

RFP Title: Off-site Storage
 RFP No.: ITSO 11-13-LM

ATTACHMENT 2 – CONTRACT TERMS AND CONDITIONS

JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS

STANDARD AGREEMENT COVERSHEET (rev 12-08)

AGREEMENT NUMBER
FEDERAL EMPLOYER ID NUMBER

- In this agreement (the “Agreement”), the term “Contractor” refers to **[CONTRACTOR]**, and the term “AOC” refers to the **JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS**.
- This Agreement becomes effective as **[TBD]** (the “Effective Date”) and expires **[TBD]**.
- The title of this Agreement is: **[TBD]**
 The title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.
- The maximum amount that the AOC may pay Contractor under this Agreement is **[\$[TBD]]**.
- The parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement (made up of this coversheet, the following exhibits, and any attachments) contains the parties’ entire understanding related to the subject matter of this Agreement. If there are any inconsistent terms in the exhibits or Appendices A or B, the following is the descending order of precedence: Appendix A, Exhibit A, B, C, D, Exhibit F, Exhibit G and Appendix B.

- Exhibit A – Standard Provisions
- Exhibit B – Special Provisions
- Exhibit C – Payment Provisions
- Exhibit D – Work to be Performed
- Exhibit E – Attachments
 - Appendix A - JBCL Appendix
 - Appendix B - Acceptance of the Work and Sign-off Form
- Exhibit F – Fee and Rate Schedule [provided by vendor]
- Exhibit G – Destruction of Requested Media Certificate [provided by vendor]

AOC’S SIGNATURE	CONTRACTOR’S SIGNATURE
JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS	CONTRACTOR’S NAME (if Contractor is not an individual person, state whether a Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized) [CONTRACTOR NAME]
BY (Authorized Signature) 	BY (Authorized Signature)

SAMPLE ONLY – DO NOT SIGN

ADDRESS Fiscal Services Office, Business Services Unit 455 Golden Gate Avenue San Francisco, CA 94102-3688	ADDRESS
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ATTACHMENT 2
CONTRACT TERMS AND CONDITIONS
EXHIBIT A - AOC STANDARD TERMS AND CONDITIONS
(NON-IT SERVICES)

Each proposer must state in its proposal whether it accepts the below, standard contract terms and conditions. Any exceptions must be included, if at all, with the proposal submission. **Please note:** (1) Terms marked with an asterisk (*) are *mandatory minimum terms* of the procurement, and taking any material exception will render a proposal non-responsive; and (2) exceptions taken to other terms and conditions may be a negative factor in evaluation of a proposal.

1. INDEMNIFICATION (*)

The Contractor shall indemnify, defend (with counsel satisfactory to the AOC), and save harmless the AOC 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

Pursuant to this provision, the AOC 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 AOC 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 AOC authority relating to insolvency or protection from the rights of creditors.

In the event the AOC terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the AOC 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 be liable to the AOC 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.

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.

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 AOC shall be to pay only for the services rendered at the rates set forth in the Agreement.

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 AOC, 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

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 AOC after the Contractor has completed a Deliverable or other Contract requirement, in compliance with the Contract documents, including without limitation, Exhibit D, Work to be Performed and Appendix B, Acceptance of the Work and Sign-off Form.
- B. **“Administrative Director”** refers to an individual or authorized designee, empowered by the AOC to make final and binding executive decisions on behalf of the AOC.
- C. **“Amendment”** means a written document issued by the AOC and signed by the Contractor, which alters the Contract Documents and identifies the following: (1) a change in the Work; (2) a change in Contract Amount; (3) a change in time allotted for performance; and/or (4) an adjustment to the Agreement terms.
- D. **“Confidential Information”** means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the AOC’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 AOC 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 AOC to the Contractor for performance of the Work, in accordance with the Contract Documents.
- G. The **“Contractor”** means the individual, association, partnership, firm, company, Contractor, corporation, affiliates, subsidiaries, or combination thereof, including joint ventures, contracting with the AOC to do the Contract Work. The Contractor is one of the parties to this Agreement.
- H. **“Day”** means a Monday-Friday workday that is not designated as a **California State Holiday**.

- I. **“Disabled Veteran’s Business Enterprise”** or **“DVBE”** means a business entity that has complied with the requirements under California law to become certified by the California Office of Small Business Certification and Resources as a business owned and operated by a disabled veteran of the United States military, naval or air services.
- J. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither the Contractor nor the AOC 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.
- K. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- L. **“Notice”** means a written document initiated by the authorized representative of either party to this Agreement and given by:
- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
 - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- M. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the AOC and the AOC’s representatives.
- N. **“State Standard Agreement”** means the form used by the AOC 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.”**
- O. **“Stop Work Order”** means the written Notice, delivered in accordance with this Agreement, by which the AOC 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.

- P. **“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 AOC 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.
- Q. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the AOC.
- R. **“Term”** comprises the **Initial Term, First Option Term, Second Option Term, Third Option Term** and **Fourth Option Term**.
- S. **“To Be Determined”** or **“TBD”** is the item that is not yet identified. Any and all To Determined items, set forth herein, shall be determined prior to award or by mutual agreement between the Contractor and the AOC and incorporated into the Agreement via Amendment(s).
- T. **“Third Party”** means any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the AOC or the Contractor, which is not a party to this Agreement.
- U. **“Work”** or **“Work to be Performed”** or **“Contract Work”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the AOC. 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 AOC's satisfaction and in compliance with the Nondiscrimination/No Harassment Clause, as set forth in this Exhibit B.

3. **TERMINATION OTHER THAN FOR CAUSE**

- A. In addition to termination for cause under Exhibit A, Standard Provisions paragraph 3, the AOC 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 AOC terminates all or a portion of this Agreement other than for cause, the AOC shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.

4. AOC'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS (*)

- A. The AOC's obligation under this Agreement is subject to the availability of authorized funds. The AOC may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the AOC, 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 AOC may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the AOC'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 AOC 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. ACCEPTANCE OF THE WORK

- A. The AOC 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 AOC 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 AOC, in accordance with direction from the AOC Project Manager. The AOC shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The AOC Project Manager shall use the *Acceptance and Sign-off Form*, provided as *Appendix B*, to notify the Contractor of the Work's acceptability.
- D. If the AOC rejects the Work provided, the AOC Project Manager shall submit to the Contractor a written rejection using *Appendix B*, describing in detail the failure of the Work as measured against the Criteria. If the AOC 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 AOC Project Manager requests further change, the Contractor shall meet with the AOC 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 AOC Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the AOC 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 AOC may terminate this Agreement pursuant to the terms set forth in *Exhibit A, Standard Provisions, paragraph 3*.

6. AGREEMENT ADMINISTRATION/COMMUNICATION

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

Judicial Council of California
Administrative Office of the Courts
Information Technology Services Office
Attn: [TBD], AOC Project Manager
455 Golden Gate Avenue
San Francisco, CA 94102-3688
 - ii. Other than for Notices, the AOC Project Manager may be contacted as follows:

RFP Title: Off-site Storage

RFP No: ITSO 11-13-LM

Telephone: [TBD]

Facsimile: [TBD]

Email: [TBD]

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

i. [TBD]

ii. Other Contractor information:

Telephone: [TBD]

Facsimile: [TBD]

Email: [TBD]

7. STANDARD OF PROFESSIONALISM

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

8. STOP WORK

A. The AOC 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 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 AOC 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 AOC 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 AOC decides the facts justify the action, the AOC 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 AOC's Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the AOC shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- D. The AOC shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

9. ASSIGNMENTS OR SUBCONTRACTING

This Agreement is based upon the unique expertise of the Contractor. Therefore, in addition to the prohibition against assignment under Exhibit A, Standard Provisions paragraph 4, it is the policy of the AOC to withhold consent from proposed assignments, subcontracts, or notations when such transfer of responsibility would operate to decrease the AOC's likelihood of receiving performance under this Agreement. No performance of this Agreement or any portion thereof may be assigned or subcontracted by the Contractor without the express written consent of the AOC, and any attempt by the Contractor to assign or subcontract any performance of this Agreement without the express written consent of the AOC shall be void and shall constitute a breach of this Agreement. If the Contractor is authorized by the AOC to subcontract or assign, all the terms of this Agreement shall be included in such subcontract or assignment.

10. 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.

11. EVALUATION OF CONTRACTOR

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

12. AGREEMENT TERM AND OPTIONS TO RENEW

- A. The **Initial Term** of the Agreement shall commence on **January 27, 2014** and expire on **December 31, 2014**. Thereafter, the AOC, in its sole discretion, has the option to extend the term of the Agreement for four (4) additional periods on the same terms and conditions applicable during the **Initial Term**, as defined below:

First Option Term: January 1, 2015 through December 31, 2015

Second Option Term: January 1, 2016 through December 31, 2016

Third Option Term: January 1, 2017 through December 31, 2017

Fourth Option Term: January 1, 2018 through December 31, 2018

- B. In the event the AOC elects to exercise the option to extend the Agreement as set forth in this provision, the expiration date of the Agreement shall become the ending date of the Term exercised.
- C. If the AOC elects to extend the Agreement, the Proposer may negotiate price adjustments applicable during the option period(s) and any agreed-upon price adjustments will be set forth in a written amendment to the Agreement. Any agreed-upon price adjustment (whether an increase or decrease in price) may not exceed during any one-year option period the previous 12 months' change in the San Francisco Region Consumer Price Index as published by the U.S. Bureau of Labor Statistics at <http://www.bls.gov/ro9/cpisanf.htm>.

13. CONFIDENTIALITY

In the performance of the Work under this Agreement or contemplation of this Agreement, the Contractor may gain access to private or confidential information of the AOC that if disclosed to Third Parties may be damaging to the AOC. All information disclosed by the AOC to the Contractor shall be held in confidence and used only in performance of this Agreement.

14. SERVICES WARRANTY

The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services or provide any technical assistance in planning, development, training, consulting or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will (i) be rendered with promptness and diligence; (ii) executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; (iii) conform to the requirements of this Agreement. For each such Deliverable, the foregoing warranty shall commence for such Deliverable upon the AOC's acceptance of such Deliverable, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable does not conform to the foregoing warranty, Contractor shall promptly correct all non-conformities to the satisfaction of the AOC. All warranties, including any special warranties specified elsewhere herein, shall inure to the AOC, its successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

15. CHANGES AND AMENDMENTS

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the AOC 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 AOC Project Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

16. ACCOUNTING SYSTEM REQUIREMENT

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

17. 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.

18. RIGHT TO AUDIT

- A. The Contractor shall permit all Data and records relating to performance, procedures, and billing to the AOC under this Agreement to be inspected and/or audited, at any reasonable time, by the authorized representative of any of the following or its designee:
 - i. The AOC;
 - ii. The California State Auditor; and/or
 - iii. Any State or Federal government auditing agency.
- B. The right of each agency to inspect and/or audit this Agreement is independent of whether or not any other audit or inspection has been performed.

19. OWNERSHIP OF RESULTS

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

20. 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 AOC without prior review and written permission by the AOC's Business Services Senior Manager.

The AOC review shall be completed within thirty (30) Days of submission to the AOC Project Manager and, if permission is denied, the AOC shall provide its reasons for denial in writing.

21. LIMITATION ON AOC'S LIABILITY

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

22. 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 AOC shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" 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 \$500,000.00 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 AOC. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the AOC 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 AOC, its officers, officials, employees and agents are to be covered, in accordance with Contractor's blanket additional insured endorsement, 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 AOC, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the AOC, its officers, officials, employees or agents shall not contribute with the insurance or benefit the

Contractor in any way,

- iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the AOC certificates of insurance satisfactory to the AOC evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the AOC's request.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the AOC, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the AOC, the Contractor shall, upon Notice to that effect from the AOC, promptly obtain a new policy, and shall submit the same to the AOC, 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 AOC of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, and worker's compensation within thirty (30) days mailed to the following address: Judicial Council, Administrative Office of the Courts, Senior Manager, Business Services, 455 Golden Gate Avenue, 6th Floor, San Francisco, CA 94102-3688.

23. 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.

24. 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 AOC will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the AOC 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 AOC 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.

25. DRUG-FREE WORKPLACE

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

26. AMERICANS WITH DISABILITIES ACT

By signing this Agreement, Contractor assures the AOC that it complies with applicable provisions of the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. §§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.

27. 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.

28. CALIFORNIA LAW

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

29. 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.

30. 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.

31. SIGNATURE AUTHORITY

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

32. SURVIVAL

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

33. 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 AOC.

END OF EXHIBIT

EXHIBIT C - PAYMENT PROVISIONS

1. CONTRACT AMOUNT

The total amount the AOC may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, shall not exceed [TBD], as set forth in this Exhibit C.

2. CONSIDERATION FOR CONTRACT WORK

Compensation shall be based upon actual expense at the rates and fees set forth in *Exhibit F, Rate and Fee Schedule*. The Contractor shall not charge the AOC for any service charge not included in Exhibit F, unless authorized by the AOC. However, in no event shall the Contract Amount exceed the amount listed in paragraph 1, above.

3. TAXES

The AOC 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 AOC 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.

4. METHOD OF PAYMENT

- A. The Contractor shall submit an invoice for Work provided, as set forth in Exhibit D, Work to be Performed, no more often than once a month. After receipt of invoice, the AOC 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 AOC 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. The itemized storage, labor, transportation, administrative fee charges and quantity, as applicable, or other contractually allowable charges for services requested by the AOC, in accordance with Exhibit F, Rate and Fee Schedule; and
 - vi. The dates and hours, if appropriate, of charges.

C. The Contractor shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California
Administrative Office of the Courts
c/o Fiscal Services Office, Accounts Payable
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102-3688

D. The AOC shall remit payment to the Contractor at the following address, unless another preferred remittance address is provided in writing by the Contractor:

[TBD]

E. Contractor shall be paid as follows, on Table 1, as compensation in full for the Services to be performed under this Agreement:

Table 1: Compensation for Services

Period	Fund Title	Fiscal Year	Amount	Invoice Due By Date
January 27, 2014 - December 31, 2014		2013-2014		April 30, 2016

F. The AOC shall make every reasonable effort to pay invoices as promptly as regular AOC fiscal procedures.

G. Monthly charges for service represents the entire charge for use in any calendar month. When a service is performed for a part of a calendar month, the monthly charge for the partial month will be prorated on the basis of a thirty-day month.

H. 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.

5. DISALLOWANCE

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

6. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any payment by the AOC as provided in this Exhibit C shall in no way lessen the liability of the Contractor to replace unsatisfactory Work or Material, even if the unsatisfactory character of such Work or Material may not have been apparent or detected at the time such payment was made. Materials, Data, components, or workmanship that do not conform to *Exhibit D, Work to Be Performed*, shall be rejected and shall be replaced by the Contractor

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without delay.

7. MOST FAVORABLE PRICE

The Contractor agrees that no other customer will receive better rates for substantially similar services offered under substantially similar terms and conditions when the volume of business from such other customers is equal to or less than the volume of business the AOC delivers under this Agreement.

END OF EXHIBIT

EXHIBIT D - WORK TO BE PERFORMED

1. DEFINITIONS

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

- A. **“Annual Inventory Report”** shall be the summary of Monthly Activity Reports of receipt and return dates, order numbers, quantity of cartons and the final inventory level at the rates set forth in the Term’s Rate and Fee Schedule.
- B. **“Backup Media”** shall mean 12-24 LTO, DLT, SDLT, AIT, AIT3 or similar secured tapes in secure/lockable/fire-water-heat-cold resistant containers and any written/backup materials. Tapes are stored and sealed in cartons.
- C. **“California State Holiday”** individually and collectively means New Year’s Day, Martin Luther King, Jr., Day, Lincoln’s Birthday, Washington’s Birthday, César Chávez Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving and Christmas Day.
- D. **“Contractor’s Storage Location”** shall mean the location of the off-site storage facility, at [TBD].
- E. **“Emergency Retrieval/Delivery”** shall include weekends and holidays. Orders shall be placed before 1:00 PM and delivered within four (4) hours.
- F. **“Monthly Activity Report(s)”** shall mean the month’s receipt and return dates, order numbers, quantity of cartons and the month’s inventory level at the rates set forth in the Term’s Rate and Fee Schedule.
- G. **“Retrieval/Delivery Drop-off Location”** shall mean the pick-up and drop-off point in the AOC, 455 Golden Gate Avenue, San Francisco, third floor, Judicial Council Lobby.
- H. **“Retrieval/Delivery Services”** shall mean weekly, special and emergency pick-up and delivery services using Contractor’s own labor and pallets. **Retrieval/Delivery Services** shall be available twenty-four (24) hours a day, three hundred sixty-five (365) days a year.
- I. **“Weekly Retrieval/Delivery”** shall mean services occurring on Tuesdays, between 10:00 AM and 2:00 PM, excluding California State Holidays.
- J. **“Expedited Retrieval/Delivery”** shall mean orders placed before 3:00 PM and delivered by the next business day.

- K. **“Emergency Retrieval”** shall mean orders placed at any time, twenty-four (24) hours a day, three hundred sixty-five (365) days a year, and delivered within eight (8) hours of request.
- L. **“Transition Services”** shall mean the transition of 80 stored cartons from the AOC that will require inner and outer packaging materials, without charge from the Contractor. The Contractor’s services of re-positioning, in-take, labeling and shelving of 80 cartons from the **Retrieval/Delivery Drop-off Location** to the **Contractor’s Storage Location** shall be at AOC expense. *If Transition Services are necessary, they shall occur in the **first quarter** of the **Initial Term** of the Agreement only.*

2. SCOPE OF SERVICES

The Contractor will provide off-site data storage and related services for the Judicial Council of California. These services are to include:

- A. Scheduled weekly pickup and off-site storage of data Backup Media from production site located at 455 Golden Gate Avenue, San Francisco, CA 94102-3688. Off-site storage locations must be sufficiently remote from the production location so as to assure that the storage site would not be affected by any man-made or natural disaster that affects the production location.
- B. Scheduled weekly delivery of data Backup Media that is due to be returned to the production site.
- C. On-demand delivery of data Backup Media to the production site or alternate site on an expedited basis during the workday or after hours.
- D. On-demand delivery of data backup material to the production site or alternate site on an emergency basis via courier or other means within eight (8) hours of request, twenty-four hours a day, three hundred sixty-five (365) days per year inclusive of holidays.
- E. The provision of tape transport and storage containers necessary to facilitate pickup, storage and delivery of Backup Media.
- F. Transition services as delineated in paragraph 4. Transition Plan.
- G. An assigned account representative that is available to meet with at critical points during the Term period.

3. STATEMENT OF THE WORK

The Contractor shall provide the services set forth below for the **Initial Term** beginning **January 27, 2014** and ending **December 31, 2014**. The Transition Plan shall exist in the Initial Term only.

- A. **Retrieval/Delivery Services** will be provided, as defined, above, within the timeframes noted.
- B. **Backup media**, if in stored in a physical format, shall be stored within the State of California. If stored in an electronic format, backup media shall be stored within the United States.
- C. **Monthly Activity Reports** shall be provided with the current inventory level, and shall be attached to the monthly invoice and *Appendix B - Acceptance and Sign-off Form* to the AOC Project Manager.
- D. Provide an **Annual Inventory Report**, which is the summary of the **Monthly Activity Reports** and final inventory level to the AOC Project Manager.
- E. If the Contractor cannot accommodate a particular **Expedited Retrieval/Delivery** or **Emergency Retrieval/Delivery** request within the established timeframe, the Contractor will communicate with the AOC Project Manager as soon as non-accommodation is known.
- F. The Contractor shall submit a monthly invoice, **Monthly Activity Report**, and a monthly Acceptance and Sign-off Form to the AOC Project Manager.
- G. Four consecutive one (1) year Terms (**First Option Term, Second Option Term, Third Option Term** and **Fourth Option Term**) will be exercised at the sole discretion of the AOC. *The services during these Terms shall not include Transition Services.*

4. **TRANSITION PLAN**

If and when Transition Services are necessary and by request of the AOC Project Manager, the services include, but are not limited to, providing secured containers and cartons for Backup Media to the Retrieval/Delivery Drop-off Location for AOC packaging, delivery to the Contractor's Storage Location, in-take and shelving services for 80 cartons. The Transition Plan will allow the Work to continue without interruption or adverse effect and will facilitate an orderly transfer the cartons. The cartons for transition contain multi-utility (small/medium) tape containers that fit between 12-24 LTO, DLT, SDLT, AIT, AIT3 or similar type units in secure/lockable/fire-water-heat-cold resistant containers.

5. **AOC CONTACT WITH CONTRACTOR**

- A. Authorized AOC representatives may contact the facility twenty-four (24) hours a Day, seven (7) Days a week, three hundred sixty-five (365) days a year, to obtain information regarding the AOC's account, Backup Media or any other service request.
- B. *The software control sytem shall be [TBD] with capabilites such as [TBD] with access by authorized AOC representatives. The performance of the system shall allow for **Monthly Activity Reports** and an **Annual Inventory Report**.*

- C. The AOC may also use the Contractor’s website [TBD] in order to remotely maintain and manage a disaster recovery plan and monitor account data protection. Authorized AOC representatives will be the following:

Name	User ID	Work Phone

6. CONTRACTOR INFORMATION

- A. The off-site store facility should provide the following features:
 - i. Earthquake resistant construction
 - ii. Environmentally controlled storage facility, which provides 24 hour/365 day air conditioning, which controls temperature, humidity, and air exchange (maximum temperature of 75° F (22° C), 60° (16° C) minimum temperature; relative humidity: 60% maximum, 30% minimum).
 - iii. Automated non-water fire suppression system
 - iv. Automatically transferred back-up power
 - v. 7x24x365 monitoring of security, alarm and fire detection systems
 - vi. On-line card key access systems for all doors
 - vii. Electronic gate entry to inside loading/unloading area.

- B. The pickup and delivery vehicles should be specifically equipped, alarmed, unmarked service vehicles which include:
 - i. Alarm-equipped cab and cargo areas
 - ii. Mobile radio and cellular communications
 - iii. Portable HALON fire extinguishers.
 - iv. Facilities to transport Customer data in locked, tamper resistant and fire/water/heat/cold resistant, locked containers

- C. The Contractor’s driver will be in uniform and carry an identification badge. The Contractor’s driver will carry a scanner with all required information regarding the AOC’s account, as well as a cellular phone for constant communication with the Contractor’s facility and outside necessary contact.

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D. Contractor's contact information is as follows:

Account Manager: [TBD]

Email: [TBD]

Telephone: [TBD]

Website: [TBD]

7. CONTRACTOR'S RESPONSIBILITIES

The Contractor will have the following responsibilities under this Contract:

- i. Work closely with the AOC Project Manager;
- ii. Perform and prepare Work as delineated;
- iii. Proactively assist with resolution of issues with any aspect of the Work; and
- iv. Work with AOC Project Manager to manage and coordinate work and knowledge transfer.

8. AOC'S RESPONSIBILITIES

The AOC Project Manager will be responsible for managing, scheduling, and coordinating all Project activities, including Project plans, timelines, and resources, and escalating issues for resolution to AOC management.

END OF EXHIBIT

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EXHIBIT E- ATTACHMENT

This Exhibit includes the following attachment:

Appendix A – JBCL Appendix
Appendix B – Acceptance of the Work and Sign-off Form

APPENDIX A - JBCL APPENDIX

This JBCL Appendix contains the provisions required for compliance with Public Contract Code (“PCC”), part 2.5, enacted under Senate Bill 78 (Stats. 2011, ch. 10), and the Judicial Branch Contracting Manual (“JBCM”) adopted pursuant to that law. In this appendix, (i) “Agreement” refers to the agreement into which this appendix is incorporated, (ii) “JBE” refers to the California judicial branch entity that is a party to the Agreement, (iii) “Contractor” refers to the other party to the Agreement, and (iv) “Consulting Services” refers to those services described in chapter 8, appendix C, section 1 of the JBCM.

1. **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 JBE if any representation and warranty becomes untrue.
 - A. **Non-discrimination.** 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 section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 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 has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of non-discrimination. (*)
 - B. **National Labor Relations Board.** 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. (*)
 - C. **Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBE.
2. **Provisions Applicable Only to Certain Agreements.** The provisions in this section are *applicable only to the types of agreements specified in the title of each subsection*. If the Agreement is not of the type described in the title of a subsection, then that subsection does not apply to the Agreement.
 - A. **Agreements over \$10,000.** This Agreement is subject to examinations and audit by the California State Auditor for a period of three years after final payment.

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- B. **Agreements over \$50,000.** No JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term).
- C. **Agreements of \$100,000 or More.** Contractor certifies that it is, and will remain for the term of the Agreement, in compliance with PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits regarding marital or domestic partner status. 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. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- D. **Agreements for Services over \$200,000 (Excluding Consulting Services).** Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
- E. **Agreements of \$1,000,000 or More.** Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran (“Iran List”) created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the JBE to enter into this Agreement pursuant to PCC 2203(c).
- F. **Agreements for the Purchase of Goods.** Contractor shall not sell or use any article or product as a “loss leader” as defined in Business and Professions Code section 17030.
- G. **Agreements for the Purchase of Certain Goods, and Printing, Parts Cleaning, Janitorial, and Building Maintenance Services Agreements.** If Contractor will sell to the JBE, or use in the performance of this Agreement, goods specified in PCC 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), then with respect to those goods: (i) Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible, and (ii) upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
- H. **Agreements for Furnishing Equipment, Materials, Supplies, or for Laundering Services.** Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this Agreement have been

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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. 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 JBE.

- I. **Agreements for which Contractor Has Committed to Achieve DVBE Participation.** Contractor shall within sixty (60) days of receiving final payment under this Agreement certify in a report to the JBE: (i) the total amount the prime Contractor received under this Agreement; (ii) the name and address of any disabled veterans business enterprise ("DVBE") that participated in the performance of this Agreement; (iii) the amount each DVBE received from the Contractor; (iv) that all payments under this Agreement have been made to the DVBE; and (v) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
- J. **Agreements Resulting from Competitive Solicitations.** Contractor shall assign to the JBE 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 JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Contractor. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by the Contractor, the JBE shall, within one 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 JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action.
- K. **Agreements for Legal Services.** Contractor shall: (i) adhere to legal cost and billing guidelines designated by the JBE; (ii) adhere to litigation plans designated by the JBE, if applicable; (iii) adhere to case phasing of activities designated by the JBE, if applicable; (iv) submit and adhere to legal budgets as designated by the JBE; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the JBE; and (vi) submit to legal bill audits and law firm audits if so requested by the JBE, whether conducted by employees or designees of the JBE or by any legal cost-control provider retained by the JBE

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for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the JBE. If (a) the value of this Agreement is greater than \$50,000, (b) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the Agreement equal to the lesser of either (A) thirty (30) multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any period of less than a full year or (B) the number of hours equal to ten percent (10%) of the contract amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for non-renewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with a judicial branch entity for legal services.

- L. **Agreements Allowing for Reimbursement of Contractor's Costs.** Contractor must include with any request for reimbursement from the JBE a certification that the 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 JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request.
- M. **Agreements Performed in California by Contractors that are Corporations, LLCs, or LPs.** Contractor is, and will remain for the term of the Agreement, qualified to do business and in good standing in California.
- N. **Agreements that the JBE Cannot Terminate for Convenience.** The JBE's obligations under this Agreement are subject to the availability of applicable funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the initial appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. Upon notice, the JBE may terminate this Agreement in whole or in part, without prejudice to any right or remedy of the JBE, for lack of appropriation of funds. Upon termination, the JBE will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total contract amount.

[ed.9-17-12]

END OF APPENDIX

APPENDIX B - ACCEPTANCE OF WORK AND SIGN-OFF 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 FORM

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EXHIBIT F – FEE AND RATE SCHEDULE

[TBD]

END OF EXHIBIT

EXHIBIT G – DESTRUCTION OF REQUESTED MEDIA CERTIFICATE

[TBD]

END OF EXHIBIT