representations and warranties to remain true during the term of this Agreement, and Contractor shall promptly notify the Court if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

2.1 *Authority.* Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and in good standing in the State of California.

2.2 *Not an Expatriate Corporation.* Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the Court.

2.3 *No Gratuities.* Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Court Personnel with a view toward securing this Agreement or securing favorable

treatment with respect to any determinations concerning the performance of this Agreement.

- 2.4 ***No Conflict of Interest.*** Contractor has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- 2.5 ***No Interference with Other Contracts.*** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- 2.6 ***No Litigation.*** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform the Services.
- 2.7 ***Compliance with Laws Generally.*** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.
- 2.8 ***Work Eligibility.*** All personnel assigned to perform this Agreement can work legally in the United States and possess valid proof of work eligibility.
- 2.9 ***Drug Free Workplace.*** Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.
- 2.10 ***No Harassment.*** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- 2.11 ***Nondiscrimination.*** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.

2.12 *Domestic Partners, Spouses, Gender, and Gender Identity.* Contractor is in compliance with, and throughout the term of this Agreement will remain in compliance with: (i) Public Contract Code section 10295.3, which on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) Public Contract Code section 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.

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

2.14 *Special Provisions regarding Compliance with the Sweatfree Code of Conduct.* If this Agreement provides for furnishing equipment, materials, or supplies other than public works, or for the laundering of apparel, garments or corresponding accessories:

1. Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Court under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108.
2. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the Court.

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

1. Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq.
2. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

2.16 *Special Provisions regarding Discharge Violations.* If Contractor is a private entity, Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

2.17 *Electronic Waste Recycling Act.* If this Agreement provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code sections 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.

2.18 *Use of Postconsumer Material.* If this Agreement provides for the purchase and sale of goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of the Contractor's postconsumer material in these goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or vendor website:

1. Contractor has delivered a declaration to the Court specifying the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code section 12200 in goods offered or sold to the Court, regardless of whether the goods meet the requirements of Public Contract Code section 12209.1;
2. Under penalty of perjury, the declaration is true and correct and will remain so until Contractor delivers any amendment of the current declaration to the Court, in which case the current declaration as amended will be true and correct; and

3. If Contractor sells under this Agreement any printer or duplication cartridges that comply with Public Contract Code section 12209, Contractor has so specified in the declaration required under this section.

2.19 Covenant as to Representations and Warranties. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the Court if any representation and warranty become untrue.

3. Indemnity

Contractor shall indemnify and defend (with counsel satisfactory to the JCC Office of the General Counsel) the Court, Judicial Branch Entities and Judicial Branch Personnel against all claims, damages, losses, and expenses, including attorney fees and costs, founded upon (i) Contractor's performance of, or failure to perform, the Services or Contractor's other duties under this Agreement, or (ii) any other breach by Contractor of this Agreement. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

4. Insurance

4.1 Basic Coverage. Contractor shall provide and maintain at Contractor's discretion and Contractor's expense the following insurance during the Term of this Agreement:

- A. ***Workers Compensation and Employer's Liability.*** The policy is required only if Contractor has employees. It must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease;
- B. ***Commercial General Liability.*** The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate; and
- C. ***Professional Liability.*** This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor's performance of services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage

continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that activities commence pursuant to this Agreement.

D. **Commercial Automobile Liability.** This policy is required only if Contractor handles or has regular access to the Court’s funds or property of significant value to the Court. This policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$1,000,000.

4.2 **“Claims Made” Coverage.** If any required insurance is written on a “claims made” form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the Court’s acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any “claims made” policy must be no later than the date that Services commence under this Agreement.

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

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

4.5 **Deductibles and Self-Insured Retentions.** Contractor shall declare to the Court all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the Court’s approval. Deductibles and self-insured retentions do not limit Contractor’s liability.

4.6 **Additional Insured Endorsements.** Contractor’s commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Court, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.

- 4.7 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the Court certificates of insurance attesting to the existence of coverage. Contractor shall provide prompt written notice to the Court if insurance coverage is cancelled or materially changed from the coverage set forth in the current certificate of insurance provided to the Court.
- 4.8 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 4.9 Required Policy Provisions.** Each policy must provide, as follows:
- A. *Insurance Primary; Waiver of Subrogation.* The basic coverage provided is primary and noncontributory with any insurance or self-insurance maintained by the Court, Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives all rights of subrogation against the Court, Judicial Branch Entities and Judicial Branch Personnel; and
 - B. *Separation of Insureds.* The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made, and/or a lawsuit is brought, to the limits of the insurer's liability.
 - C. *Recovery or Subrogation.* Each insurer waives any right of recovery or subrogation it may have against the Court, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 4.10 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:
- A. *Separate.* Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
 - B. *Joint.* Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 4.11 Consequence of Lapse.** If required insurance lapses during the Term of this Agreement, the Court is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

5. Default and Remedies

5.1 Default. A default exists under this Agreement if:

- A. Contractor fails or is unable to meet or perform any of Contractor's duties under this Agreement, and this failure is not cured within 30 days' following notice of default or is not capable of being cured within this cure period;
- B. Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business;
- C. Contractor makes or has made under this Agreement any representation or warranty that is or was incorrect, inaccurate, or misleading;
- D. Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under this Agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make this Agreement admissible when required is not fulfilled or performed.

5.2 Notice. Contractor shall notify the Court immediately if Contractor defaults, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement.

5.3 Remedies.

- A. *Available Remedies.* The Court may do any of the following:
 - 1. Withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor;
 - 2. Require Contractor to enter into non-binding mediation;
 - 3. Exercise, following notice, the Court's right of early termination of this Agreement as provided below; and
 - 4. Seek any other remedy available at law or in equity.
- B. *Remedies Cumulative.* All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

6. Termination and Cancellation; Effect of Expiration or Termination

6.1 Early Termination and Cancellation Rights.

- A. The Court may terminate this entire Agreement, in whole or in part, immediately “for cause” if Contractor is in default;
- B. The Court may also cancel delivery immediately of all or any portion of unshipped goods or limit Contractor’s Services, and, proportionately, Contractor’s compensation except to reimburse Contractor for its actual costs incurred before expenses arising out of early termination by the Court, and any direct and indirect expenses incurred by cancellation of goods in process that are custom made for the Court), if:
 - 1. the Court determines that having Contractor provide the Services has become infeasible due to changes in applicable laws or regulations; or
 - 2. expected or actual funding to compensate Contractor is withdrawn, reduced, or limited.
- C. The Court may terminate, in whole or in part, this Agreement, with or without cause, by giving Contractor 30 days’ written notice.
- D. This entire Agreement will terminate immediately without further action of the parties upon the death, or temporary or permanent incapacity, of a natural person who is a party to this Agreement or a general partner of a partnership that is a party to this Agreement.

6.2 Effect of Expiration and Early Termination; Survival.

- A. Upon the Termination Date:
 - 1. The Court shall be released from compensating Contractor for Services, other than those Contractor satisfactorily performed before the Termination Date, and for any indirect costs.
 - 2. Without prejudice to the Court, Contractor shall be released from performing Services.
 - 3. Contractor shall return to the Court any equipment purchased or built with Court funds, with costs incurred by Contractor being reimbursed by the Court.

- B. All provisions of this Appendix C will survive the expiration or termination of this Agreement, except for section 1 and promises regarding the maintenance of insurance in section 3 (other than section 3.2, which will also survive).

7. Assignment and Subcontracting; Successors

7.1 Permitted Assignments and Subcontracts.

- A. Neither party may assign or subcontract its rights or duties under this Agreement, except as follows:
 - 1. The Court may assign the Court's rights and duties to any Judicial Branch Entity. The Court shall notify Contractor in writing within 30 days following the assignment.
 - 2. Either party may assign its rights and duties or subcontract portions of this Agreement to a third party if the non-assigning party gives advance written consent to the assigning party. Consent may be withheld for any reason or no reason. If a non-assigning party does consent, the consent will take effect only if there is a written agreement between the assigning or subcontracting party and all assignees and subcontractors, stating the assignees and subcontractors:
 - a. are jointly and severally liable to the non-assigning party for performing the duties in this Agreement of the assigning/subcontracting party;
 - b. affirm the rights granted in this Agreement to the non-assigning party;
 - c. make the representations and warranties made by the assigning/subcontracting party in this Agreement; and
 - d. appoint the non-assigning party an intended third party beneficiary under the written agreement with the assigning/subcontracting party.
- B. No assignment or subcontract will release either party of its duties under this Agreement.

7.2 Successors. This Agreement binds the parties as well as their heirs, successors, and assignees.

8. Notices

Notices under this Agreement must be in writing. Notices may be delivered in person, via a reputable express carrier, or by registered or certified mail (postage pre-paid). Notice is effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the notice was refused, unclaimed, or deemed undeliverable. Notices must be addressed to the individual(s) in the signature block of this Agreement. Either party may change its address for receipt of notice by entering a different recipient and address below or by giving notice at any time to the other party in the manner permitted by this paragraph.

If to the Court:

If to Contractor:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

E-mail: _____

E-mail: _____

9. Miscellaneous Provisions; Interpretation

9.1 Independent Contractor. Contractor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Court. Contractor has no authority to bind or incur any obligation on behalf of the Court. If any governmental entity concludes that Contractor is not an independent contractor, the Court may terminate this Agreement immediately upon Notice.

9.2 GAAP Compliance. Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.

9.3 Special Provisions for Agreements Providing for Compensation of \$50,000 or more; Union Activities Restrictions. As required under Government Code sections 16645-16649, if this Agreement provides for total Compensation of \$50,000 or more to Contractor, then the covenants in this section apply to Contractor’s activities. Contractor shall not:

- A. Assist, promote, or deter union organizing by employees performing work under state or judicial branch contracts;

- B. Use the state's or Court's funds received under this Agreement to assist, promote or deter union organizing; or
- C. For any business conducted under this Agreement, use any property of the state or Court to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state or judicial branch property is equally available to the general public for holding meetings.

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

9.4 General Audit and Records

- A. *Audit.* Contractor must allow the Court's or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the Court five percent (5%) or more during the period subject to audit, Contractor must reimburse the Court in an amount equal to the cost of such audit.
- B. *Ownership.* The Court is the exclusive owner of all materials collected and produced in connection with the Services. Upon the Termination Date (subject to any mutually agreed period of continuation of Services), or upon the Court's notice at any time, and subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the Court or to another party at the Court's direction. Contractor shall maintain all other materials in an accessible location and condition for a period of not less than four years after the later of:
 - 1. Contractor's receipt of final payment under this Agreement; and
 - 2. The Court's resolution with Contractor of the findings of any final audit.
- C. *Copies.* Contractor may retain copies of any original documents Contractor provides to the Court.

9.5 Special Provisions regarding Ownership of Results.

- A. *Special Provisions regarding Grant Funds.* If this Agreement provides compensation to Contractor for a project funded through a grant, at the conclusion of the Project, title to all expendable and non-expendable personal property with a value of \$500 or more purchased with Court funds shall vest, automatically and without further action of the parties, with the Court. If Contractor provides written certification to the Court that the property will continue to be used for grant-related purposes and the Court approves such certification in writing, the Court may permit title to all such property to remain with Contractor in accordance with the Court's written instructions. Contractor must await specific written instructions from the Project Manager regarding any transfer of title or disposition.
- B. *Special Provisions regarding Ownership of Certain Equipment.* If compensation under this Agreement is not through grant funding and this Agreement provides for the provision of equipment purchased or built with Court funds, title to any equipment purchased or built with Court funds shall vest in the Court immediately upon payment of the purchase price. Before delivery to the Court, Contractor is responsible for loss or damage to the equipment to the extent it results from the negligent act or omission of Contractor or its directors, officers, employees, or agents, and Contractor shall make all necessary or appropriate repairs and adjustments.

9.6 Confidential Information; Publicity.

- A. *Confidential Information.* Contractor agrees to hold in confidence the following confidential information Contractor receives in connection with this Agreement:
1. All written information that is marked confidential;
 2. All non-public information in electronic form to which Contractor has access; and
 3. All verbal information the Court later confirms in writing is confidential.

The Court owns the confidential information, and the Court authorizes Contractor to use it only for purposes of performing this Agreement. For example, Contractor may give confidential information on a "need-to-know" basis to Contractor's professional services providers, employees and subcontractors who have also executed confidentiality agreements that protect the Court's confidential information to the same extent as this

section 8.7. Contractor may also disclose the Court's confidential information to the extent necessary to comply with law, provided Contractor gives the Court advance notice.

- B. *Publicity.* Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of Andrea K. Wallin-Rohmann, Clerk/Executive Officer, Court of Appeal, Third Appellate District.
- C. *Specific Performance.* Contractor understands a default under this section will result in irreparable damage for which no adequate remedy will be available. Accordingly, injunctive or other equitable relief is a remedy that the Court will be entitled to seek.

9.7 Special Provisions Applicable to Competitively Bid Contracts; Antitrust Claims. If Services or goods under this Agreement were obtained by means of a competitive bid, Contractor shall comply with the requirements of Government Code sections set out below.

- A. Contractor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Court. Such assignment shall be made and become effective at the time the Court tenders final payment to the Contractor. (Government Code section 4552.)
- B. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (Government Code section 4553.)
- C. Upon demand in writing by the Contractor, the Court shall, within one (1) year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the Court has not been injured thereby, or (b) the Court declines to file a court action for the cause of action. (Government Code section 4554.)

9.8 Choice of Law and Jurisdiction. California law, without regard to its choice-of-law provisions, governs this Agreement. Jurisdiction for any legal action arising

from this agreement shall exclusively reside in state or federal courts located in Sacramento County, California, and the parties hereby consent to the jurisdiction of such courts.

- 9.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code §1654.
- 9.10 Amendment and Waiver.** A waiver of enforcement of any of this Agreement's terms or conditions by the Court is effective only if expressly agreed in writing by a duly authorized officer of the Court. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 9.11 Authority and Binding Effect.** Each party warrants it has the authority to enter into this Agreement, it may perform the services provided for in this Agreement, and its representative who signs this Agreement has the authority to do so. Each party warrants this Agreement constitutes a valid and binding obligation of the party, enforceable in accordance with its terms.
- 9.12 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 9.13 Headings.** All headings are for reference purposes only and do not affect the interpretation of this Agreement.
- 9.14 Time of the Essence.** Time is of the essence of the Contractor's performance of Services under this Agreement.
- 9.15 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.
- 9.16 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.

APPENDIX D

Defined Terms

As used in this Agreement, the following terms have the indicated meanings:

“**Agreement**” is defined on the Coversheet.

“**JCC**” is an acronym for the Judicial Council of California.

“**Contractor**” means the person or entity awarded the RFP and named in the Agreement.

“**Confidential Information**” means: (i) any information related to the business or operations of the Court, including information relating to the Court’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Court (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the Court’s satisfaction that: (a) Contractor lawfully knew prior to the Court’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.

“**Coversheet**” refers to the first page of this Agreement.

“**Deliverables**” is defined in Appendix A.

“**Effective Date**” is defined on the Coversheet.

“**Expiration Date**” is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.

“**JBE**” is defined on the Coversheet.

“**Judicial Branch Entity**” or “**JBE**” means any California superior or appellate court, the Judicial Council of California, the Administrative Office of the Courts, and the Habeas Corpus Resource Center; these entities comprise the “Judicial Branch.”

“**Judicial Branch Personnel**” means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.

“**Notice**” means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Appendix C.

“**PCC**” refers to the California Public Contract Code.

“**Compensation**” means all remuneration owed to Contractor in respect of Services, including Contractor’s professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.

“**Court**” means the Court of Appeal, Third Appellate District.

“Expiration Date” is the last day of the Term, unless the Initial Term is extended by exercise of an option. In that event, the Expiration Date will instead refer to the date specified as the expiration date in the notice of exercise of the option.

“Loss,” as used in the indemnity provisions of this Agreement includes any actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorney fees.

“Mediation Program Committee” The Appellate Mediation Program Committee is comprised of justices and staff of the Court of Appeal, Third Appellate District, as well as a representative from the Sacramento-area legal community, appointed by the Administrative Presiding Justice.

“Services” are Contractor’s duties as defined in Appendix A.

“Termination Date” has the same meaning as “Expiration Date” unless this Agreement is validly terminated before the applicable Expiration Date, in which case Termination Date means the effective date this Agreement is validly terminated.