

Attachment 2, Contract Terms

**EXHIBIT A
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

A. Pursuant to this provision, the State may terminate this Agreement in whole or in part under any one of the following circumstances, by issuing a written Notice of termination for default to the Contractor:

- i. If the Contractor (a) fails to perform the services within the time specified herein or any extension thereof, (b) fails to perform any requirements of this Agreement, or (c) so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, after receipt of a written Notice from the State specifying failure due to any of the preceding three (3) circumstances, the Contractor does not cure such failure within a period of five (5) business days or a longer period, if authorized in the Notice of failure; or,
- ii. If the Contractor should cease conducting business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer or permit the appointment of the receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any State authority relating to insolvency or protection from the rights of creditors.

B. In the event the State terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the State may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall

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be liable to the State for any excess costs for such similar supplies or services, subject to the limitations contained elsewhere herein; further, the Contractor shall continue the performance of this Agreement to the extent not terminated under this provision.

- C. The Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of acts of Force Majeure; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- D. If, after Notice of termination for default of this Agreement, it is determined for any reason that the Contractor was not in default under this provision, or that the default was excusable under this provision, the obligations of the State shall be to pay only for the services rendered at the rates set forth in the Agreement.
- E. The rights and remedies of either party provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

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 Contractor's performance of 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.

END OF EXHIBIT

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**EXHIBIT B
SPECIAL PROVISIONS**

1. Definitions

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

- A. “**Acceptance**” means the written acceptance issued to the Contractor by the State after the Contractor has completed a Deliverable, Submittal, or other Contract requirement, in compliance with the Contract Documents, including without limitation, Exhibit D, Work to Be Performed, and the Acceptance of the Work provision set forth in this exhibit.
- B. “**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.
- C. “**Amendment**” means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- D. “**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.
- E. 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**.”
- F. “**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.
- 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.

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- H. “**Court(s)**” or “**Trial Court(s)**” means one or more of the fifty-eight (58) superior courts in the California state trial court system.
- I. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- J. “**Day**” means calendar day, unless otherwise specified.
- K. “**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.
- L. “**Force Majeure**” means a delay which impacts the timely performance of Work for 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.
- M. “**Key Personnel**” refers to the Contractor’s personnel or Subcontractor named in Exhibit E, Contractor’s Key Personnel, whom the State has identified and approved to perform the Work of the Contract. Qualifications of Key Personnel are represented by the resumes set forth in Exhibit E, Contractor’s Key Personnel. Responsibilities of Key Personnel are set forth in Exhibit D, Work to be Performed.
- N. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- O. “**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

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- ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.

- P. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.

- Q. 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.

- R. **“State Standard Agreement”** means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual **“Contract Counterpart.”**

- S. **“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.

- T. **“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.

- U. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.

- V. **“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.

- W. **“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.

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/No Harassment Clause, as set forth in this Exhibit B.

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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. 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

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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.

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 Term(s) and Options to Renew

A. Until this Agreement is mutually signed and delivered, none of the terms and conditions of this Agreement shall have any legal force or effect, and any such prior commencement of performance by the Contractor shall be at the Contractor's own risk; provided, however, following mutual execution and delivery of this Agreement, the terms and conditions of this Agreement shall be deemed to apply equally to both subsequent and prior performance.

B. The Agreement shall remain in effect from **[TBD, 2009] through [TBD, 2010][One year]** ("Initial Term").

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- C. The parties agree that the State may elect to extend the Agreement up to two (2) consecutive optional one-year Terms, identified as follows, if authorized in writing in accordance with the terms and conditions of the Agreement:
 - i. [TBD, 2010] through [TBD, 2011] (“**First Option Term**”).
 - ii. [TBD, 2011] through [TBD, 2012] (“**Second Option Term**”).
- D. In the event the State elects to exercise an option to extend the Agreement, the Agreement will not exceed a total of three years, as set forth in this provision, and the parties will modify the Agreement via bilateral execution of the State’s Standard Agreement form.
- E. In the event any option Term is exercised under this Agreement, the rates applicable for each option Term, as set forth in Exhibit C, Payment Provisions, shall apply.

7. Agreement Administration/Communication

- A. Under this Agreement, the Project Manager, **TBD**, 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 Managers.
 - i. Any Notice from the Contractor to the State shall be in writing and shall be delivered the Project Manager as follows:

TBD
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Ave.
San Francisco, CA 94102

- ii. Other than for Notices, the Project Manager may be contacted as follows:

[TBD]

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

[TBD]

8. 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.

9. Evaluation of Contractor

The State shall evaluate the Contractor's performance under the Agreement.

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10. Acceptance of the Work

- A. The 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 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
 - 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 Project Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The Project Manager shall use the Acceptance and Signoff Form, provided as Attachment 1 to this Agreement’s Exhibit F, Attachments, to notify the Contractor of the Work’s acceptability.
- D. If the State rejects the Work provided, the 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 Project Manager requests further change, the Contractor shall meet with the 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 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,

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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.

11. Contractor's Personnel and Replacement of Personnel

- A. 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, either the performance of the Contractor's personnel is unsatisfactory, or continued assignment of any of Contractor's personnel is not in the best interest of the State. 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.
- B. If any of the Contractor's Key Personnel become unavailable, or are disapproved in accordance with subparagraph A, above, during the term of this Agreement, the Contractor shall immediately assign replacement personnel acceptable to the Project Manager, possessing equivalent or greater experience and skills as that demonstrated in the resume set forth in Exhibit E, Contractor's Key Personnel.
- C. 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 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.
- D. 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 paragraph 3, as set forth in Exhibit A, Standard Provisions.

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

13. 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,

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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.

14. 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 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.

15. Accounting System Requirement

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

16. 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 four (4) 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.

17. 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 four (4) years after final payment under this Agreement.

18. 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

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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.
 - iv. Business 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.
- 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, as well as the officers, officials, employees and agents of the Courts 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 as well as the officers, officials, employees and agents of the Courts. Any insurance and/or self-insurance maintained by the State or the Courts, 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.

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- 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, Business Services Manager, 455 Golden Gate Ave., 7th Floor, San Francisco, CA 94102.

19. Confidentiality

- 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.

20. 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.

21. Ownership of Results

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- A. Unless the Contractor and the State reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the State’s requirement (i) all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the State shall be treated as if it were “work for hire” for the State, and (ii) the Contractor will immediately disclose to the State all discoveries, inventions, enhancements, improvements, and similar creations (collectively, “**Creations**”) made, in whole or in part, by the Contractor in the course of or related to providing services to the State.
- B. All ownership and control of the above Data, Materials, and Creations, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the State, without any additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the State. The Contractor agrees to execute any documents required by the State to register its rights and to implement the provisions herein. Upon the State's written request, the Contractor shall provide the State with all this Data within thirty (30) Days of the request.
- C. 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.

22. Limitation on Publication

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.

23. Limitation of Liability

- A. The State shall not be responsible for loss of or damage to any non-State equipment arising from causes beyond the State's control.
- B. The Contractor indemnifies and holds harmless the State from and against all liability for personal injury or property damage caused by the Contractor’s negligence or willful misconduct while performing its obligations pursuant to this Agreement on the State’s premises. Any expiration or termination of this Agreement shall not affect the continuing obligations of the parties described in this Agreement.

24. Use of State or Court Provided Equipment

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Neither the State nor the Courts shall be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Contractor, or by any of its employees, Subcontractors or agents, even though such equipment may be furnished, rented, or loaned to the Contractor by the State or Courts.

25. 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 (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or (v) 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.

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

27. 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

Attachment 2, Contract Terms

(2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.

28. Drug-Free Workplace

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

29. Nondiscrimination/No Harassment 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. During the performance of this Agreement, the Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its Subcontractors interact in the performance of this Agreement. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- C. 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.
- D. 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.
- E. The Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

30. Americans with Disabilities Act

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

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31. California Law

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

32. 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.

33. 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.

34. 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.

35. Signature Authority

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

36. Survival

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.

37. 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.

Project Title: CLIK System Development Project – Lead Developer/DBA
RFP Number: ISD 200906-CT

Attachment 2, Contract Terms

END OF EXHIBIT

Attachment 2, Contract Terms

**EXHIBIT C
PAYMENT PROVISIONS**

1. Definitions

- A. **“Additional Night”** is defined as a overnight stay that is required to perform the Work of this Agreement that is in addition to the one (1) to three (3) consecutive nights defined in Overnight Trips below.
- B. **“Day Trip –No Air”** is defined as a trip for one (1) traveler that is required to perform the Work of this Agreement and does not include an overnight stay and does not require air travel.
- C. **“Day Trip – With Air”** is defined as a trip for one (1) traveler that is required to perform the Work of this Agreement and does not include an overnight stay but does require air travel.
- D. **“Maximum Per Trip Amount”** is defined as the maximum amount that the State will reimburse the Contractor for travel on a per trip basis.
- E. **“Overnight Trip – No Air”** is defined as a trip for one (1) traveler that is required to perform the Work of this Agreement and includes an overnight stay for one (1) to three (3) consecutive nights but does not require air travel.
- F. **“Overnight Trip – With Air”** is defined as a trip for one (1) traveler that is required to perform the Work of this Agreement and includes an overnight stay for one (1) to three (3) consecutive nights and does require air travel.
- G. **“Remote Day Trip – With Air”** is defined as a trip, that is required to perform the Work of this Agreement, to a remote location, not normally available via commercial air carrier or public transportation, for one (1) traveler and includes air fare, but does not include an overnight stay. The following courts are considered remote locations: Remote courts: Humboldt, Trinity, Siskiyou, Del Norte, Modoc, Lassen, Plumas, Mono, Inyo, and Imperial
- H. **“Remote Overnight Trip – With Air”** is defined as a trip, that is required to perform the Work of this Agreement, to a remote location, not normally available via commercial air carrier or public transportation, for one (1) traveler and includes air fare and an overnight stay for one (1) or more consecutive nights. The following courts are considered remote locations: Remote courts: Humboldt, Trinity, Siskiyou, Del Norte, Modoc, Lassen, Plumas, Mono, Inyo, and Imperial.

Attachment 2, Contract Terms

2. Contract Amount

The total amount the State may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, shall be the actual cost not to exceed the Contract Amount of [TBD], as set forth in this Exhibit.

3. Compensation for Contract Work

A. The State shall compensate the Contractor for the actual cost of performing the Work of this Agreement at the hourly rate set forth in Table 1, and at the not to exceed amounts for the Deliverables in Table 2a, below.

Table 1: Contracted Hourly Rate for Contractor’s Key Personnel

Contractor’s Key Personnel	Period of Performance	Rate Per Hour
[TBD]	[Initial Term TBD]	[TBD]
[TBD]	[First Option Renewal Term TBD]	[TBD]
[TBD]	[Second Option Renewal Term [TBD]	[TBD]

Table 2a: Deliverables and Not To Exceed Amounts during the Initial Term

Deliverable No.	Deliverable	Not To Exceed Amount
1	Monthly Status Report for all Work performed in December 2009	[TBD]
2	Monthly Status Report for all Work performed in January 2010	[TBD]
3	Monthly Status Report for all Work performed in February 2010	[TBD]
4	Monthly Status Report for all Work performed in March 2010	[TBD]
5	Monthly Status Report for all Work performed in April 2010	[TBD]
6	Monthly Status Report for all Work performed in May 2010	[TBD]
7	Monthly Status Report for all Work performed in June 2010	[TBD]
8	Monthly Status Report for all Work performed in July 2010	[TBD]
9	Monthly Status Report for all Work performed in August 2010	[TBD]
10	Monthly Status Report for all Work performed in September 2010	[TBD]

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Table 2a: Deliverables and Not To Exceed Amounts during the Initial Term

Deliverable No.	Deliverable	Not To Exceed Amount
11	Monthly Status Report for all Work performed in October 2010	[TBD]
12	Monthly Status Report for all Work performed in November 2010	[TBD]

- B. Except for the specific travel expenses set forth in paragraph 4, below, the hourly rate set forth in Table 1, above, includes all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for services rendered to the State.
- C. The Contractor shall not provide Services in excess of [TBD] hours, the maximum total number of hours allowable under this Agreement. Additionally, the Contractor will not work more than forty (40) hours per week unless preapproved, in writing, by the Project Manager.
- D. The Contractor shall not charge nor shall the State pay any overtime rate.
- E. The Contractor shall not request nor shall the State consider any reimbursement for non-production work including but not limited to time spent traveling to and from the job site or any living expenses.
- F. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed [TBD].

4. Compensation for Transportation, Meals, and Lodging Expenses

- A. The State shall reimburse the Contractor for travel expenses as follows:
 - i. The State shall reimburse the Contractor its actual expenses incurred for reasonable and necessary travel, including air fare, mileage, local transportation, meals, lodging and other incidental expenses for travel that is required to perform the Work of this Agreement. **There is no reimbursement of expenses for commute travel from the Contractors home or place of business to the AOC’s facility in San Francisco, CA or any other expenses related to commute travel from the Contractors home or place of business to the AOC.** For services covered by this Agreement, allowable travel expenses shall not exceed the Maximum Per Trip Amount set forth in Schedule 1, below.
 - ii. Maximum Per Trip Amount and Travel Plan: Each Maximum Per Trip Amount stated below includes all travel expenses, including but not limited to: airfare, mileage, local transportation, lodging, meals, and incidentals. The parties agree that

Attachment 2, Contract Terms

the following Schedule 1 sets forth reasonable plans for travel that may be required to perform the Work of this Agreement.

Schedule 1: Estimated Travel

Type of Trip	Maximum Per Trip/Night
Day Trip-No Air	\$200.00
Day Trip-With Air	\$600.00
Remote Day Trip-With Air	\$750.00
Overnight Trip – No Air	\$350.00
Overnight Trip – With Air	\$750.00
Remote Overnight Trip – With Air	\$900.00
Additional Night	\$250.00

iii. Maximum Per Trip Amounts set forth in Schedule 1 above include:

1. Allowable meals for Overnight Trips only, which are reimbursable at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~\$6.00; lunch~\$10.00; dinner~\$18.00; and/or incidentals~\$6.00; and
2. Private vehicle mileage at the rate of \$0.55 per mile.

iv. Documentation: If requested by the State, the Contractor shall provide copies of invoices and copies and/or backup documentation for its actual travel expenses that were reimbursed under this Agreement.

v. The Contractor shall provide Notice to the State if the Contractor has reason to believe that the travel required to perform the Work will exceed the anticipated maximum amounts, specified in Schedule 1, above, for travel for services provided under this Agreement.

B. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed **\$3,000.00** per contract year.

5. Direct Expenses

Except for allowable expenses for transportation, meals and lodging, as set forth in paragraph 4 above, all fees and charges noted in this Agreement are inclusive of any and all anticipated travel, lodging, transportation, clerical support, Materials, fees, overhead, profits, and other costs and/or expenses incidental to the performance of the specified requirements under this Agreement.

Attachment 2, Contract Terms

6. Other Expenses

The State shall not consider reimbursement for costs not defined as allowable in this Agreement, including but not limited to any administrative and operating expenses incurred during the performance of this Agreement.

7. Taxes

The State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement.

8. Method of Payment

- A. The Contractor shall submit an invoice for Work provided no more often than monthly. After receipt of invoice, the State will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.
- B. The State will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate the following:
 - i. The Contract number;
 - ii. An unique invoice number;
 - iii. The Contractor's name and address;
 - iv. The taxpayer identification number (the Contractor's federal employer identification number);
 - v. A description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate;
 - vi. The dates and hours worked;
 - vii. The name of the Key Personnel that performed the Work and the contractual charges, including the appropriate hourly rate;
 - viii. For reimbursable travel expenses, the name(s) of Key Personnel that traveled, date of trip, destination, type of trip, and the actual reimbursable expense, as allowed under this Agreement; and
 - ix. A preferred remittance address, if different from the mailing address.
- C. The Contractor shall submit one (1) original and two (2) copies of invoices to:

Attachment 2, Contract Terms

Judicial Council of California
Administrative Office of the Courts
c/o Finance Division, Accounts Payable
455 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102-3688

- D. Please note that invoices or vouchers not on printed bill heads shall be signed by the Contractor or the person furnishing the supplies or services.

- E. Invoices to be paid from the funding sources identified on the executed State Standard Agreement form must be submitted by the dates set forth in Table 4, below. The State may not be responsible for payment of invoices received after the dates specified in Table 4, below, from the funding sources listed.

Table 4: Final Invoice Due Date

Fund Title	Chapter	Fiscal Year	Final Invoice Due By
[TBD]	[TBD]	2009-2010	April 30, 2012

9. Disallowance

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

END OF EXHIBIT

Attachment 2, Contract Terms

**EXHIBIT D
WORK TO BE PERFORMED**

1. Background and Objective

The Contractor’s Key Personnel shall participate in upgrading the technology and developing additional required functionality for the CLIK System. Except for occasional travel, Work will be performed on site at the AOC’s facility in San Francisco, CA.

2. Work Requirements

In providing the Work of the Agreement for the Initial Term, the Contractor’s Key Personnel shall perform the Tasks set forth below in Table 1a and provide the Deliverables set forth in Table 2a, below:

Table 1a: Tasks To Be Performed For The Initial Term

Task No.	Period of Performance	Description
1	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Become familiar with the AOC environment. • Become familiar with the CLIK Business Requirements Document. • Become familiar with the draft CLIK Functional Specifications Document. • Develop and keep updated a Project Plan for this project for the technical aspects of the project.
2	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Become familiar with the CAPS and AJTS database(s) and prepare technical documentation, as needed.
3	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Become familiar with the Audio Visual, Faculty, and Nominations Systems database(s) and prepare technical documentation, as needed.
4	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Support the completion of the Functional Specifications documents for CAPS and AJTS which will include minimal changes to Audio Visual, Faculty, and Nominations Systems required to support changes in AJTS and CAPS. • Begin designing the system functions for first phase of the rewrite.
5	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Begin design of CAPS and AJTS database(s). • Design and document the application architecture for the new CAPS and AJTS.
6	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Complete the design of the CAPS and AJTS database(s). • Design changes to the Audio Visual, Faculty, and Nominations Systems database(s) required to support CAPS and AJTS

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Task No.	Period of Performance	Description
		<p>database(s) changes.</p> <ul style="list-style-type: none"> • Begin development of the new database structures for CAPS and AJTS
7	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Complete development of the new database structures for CAPS and AJTS • Begin converting the existing data for both CAPS and AJTS from the old system to the new databases, including cleaning up data where needed. • Test the conversion of the existing data for both CAPS and AJTS from the old system to the new databases, including the cleaning up data where needed. • Begin modifying the existing database(s) structures for Audio Visual, Faculty, and Nominations Systems database(s) required to support CAPS and AJTS database(s) changes. • Begin developing functions for first phase of rewrite.
8	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Continue developing functions for first phase of rewrite. • Complete the modification of the existing database(s) structures for Audio Visual, Faculty, and Nominations Systems database(s) required to support CAPS and AJTS database(s) changes.
9	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Complete converting the existing data for both CAPS and AJTS from the old system to the new databases, including cleaning up data where needed. • Completed developing functions for first phase.
10	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Support Integration Testing fixing problems as they are found. • Develop Implementation Plan of the first functions for CAPS and AJTS.
11	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Support User Testing of first functions fixing problems as they are found. • Implement the first functions for CAPS and AJTS.
12	Ongoing as needed through November 30, 2010	<ul style="list-style-type: none"> • Provide production support for the for CAPS and AJTS functions implemented. • Develop Project Plan for the second phase of development for CLIK

Table 2a: Initial Term Deliverables and Due Dates

Deliverable No.	Description of Deliverable	Deliverable Due Date
1	Monthly Status Report for all Work performed in December 2009	December 31, 2009
2	Monthly Status Report for all Work performed in January 2010	January 31, 2010

Attachment 2, Contract Terms

Table 2a: Initial Term Deliverables and Due Dates

Deliverable No.	Description of Deliverable	Deliverable Due Date
3	Monthly Status Report for all Work performed in February 2010	February 28, 2010
4	Monthly Status Report for all Work performed in March 2010	March 31, 2010
5	Monthly Status Report for all Work performed in April 2010	April 30, 2010
6	Monthly Status Report for all Work performed in May 2010	May 31, 2010
7	Monthly Status Report for all Work performed in June 2010	June 30, 2010
8	Monthly Status Report for all Work performed in July 2010	July 31, 2010
9	Monthly Status Report for all Work performed in August 2010	August 31, 2010
10	Monthly Status Report for all Work performed in September 2010	September 30, 2010
11	Monthly Status Report for all Work performed in October 2010	October 31, 2010
12	Monthly Status Report for all Work performed in November 2010	November 30, 2010

3. AOC Responsibilities

The Project Managers will be responsible for managing Project activities and reviewing weekly project summary reports and meeting with key personnel bi-weekly or as needed and escalate issues for resolution to AOC management.

4. Authority and Approval

The Contractor is not authorized to make final and binding decisions or approvals on behalf of the State. As required in this Agreement, the Contractor will obtain the necessary approvals from the Project Manager and/or the Business Services Manager as may be required.

5. Monthly Status Reports

The Contractor shall submit monthly progress reports to the AOC Project Manager, describing Work performed, Work status, Work progress, difficulties encountered, remedial actions, and statement of activity anticipated.

END OF EXHIBIT

Attachment 2, Contract Terms

EXHIBIT E
CONTRACTOR’S KEY PERSONNEL

1. The following individual, or equivalent as approved pursuant to Exhibit B, Special Provisions, paragraph 11, Contractor’s Personnel and Replacement of Personnel, shall be the Key Personnel designated to perform the Work of this Agreement:

Name of Contractor’s Key Personnel	Title
[TBD]	Lead Developer/Data Base Analyst

2. Contractor’s Key Personnel Resume is attached below.

[TBD]

END OF EXHIBIT

Project Title: CLIK System Development Project – Lead Developer/DBA
RFP Number: ISD 200906-CT

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EXHIBIT F
ATTACHMENTS

This Exhibit includes the following attachment:

Attachment 1, Acceptance and Signoff Form

END OF EXHIBIT

Project Title: CLIK System Development Project – Lead Developer/DBA
RFP Number: ISD 200906-CT

Attachment 2, Contract Terms

**ATTACHMENT 1
ACCEPTANCE AND SIGNOFF FORM**

Description of Work provided by Contractor:

Date submitted: _____

Work is:

1) Submitted on time: yes no. If no, please note length of delay and reasons.

2) Complete: yes no. If no, please identify incomplete aspects of the Work.

3) Technically accurate: yes no. If no, please note corrections required.

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

Work is accepted.

Work is unacceptable as noted above.

Name: _____

Title: _____

Date: _____

END OF ATTACHMENT