

**ATTACHMENT A – REVISION 1**  
**MASTER AGREEMENT TERMS AND CONDITIONS**

This Master Agreement for Office Supplies, Copier Paper and Toner (“Agreement” or “Master Agreement”) is made this 1st day of October, 2008 by and between [REDACTED] with offices at [REDACTED] (“Contractor”) and the Judicial Council of California Administrative Office of the Courts (“AOC”) with offices at 455 Golden Gate Avenue, San Francisco, California.

In consideration of the mutual promises, covenants, terms and conditions set forth below, the parties hereby agree as follows:

**1. PURPOSE**

The purpose of this Master Agreement is to set forth the terms and conditions that apply to Contractor’s furnishing of office supplies, copier paper and toner as requested in RFP No. FIN-0708-OS (“RFP”) and as further described in Exhibit 2, Statement of Work, to members of the Purchasing Group. The “Purchasing Group” is defined to include the 58 Superior Courts of California, the California Appellate Courts, including the Supreme Court of California, the Habeas Corpus Resource Center, [the county law libraries in California](#), and the AOC (each of which may be individually and variously referred to as a “member of the Purchasing Group” or “Purchasing Group member”).

**2. TERM**

The initial term of this Agreement is two (2) years, commencing on October 1, 2008 with three (3) one-year options to extend the term, which options may be exercised by the AOC in its sole discretion anytime prior to the expiration of the initial term. If the AOC elects to extend the term of this Master Agreement, the AOC 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 this Master Agreement.

**3. OBLIGATION**

This Master Agreement does not obligate the AOC or any member of the Purchasing Group to place any orders under this Master Agreement and it does not guarantee Contractor a specific volume of orders under this Master Agreement.

**4. RELATIONSHIP OF PARTIES**

The AOC has the authority to enter into master agreements for goods and services on behalf of the Purchasing Group. Individual members of the Purchasing Group may elect to utilize this Master Agreement by placing orders, as set forth herein, in which case the terms and conditions of this Master Agreement shall govern such purchase. Any Purchasing Group member that is not a signatory to this Master Agreement is, and is intended to be, a third party beneficiary of this Master Agreement and has the right to enforce all terms and conditions of this Master Agreement that affect it.

**5. SCOPE OF SERVICE AND PRICE**

Contractor shall provide office supplies, copier paper and/or toner to the Purchasing Group pursuant to the terms and conditions of this Agreement. The description and price for office supplies, copier paper and/ or toner that are considered Contract Items is set forth in Exhibit [B1](#), Pricing Sheets. “Contract Item” is defined as any item or replacement item that is included in Exhibit [B1](#), Pricing Sheets, or any amendment to this Agreement. Additionally, Contractor shall provide “Non-Contract Items” to the Purchasing Group named in this Agreement at the discounted rate set forth in Exhibit [B1](#), Pricing

Sheets. “Non-Contract Items” are defined as office supplies, copier paper and toner that Contractor is able to provide but that are not listed or included with a specific price in Exhibit B1, Pricing Sheets.

Contractor’s prices set forth in Exhibit B1, Pricing Sheets, include all charges, including but not limited to, freight and delivery, cost of materials and product, overhead, profits, and other costs or expenses incidental to the Contractor’s performance under this Agreement.

## **6. INVENTORY**

Contractor shall maintain access to a reasonable stock of the goods to be provided for prompt delivery to members of the Purchasing Group. Failure of Contractor to maintain access to such a stock may result in termination of this Agreement.

## **7. ORDERING**

The Purchasing Group members ~~named in this Agreement~~ may place individual orders for the office supplies, copier paper and toner provided pursuant to this Agreement or issue blanket Purchase Orders covering items for multiple individual orders up to the amount of the blanket Purchase Order. Orders may be placed with a Purchase Order via telephone, facsimile, or Contractor’s designated Internet site with reference to a Purchase Order. A “Purchase Order” is defined as an ordering document used by a Purchasing Group member to place an order for office supplies, copier paper or toner under this Agreement. All orders will reference this Master Agreement No. [REDACTED]. The form and format of an order form or a Purchase Order may vary. The Purchasing Group member placing the order will be responsible for receipt of goods and payment pursuant to the terms and conditions set forth in this Agreement. A Purchase Order placed by the Purchasing Group member constitutes and will be construed as a separate, independent contract between Contractor and such Purchasing Group member for purchase and payment of such supplies, copier paper and toner as described in the Purchase Order subject to the following limitation. Any additional or supplemental terms contained in the Purchase Order or in any invoice or confirmation of the Purchase Order that conflict with or materially alter any term or condition of this Master Agreement as it relates to a Purchase Order will not be deemed part of such contract.

## **8. BACKORDERS**

If an item is not available at the time the order is placed, the Purchasing Group member placing the order will be informed immediately by Contractor and presented with an option of a replacement item or the back-ordered item when it becomes available. An estimated delivery date will be provided for all back-ordered items. If a back-ordered item is not available on the estimated delivery date, the Purchasing Group member placing the order must be notified prior to the estimated delivery date and given the option of a replacement item or the back-ordered item when it becomes available. All replacement items shall be of equal or better quality. If the Purchasing Group member is not satisfied with the quality of the replacement product, the Purchasing Group member has the right to return the product. The Purchasing Group member will not incur any cost for return of the product, including but not limited to shipping and handling, and Contractor is responsible for any such cost.

## **9. CUSTOMER SERVICE SUPPORT**

(a) Contractor shall provide customer service, as described in Exhibit 2, Statement of Work [to be developed from this RFP and vendor’s proposal].

(b) Contractor shall maintain a toll-free number for ordering, inquiries, and customer service inquiries from the Purchasing Group member placing the order.

(c) Contractor shall also maintain an internet web site for ordering for the Purchasing Group members.

## 10. WARRANTIES

(a) Contractor shall pass through all manufacturer supplied end-user warranties to the Purchasing Group member on all goods provided pursuant to this Agreement. Contractor further warrants that all services shall be rendered in a good and workmanlike manner by skilled personnel in compliance with all applicable laws and regulations.

(b) With respect to all of the goods provided hereunder, Contractor represents and warrants that it has obtained from manufacturers of such goods provided hereunder and will assign or pass through to each Purchasing Group member the following representations and rights from said manufacturers: that said manufacturers agree to defend, indemnify and hold harmless Contractor and the end user customer at manufacturer's expense from and against any claim, charge, demand, proceeding, suit, liability, loss, cost, expense, order, decree, attorneys fees, court costs, trial or appeal and judgments including damages of any kind resulting from, arising out of or in connection with any actual or claimed: (i) personal injury (including death), property damage or loss of any nature whatsoever alleged to have occurred as a result of the use of any of the goods covered by this Agreement, (ii) any defect in material, workmanship or design and (iii) patent, trademark or copyright infringement with respect to any of the goods sold.

## 11. PACKAGING

(a) All products must be new, and must be delivered in the manufacturer's standard package. Prices shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents.

(b) Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Group member's Purchase Order number.

~~(c) — Each shipment shall include a packing slip showing: the Purchase Order number; the ordering date; ordering department, if appropriate; ship to location; the item number; product description; quantity shipped; and backordered items, including the expected ship date.~~

## 12. DELIVERY AND PACKING SLIPS

(a) Each shipment shall include a packing slip showing: the Purchase Order number; the ordering date; ordering department, if appropriate; ship to location; the item number; product description; quantity shipped; and backordered items, including the expected ship date. Each container must be marked with the Purchase Order number, part number and quantity. Any itemized packing slip bearing the Purchase Order number as shown thereon must be left with the goods to insure their receipt.

~~(ab)~~ Time is of the essence as to delivery and any other performance required of Contractor. Delivery of goods shall be made as required on the individual Purchase Order. All deliveries will be made F.O.B. (freight on board) destination as freight pre-paid. Unless otherwise specified on the Purchase Order, all deliveries will be Inside Deliveries as designated by a representative of the Purchasing Group member placing the order. Inside Delivery refers to a delivery to a location designated by such representative that is other than a loading dock, front lobby, or reception area.

Specific delivery instructions will be provided at the time the order is placed and noted on the order form or Purchase Order. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or any other purpose will be paid by the Purchasing Group member unless such charge is expressly included on the Purchase Order.

(bc) Shipping and delivery costs, if applicable, shall be included in Contractor's prices. Contractor shall not invoice the Purchasing Group member separately for shipping or delivery costs.

~~(ed) Each container must be marked with the Purchase Order number, part number and quantity. Any itemized packing slip bearing the Purchase Order number as shown thereon must be left with the goods to insure their receipt.~~ Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of Contractor. When damage does occur, it is the responsibility of Contractor to immediately notify the Purchasing Group member staff.

(de) Contractor shall maintain an overall monthly average of 95 percent for next-day delivery of products purchased under this Agreement, unless noted elsewhere in this Agreement. The on-time delivery rate shall be calculated on a quarterly basis by dividing the number of completed on-time deliveries (no partial deliveries) by the total number of deliveries. That is, for orders reported as filled by the order entry system, the shipments shall be received within the times specified when the order is placed at least 95 percent of the time.

(ef) [Delivery commitments will be established in Exhibit 2, Statement of Work, based on the this RFP's next-day delivery requirement and vendor's RFP Response, including a remedy if the quarterly average for on-time delivery falls below 95 percent for three (3) consecutive months.]

(fg) The Contractor's failure to meet delivery terms may result in termination of this Agreement.

### 13. RISK OF LOSS

Contractor shall bear the risk of loss or damage to the ordered goods until Contractor delivers the goods to the place of business and, if specified by the Purchasing Group member, the Inside Delivery location, indicated on the Purchase Order.

### 14. INSPECTION AND ACCEPTANCE

Notwithstanding any prior inspection or payments, all goods and services delivered hereunder shall be subject to final inspection and acceptance or rejection by the Purchasing Group member at any time within thirty (30) days after delivery. All items which are not in compliance with the specifications hereof, which are not as warranted or which are shipped late, shipped in excess or insufficient quantities or substituted for items ordered hereunder may be rejected by the Purchasing Group member and returned at Contractor's expense and risk. Payment shall neither constitute an acceptance of the material nor impair the Purchasing Group member's right to inspect or any of the Purchasing Group member's remedies.

### 15. REPLACEMENT RETURN POLICY

The Contractor will arrange for the return of all mis-ordered, mis-shipped, returned, or damaged items at no cost to the Purchasing Group member. There will be no restocking fee for returns of items that are damaged or shipped by the vendor in error. The Contractor will not charge the Purchasing Group member for the return of any mis-ordered, mis-shipped or damaged items.

## 16. INVOICES, PAYMENT AND SETOFF

The Purchasing Group member shall have no obligation to pay for any item until one original and two copies of a correct invoice for the item is received at the address shown on the Purchase Order. Payment is due Net 30, unless otherwise indicated on the Purchase Order. Each invoice shall be printed on Contractor's standard printed bill form, and shall include at a minimum (i) the Purchase Order number, (ii) Contractor's name and address, (iii) the nature of the invoiced charge, (iv) the description and quantity of goods provided; (v) the per unit amount charged; ~~and~~ (vi) the extended price; ~~and~~ (vii); ~~including~~ all applicable taxes itemized separately. Amounts owed by Contractor to the Purchasing Group member due to Purchasing Group member's rejections of goods or services or discrepancies in said invoices will be, at the Purchasing Group member's option, fully credited against future invoices payable by the Purchasing Group member, or paid by Contractor within thirty (30) days from Contractor's receipt of a debit memo or other written request for payment by the Purchasing Group member. The Purchasing Group member shall have the right at any time to set off any amount owing from Contractor to the Purchasing Group member against any amount payable by the Purchasing Group member to Contractor pursuant to any purchase order or any other transaction or occurrence.

## 17. REPORTS

(a) Contractor shall provide each Purchasing Group member that purchase goods under this Agreement with monthly reports, as described in Exhibit 2, Statement of Work.

(b) Contractor shall provide the AOC Project Manager as described in section 25 below a quarterly program report in hardcopy and electronic format that provides the following information for each Purchasing Group member that order goods under this Agreement, including a program summary of the information:

(i) Delivery Information: Delivery information shall include the number of "On-Time Shipments" and the number of "Late Shipments." On-Time Shipments are defined as shipments of goods that meet the delivery commitments set forth in this Agreement. Late Shipments are defined as shipments that do not meet the delivery commitments set forth in this Agreement.

(ii) Non-Contract Items: A list of all Non-Contract items that are ordered, including the price charged to the Purchasing Group member.

(iii) Back-Ordered or Out-of-Stock Items: A list of items that were back ordered or out-of-stock at the time the Purchasing Group member placed their order, including the number of days before the order was filled with an acceptable replacement item or the requested item.

(v) Order Value: A summary, by Purchasing Group member, of the total value ordered during the quarter reported.

The Quarterly Report shall be provided no later than thirty (30) days after the end of each quarter and shall include purchases that are invoiced or paid for with a credit card.

## 18. AUDIT RIGHTS

Contractor agrees to maintain records relating to performance and billing by Contractor under this Agreement for a period of four (4) years after final payment of any Purchase Order issued under this Agreement. During the period of time that Contractor is required to retain such records, the AOC or its

representative may, during normal business hours, inspect and make extracts or copies of such records and other materials for purposes of confirming the accuracy of invoices submitted hereunder.

## **19. TERMINATION**

(a) The AOC may terminate this Agreement without cause by providing Contractor with thirty (30) days prior written notice.

(b) If a Purchasing Group member fails to pay delinquent invoices due hereunder within thirty (30) days after receipt of written notice of such default, or if a Purchasing Group member is delinquent in payment more than twice in any year, Contractor may discontinue providing goods and services to said Purchasing Group member under this Agreement. The parties agree that invoices are considered delinquent if payment is not received within forty-five (45) days of receipt of invoice.

(c) Contractor shall give the AOC written notice of the delinquent Purchasing Group member at the same time notice is given to the delinquent Purchasing Group member. The AOC represents that it is authorized to enter into this Agreement on behalf of each of the Purchasing Group members and, as such, is authorized to obtain copies of such delinquent notice.

## **20. INDEMNITY**

CONTRACTOR SHALL DEFEND (with counsel satisfactory to the AOC) INDEMNIFY, AND HOLD HARMLESS EACH AND EVERY PURCHASING GROUP MEMBER AND THEIR OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RESULTING IN ANY WAY FROM ANY DEFECT, WHETHER LATENT OR PATENT, IN THE GOODS OR SERVICES PURCHASED HEREUNDER OR FROM ANY ACT OR OMISSION OF CONTRACTOR, ITS AGENTS OR EMPLOYEES, INDEPENDENT CONTRACTORS OR SUBCONTRACTORS. THIS INDEMNIFICATION SHALL BE IN ADDITION TO ANY WARRANTY OR OTHER OBLIGATIONS OF CONTRACTOR AND SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM, DAMAGE, LOSS, LIABILITY, COST OR EXPENSES IS BASED ON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY. THE INDEMNITY SHALL SURVIVE DELIVERY AND ACCEPTANCE OF GOODS OR SERVICES.

## **21. INFRINGEMENT PROTECTION**

Contractor shall hold each Purchasing Group member and its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, for Contractor's infringement or use of any copyrighted or un-copyrighted composition, secret process, or patented or un-patented invention, article, or appliance furnished or used in connection with this Agreement and any subsequent Purchase Order.

## **22. INSURANCE**

Contractor agrees, warrants and represents to each of the Purchasing Group members that Contractor will maintain adequate insurance to cover any liabilities described in this Agreement. Contractor further warrants and represents that Contractor will maintain adequate insurance to cover any public liability, property damage and/or automobile liability for any damage incurred with Contractor's performance of any work on or about the premises or third-party premises to which the goods and services are to be

delivered as indicated on the Purchase Order. Contractor shall maintain proper Workers' Compensation Insurance covering all employees performing under this Agreement.

**23. LEGAL COMPLIANCE**

Contractor represents and warrants as follows:

(a) Contractor shall observe and comply with all federal, state, and city laws, rules, and regulations affecting goods and services under this Agreement.

(b) During the performance of this Agreement, 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. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and its subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor or its subcontractors interact in the performance of this Agreement. Contractor and its subcontractors shall take all reasonable steps to prevent harassment from occurring.

(c) 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) Contractor and any of its subcontractors shall give written notice of the above obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

(e) By signing this Agreement, Contractor represents and warrants that it complies with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Sections 12101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

(f) Contractor represents and warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Contractor or any agent, director, or representative of Contractor, to any officer, official, agent, consultant, or employee of the AOC or of any other Purchasing Group member with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this representation, the AOC has the right to terminate this Agreement for cause, either in whole or in part, and any loss or damage sustained by the AOC, or any other Purchasing Group member in procuring, on the open market, any items which Contractor agreed to supply, shall be borne and paid for by Contractor. The rights and remedies of each Purchasing Group member provided for in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

**24. STATUS AS INDEPENDENT CONTRACTOR AND SUBCONTRACTS**

Contractor is an independent contractor and while performing work on or off the premises of any Purchasing Group member neither Contractor nor any of its agents or employees shall be considered agents or employees of such Purchasing Group member. Contractor shall not subcontract or delegate its

obligations under this Agreement without the prior written consent of the AOC, and any attempted subcontracting or delegation without such consent is void.

**25. AGREEMENT ADMINISTRATION/COMMUNICATION**

(a) Under this Agreement, the AOC Project Manager shall monitor and evaluate the Contractor's performance. The AOC Project Manager for this Agreement is named below. All requests and communications concerning this Agreement shall be made through the AOC Project Manager.

Bill Hardin, Project Manager  
Judicial Council of California  
Administrative Office of the Courts  
2850 Gateway Oaks Drive, Suite 300  
Sacramento, CA 95833-3509

(b) Any notice concerning this Agreement from the Contractor to the AOC shall be in writing and shall be delivered as follows:

Paula Coombs, Contracting Officer  
Judicial Council of California  
Administrative Office of the Courts  
2850 Gateway Oaks Drive, Suite 300  
Sacramento, CA 95833-3509

(bc) Purchasing Group Member Contact: Each Purchase Order will include a contact for the party placing the order. Contractor shall contact the individual named on the Purchase Order regarding questions on the order or payment status.

(ed) Notice to Contractor shall be directed in writing to:

[Redacted]  
Attention: [Redacted]  
[Redacted]  
[Redacted]

**26. ASSIGNMENT**

Neither party shall assign this Agreement, either in whole or in part, without the prior consent of the other party in the form of a written amendment signed by the AOC and Contractor and any assignment without such consent is void except to the extent otherwise provided in this section with respect to assignment by the AOC. Such consent shall not be unreasonably withheld. However, the parties agree that in the event the AOC is required by law, statute, or regulation to assign this Agreement to another government entity for administrative purposes, Contractor's consent is not required. This Agreement shall be binding upon and inure to the benefit of successors and approved assigns of the parties.

**27. AGREEMENT MADE IN CALIFORNIA; VENUE**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provision. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the City and County of San Francisco ~~County~~.



**28. CONTRACT CONSTRUCTION**

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of the Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

**29. SURVIVAL**

Terms which shall survive any termination or expiration of this Agreement include, but are not limited to, Indemnity, Warranties, Infringement Protection, Audit Rights, and Assignment.

**30. SIGNATURE AUTHORITY**

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

**31. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and final understanding of the parties with respect to the subject matter hereof and supersedes and terminates any and all prior and/or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to the subject matter hereof. No subsequent amendment to this Agreement will be effective unless in a writing signed by properly authorized representatives of AOC and Contractor.

**END OF MASTER AGREEMENT TERMS AND CONDIITONS**

**EXHIBIT 1  
PRICING SHEETS**

[ATTACH VENDOR PRICING SHEETS, INCLUDING PERCENTAGE DISCOUNT FOR NON-  
CONTRACT ITEMS AND REFERENCE NUMBER OF PAGES ATTACHED]

**EXHIBIT 2  
STATEMENT OF WORK**

[ATTACH NEGOTIATED STATEMENT OF WORK BASED ON VENDOR'S PROPOSAL]