

## **ATTACHMENT 2 CONTRACT TERMS**

### **EXHIBIT A - STANDARD PROVISIONS**

#### **1. INDEMNIFICATION**

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

#### **2. RELATIONSHIP OF PARTIES**

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

#### **3. TERMINATION FOR CAUSE**

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

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

B. In the event the State terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the State may procure, upon such terms and in such

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manner as it may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the State for any excess costs for such similar supplies or services, subject to the limitations contained elsewhere herein; further, the Contractor shall continue the performance of this Agreement to the extent not terminated under this provision.

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

### **4. NO ASSIGNMENT**

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

### **5. TIME OF ESSENCE**

Time is of the essence in Contractor's performance of this Agreement.

### **6. VALIDITY OF ALTERATIONS**

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

### **7. CONSIDERATION**

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

***END OF EXHIBIT***

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### EXHIBIT B - SPECIAL PROVISIONS

#### 1. DEFINITIONS

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

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

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- G. The “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.
- H. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- I. “**Day**” means calendar day, unless otherwise specified.
- J. “**Deliverable(s)**” or “**Submittal(s)**” means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- K. “**Force Majeure**” means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i. Acts of God or the public enemy;
  - ii. Acts or omissions of any government entity;
  - iii. Fire or other casualty for which a party is not responsible;
  - iv. Quarantine or epidemic;
  - v. Strike or defensive lockout; and,
  - vi. Unusually severe weather conditions.
- L. “**Grant**” refers to the amount available for funding the Work to be Performed which is be provided by a grant from the U.S. Department of Health and Human Services, Administration for Children and Families, Court Improvement Program, Catalog of Federal Domestic Assistance (CFDA) Program No. 93.586 and a grant from the State of California Department of Social Services.
- M. “**Grantee**” and “**Subgrantee**” The “**Grantee**” refers to the recipient of the **Grant**, the Judicial Council of California, Administrative Office of the Courts. The “**Subgrantee**” refers to a subrecipient of Grant/subgrant funds via a sub-tiered award by the Grantee.
- N. “**Grantor**” refers to either the U.S. Department of Health and Human Services, Administration for Children and Families or the State of California, Department of Social Services.

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- O. “**Key Personnel**” refers to the Contractor’s personnel identified in the resume set forth in Exhibit TBD - Contractor’s Key Personnel, whom the State has identified and approved to perform the Work of the Contract.
- P. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- Q. “**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.
- R. The “**State**” refers to the Judicial Council of California/Administrative Office of the Courts (“AOC”). The State is one of the parties to this Agreement.
- S. “**State Standard Agreement**” means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual “Contract Counterpart.”
- T. “**Stop Work Order**” means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this Exhibit B - Special Provisions.
- U. “**Subcontractor**” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
- V. “**Task(s)**” means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.

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- W. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the State or the Contractor, which is not a party to this Agreement.
- X. **“To Be Determined”** or **“TBD”** is the item that is not yet identified. Any and all To Be Determined items, set forth herein, shall be determined prior to award or by mutual agreement between the Contractor and the State and incorporated into the Agreement via Amendment(s).
- Y. **“Work”** or **“Work to be Performed”** or **“Contract Work”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

### **2. MANNER OF PERFORMANCE OF WORK**

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction and in compliance with the Non-discrimination/No Harassment Clause, as set forth in this Exhibit B - Special Provisions.

### **3. TERMINATION OTHER THAN FOR CAUSE**

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

### **4. STATE'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS**

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to the Contractor.

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Such termination shall be in addition to the State's rights to terminate for convenience or default.

- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
  - i. The State will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
  - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
  
- C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

### **5. AGREEMENT ADMINISTRATION/COMMUNICATION**

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

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

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

Telephone: **TBD**  
Facsimile: **TBD**  
Email: **TBD**

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

### **6. 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.

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### **7. DEFICIENT PERFORMANCE**

Should the State find the Contractor or any of its Subcontractors to be deficient in any aspects of performance under this Agreement, the Contractor shall submit a proposed corrective action plan to the State. The corrective action plan shall identify specific action to be taken to correct the deficient performance and shall be submitted within five (5) Days after notification of the deficiencies. Should the Contractor fail to present a corrective action plan as required or take appropriate corrective action, the State shall notify the Contractor in writing that this Agreement is terminated, in whole or in part.

### **8. STOP WORK**

- A. The State may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- i. Cancel the Stop Work Order; or
  - ii. Terminate the Work covered by the Stop Work Order as provided for in either of the termination provisions of this Agreement.
- B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume Work. The State shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
- i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and
  - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.



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- C. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State's Obligation Subject to Availability of Funds provision, as set forth under this Exhibit B - Special Provisions, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

### **9. ACCEPTANCE OF THE WORK**

- A. The Project Manager shall be responsible for the sign-off Acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the Project Manager will apply the Acceptance Criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
- B. Acceptance Criteria for Work ("**Criteria**") provided by the Contractor pursuant to this Agreement:
  - i. Timeliness: The Work was delivered on time;
  - ii. Completeness: The Work contained the Data, Materials, and features required in the Contract; and
  - iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the State, in accordance with direction from the Project Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The Project Manager shall use the Acceptance and Signoff Form, provided as Exhibit E - Acceptance and Sign-off Form to this Agreement, to notify the Contractor of the Work's acceptability.
- D. If the State rejects the Work provided, the Project Manager shall submit to the Contractor a written rejection using Exhibit E - Acceptance and Sign-off Form, describing in detail the failure of the Work as measured against the Criteria. If the State rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.

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- E. If the Project Manager requests further change, the Contractor shall meet with the Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.
- F. If agreement cannot be reached between the Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the State may terminate this Agreement pursuant to the terms of Standard Provisions paragraph 3, as set forth in Exhibit A - Standard Provisions.

### **10. CONTRACTOR'S PERSONNEL AND REPLACEMENT OF PERSONNEL**

- A. The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the State under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. The State agrees to provide Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- B. The State has the right to review resumes and interview the Contractor's proposed personnel prior to commencement of the Work of this Agreement. If, in the State's reasonable opinion, any of the proposed personnel is unsatisfactory or does not meet the State's requirements, the Contractor shall submit a different candidate for consideration.
- C. If any of the Contractor's personnel become unavailable during the term of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- D. The Contractor shall endeavor to retain the same individuals on the Project during the performance of the Work of this Agreement. However, the Contractor may, with approval of the Project Manager, introduce personnel to the Project with specific skill sets or release personnel from the Project whose skill set is not needed at the time.

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- E. If any of the Contractor's personnel identified within the Agreement become unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the Project Manager.
- F. If any of the Contractor's personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the State, the State may terminate this Agreement for cause pursuant to Exhibit A - Standard Provisions, paragraph 3.

### **11. ASSIGNMENTS OR SUBCONTRACTING**

- A. 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 State to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State'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 State, and any attempt by the Contractor to assign or subcontract any performance of this Agreement without the express written consent of the State shall be void and shall constitute a breach of this Agreement. If the Contractor is authorized by the State to subcontract or assign, all the terms of this Agreement shall be included in such subcontract or assignment.
- B. Any substitution or prolonged absence of the personnel, who were specifically identified in the original proposal, as accepted, must be approved. Failure to obtain acceptance shall constitute a major breach of this Agreement.

### **12. CONTRACTUAL AND REGULATORY COMPLIANCE**

The Contractor shall follow applicable federal, state, and local laws and regulations, including but not limited to:

- i. The Grant terms and conditions set forth in Attachment F, Grant Terms and Conditions.
- ii. California Rules of Court, Rule 10.810.

### **13. EVALUATION OF CONTRACTOR**

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

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### **14. CONFIDENTIALITY**

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

### **15. COPYRIGHTS AND RIGHTS IN DATA**

- A. The State reserves the right to use and copyright, in whole or in part, any Data produced with funding from this Agreement.
- B. The Contractor agrees not to copyright any Data produced with funding from this Agreement unless the State gives the Contractor express permission to do so. If such permission is obtained and the Data is copyrighted, the State will be given an exemption that reserves for it the right to use, duplicate, and disseminate the Data without fee.

### **16. SERVICES WARRANTY**

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

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elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

### **17. CHANGES AND AMENDMENTS**

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Project Manager. Requests for changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After the Project Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

### **18. ACCOUNTING SYSTEM REQUIREMENT**

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

### **19. 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.

### **20. AUDIT**

The Contractor shall permit the authorized representative of the State or its designee or both at any reasonable time to inspect or audit all Data relating to performance to the State under this Agreement. The Contractor further agrees to maintain such Data for a period of four (4) years after the expiration date of this Agreement, whichever occurs later.

### **21. OWNERSHIP OF INTELLECTUAL PROPERTY, ETC.**

- A. Unless the Contractor and the State reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the State's requirement (i) all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the State shall be treated as if it were "work for hire" for the State, and (ii) the Contractor will immediately disclose to the State all discoveries, inventions,

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enhancements, improvements, and similar creations (collectively, "Creations") made, in whole or in part, by the Contractor in the course of or related to providing services to the State.

- B. All ownership and control of the above Data, Materials, and Creations, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the State, without any additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the State. The Contractor agrees to execute any documents required by the State to register its rights and to implement the provisions herein.

### **22. TRADE SECRET, PATENT AND COPYRIGHT INDEMNIFICATION**

- A. The Contractor shall hold the State, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in connection with the Agreement.
- B. The Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims, and liability for patent, copyright, and trade secret infringement.
- C. Should the Data, Materials, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Data or Materials, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Data or Materials by the State shall be prevented by injunction, the Contractor agrees to take back such Data or Materials and make every reasonable effort to assist the State in procuring substitute Data or Materials. If, in the sole option of the State, the return of such infringing Data or Materials makes the retention of other Data or Materials acquired from the Contractor under this Agreement impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Data or Materials and refund any sums that the State has paid the Contractor less any reasonable amount for use or damage.

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- D. The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright, or trade secret infringement which is based upon the following:
- i. The combination or utilization of Data and/or Materials furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
  - ii. The operation of equipment furnished by the Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or,
  - iii. The modification by the State of the equipment furnished hereunder or of the software; or,
  - iv. The combination or utilization of software furnished hereunder with non-Contractor supplied software.
- E. The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- F. The foregoing states the entire liability of the Contractor to the State with respect to infringement of patents, copyrights, or trade secrets.

### **23. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA**

- A. The State agrees that all Data and Materials appropriately marked or identified in writing as proprietary, and furnished hereunder, are provided for the State's exclusive use for the purposes of this Agreement only. All such proprietary Data and software shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary Data are not disclosed to others, without prior written consent of the Contractor.
- B. The State will use reasonable efforts to insure, prior to disposing of any media, that any licensed Data and Materials contained thereon have been erased or otherwise destroyed.
- C. The State agrees that it will take appropriate action by instruction, agreement, or otherwise, with its employees, or other persons permitted access to licensed software and other proprietary Data, to satisfy its obligations under this Agreement with respect to use, copying, modification, protection, and security of proprietary software and other proprietary Data.

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### **24. SOLICITATION**

No employee of the applicant agency, the Contractor, or any agency acting on behalf of the agency, may solicit or accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

### **25. LIMITATION ON PUBLICATION**

The Contractor shall not, without prior written consent of the State, directly or indirectly, make use of advertising or publicity containing any reference to the State or any of its employees.

### **26. LIMITATION ON STATE'S LIABILITY**

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

### **27. INSURANCE REQUIREMENTS**

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the State shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.
- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
- i. In the event, Contractor has employees: Workers' Compensation at statutory requirements of the State of residency.
  - ii. In the event, Contractor has employees: Employers' Liability with limits not less than \$500,000.00 for each accident.
  - iii. Commercial General Liability Insurance with limits not less than \$500,000.00



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

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Courts, Senior Manager, Business Services, 455 Golden Gate Avenue, 7<sup>th</sup> Floor, San Francisco, CA 94102-3688.

### **28. 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.

### **29. COVENANT AGAINST GRATUITIES**

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

### **30. NATIONAL LABOR RELATIONS BOARD**

By executing this Agreement, the Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal Court has been issued against the Contractor within the immediately preceding two (2)

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

### **31. DRUG-FREE WORKPLACE**

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

### **32. NONDISCRIMINATION/NO HARASSMENT CLAUSE**

- A. During the performance of this Agreement, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or proposer for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and proposers for employment are free of such discrimination.
- B. During the performance of this Agreement, the Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its Subcontractors interact in the performance of this Agreement. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- C. The Contractor shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, §§12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, §§7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, §12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- D. The Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. The Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

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### **33. AMERICANS WITH DISABILITIES ACT**

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

### **34. 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.

### **35. CALIFORNIA LAW**

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

### **36. 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.

### **37. 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.

### **38. SIGNATURE AUTHORITY**

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

### **39. SURVIVAL**

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

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**40. ENTIRE AGREEMENT**

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

***END OF EXHIBIT***

**ATTACHMENT 2  
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**EXHIBIT C - PAYMENT PROVISIONS**

**1. CONTRACT AMOUNT**

- A. The total amount the State may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, shall be the firm fixed price per Deliverable, not to exceed the Contract Amount of **[TBD but shall not exceed \$30,000]**, as set forth in this Exhibit.
  
- B. The Contractor has estimated the costs and expenses necessary to complete the Work. The State’s acceptance of the Contractor’s proposal and price does not (i) imply that the State approves of or adopts the Contractor’s plan, means, methods, techniques, or procedures required to perform the Work, nor (ii) relieve the Contractor from the sole responsibility for the accuracy of its estimate and timely completion of the Work of this Agreement within the total amount for compensation set forth herein.

**2. COMPENSATION FOR CONTRACT WORK**

- A. For performing the Work of this Agreement, as set forth in Exhibit D, Work to be Performed, the State shall compensate the Contractor, for the completion and Acceptance of each Deliverable, at the firm fixed price set forth in Table 1, below.

**Table 1: Deliverables, Due Dates, and Firm Fixed Prices per Deliverable**

<i>Deliverable No. and Description</i>	<i>Deliverables Due Date</i>	<i>Firm Fixed Price Per Deliverable</i>
<b>Deliverable 1:</b> Meeting between AOC Project Manager and the Contractor to discuss formation of the Indian Child Welfare Act Advisory Group (ICWAAG). Minutes of this first meeting identifying proposed action items, resources, and strategies.	<b>TBD</b> but no later than May 31, 2010	<b>TBD</b>
<b>Deliverable 2:</b> Invitations sent to prospective members of the ICWAAG. Meeting 1 with ICWAAG Group occurs. Summary of e-mail correspondence among members of the ICWAAG members for month of May.	<b>TBD</b> but no later than June 30, 2010	<b>TBD</b>

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<i>Deliverable No. and Description</i>	<i>Deliverables Due Date</i>	<i>Firm Fixed Price Per Deliverable</i>
<b>Sub-Total Amount for Deliverables 1 and 2</b>		<b>[TBD but shall not exceed \$13,000.00]</b>
<b>Deliverable 3:</b> Draft of competencies and learning objectives for module 3. Invitations sent for Meeting 2 with ICWAAG Group. Summary of e-mail correspondence among members of the ICWAAG members for month of June.	<b>TBD</b> but no later than July 31, 2010	<b>TBD</b>
<b>Deliverable No. 4:</b> Draft of competencies and learning objectives for modules 4 and 5. Meeting 2 with ICWAAG Group. Summary of e-mail correspondence among members of the ICWAAG for the months of July and August.	<b>TBD</b> but no later than August 30, 2010	<b>TBD</b>
<b>Deliverable No. 5:</b> Meeting 3 with ICWAAG Group. Summary of e-mail correspondence among members of the ICWAAG for the month of September.	<b>TBD</b> but no later than September 30, 2010	<b>TBD</b>
<b>Deliverable No. 6:</b> Meeting 4 with ICWAAG Group. Summary of e-mail correspondence among members of the ICWAAG for the months of October.	<b>TBD</b> but no later than October 30, 2010	<b>TBD</b>
<b>Deliverable No. 7:</b> Delivery of all remaining work product listed in scope of services.	<b>TBD</b> but no later than November 30, 2010	<b>TBD</b>
<b>Sub-Total Amount for Deliverables 3, 4, 5, 6, and 7</b>		<b>[TBD but shall not exceed \$17,000.00]</b>
<b>Contract Amount</b>		<b>[TBD but shall not exceed \$30,000.00]</b>

B. The total actual cost which the State may reimburse the Contractor, pursuant to this paragraph, shall not exceed **[TBD but shall not exceed \$30,000.00]**.

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### **3. DIRECT EXPENSES**

All fees and charges noted in this Agreement are inclusive of any and all anticipated travel, lodging, transportation, clerical support, Materials, fees, overhead, profits, and other costs and/or expenses incidental to the performance of the specified requirements under this Agreement.

### **4. OTHER EXPENSES**

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

### **5. TAXES**

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

### **6. METHOD OF PAYMENT**

- A. The Contractor shall submit an invoice for Work provided, as set forth in Exhibit D - Work to be Performed. In no event shall the Contractor bill the State more often than once during any month. After receipt of invoice, the State will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.
- B. The State will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate the following:
  - i. The Contract number;
  - ii. An unique invoice number;
  - iii. The Contractor's name and address;
  - iv. The taxpayer identification number;
  - v. A description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate;



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- vi. The of delivery of Deliverables;
  - vii. The appropriate contractual billing rate(s), including rate(s) for allowable expenses, as set forth herein; and
  - viii. A preferred remittance address, if different from the mailing address.
- C. The Contractor shall submit one (1) original and two (2) copies of invoices to:
- Judicial Council of California  
Administrative Office of the Courts  
Finance Division, Accounts Payable  
455 Golden Gate Avenue, 7th Floor  
San Francisco, CA 94102-3688
- D. Please note that invoices or vouchers not on printed bill heads shall be signed by the Contractor.
- E. **Invoices for completed and Accepted Deliverables 1 and 2, must be submitted by July 31, 2010. Invoices for completed and Accepted Deliverables 3, 4, 5, 6, and 7 must be submitted by December 31, 2010.**

### **7. DISALLOWANCE**

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

***END OF EXHIBIT***

## **ATTACHMENT 2 CONTRACT TERMS**

### **EXHIBIT D – WORK TO BE PERFORMED**

#### **1. TERM**

The services are expected to be performed between the dates of execution of the contract and expire on **TBD**.

#### **2. SCOPE OF SERVICES**

- A. The Contractor will provide the following Services develop and provide curriculum for
- B. Organize, convene, and facilitate at least four meetings of approximately 2-3 hours each of an Indian Child Welfare Act Advisory Group which will consist of no fewer than three qualified individuals to be selected by the AOC in consultation with the contractor. The meetings may be held onsite at the AOC or via conference call.
- C. Monitor and summarize e-mail correspondence among members of the advisory group;
- D. Conduct research to determine what case law, statutes, rules, policies and academic research may inform the development of the curriculum;
- E. Develop full curriculum for the topic area incorporating the material and information gathered from the advisory group meetings, email correspondence and research. The curriculum must include the following components:
  - i. Competencies;
  - ii. Learning objectives;
  - iii. Lesson plans;
  - iv. In-person and distance learning training;
  - v. Training guide;
  - vi. Supplemental material including power point, handouts, case examples, model ICWA scenarios, workshop activities, and other training material;
  - vii. Full bibliography; and
  - viii. At least one demonstration and pilot of the completed curriculum at an appropriate forum to be agreed upon by the contractor and the AOC.
- F. Include in the curriculum alternative approaches to accommodate the varying knowledge levels of potential attendees as well as the different learning styles that may be present within a group of attendees.

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### **3. DESCRIPTION OF WORK**

The contractor will deliver fully developed curriculum for Modules 3, 4, and 5 for the Indian Child Welfare Act. The curriculum will include:

- A. Module 3: Jurisdictional and Procedural Issues: Jurisdiction; Tribal transfer or intervention; waivers from Indian parents/ custodians & appointment of counsel to cover such issues as:
- 1) When does a tribe have exclusive jurisdiction?
  - 2) How does this potentially apply in California?
  - 3) What does an agency or petitioners need to do to determine whether a tribe might have exclusive jurisdiction? What does the court need to do?
  - 4) When do a tribe and state court have concurrent jurisdiction?
  - 5) Mandatory transfer and what constitutes “good cause” not to transfer?
  - 6) Intervention by tribe
  - 7) Full Faith and Credit requirements
  - 8) What rights does a tribe have if it does not intervene; and
  - 9) When must counsel be appointed for Indian parents and Indian custodians
  - 10) Other issues as identified
- B. Module 4 : Evidentiary Issues including:
- 1) Qualified Expert Witness Testimony
    - a) When is it required?
    - b) What needs to be addressed/ what issue does the testimony go to?
    - c) Who qualifies?
    - d) How should expert be chosen?
    - e) Can there be more than one expert?
    - f) What should expert do to prepare?
  - 2) Burden of proof
  - 3) How does the “clear and convincing” evidence standard differ from the normal standard? What evidence would be required?

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- 4) How does the “beyond a reasonable doubt” standard differ? What evidence is required?
- 5) Findings in Dependency and Delinquency Proceedings
- 6) Findings in Family Code Proceedings
- 7) Findings in Probate Code Proceedings
- 8) Other issues as identified

C. Module 5 – Preserving issues for appeal; Remedies and Post Trial issues including:

- 1) How to preserve issues for appeal;
- 2) Notification to Secretary of Interior;
- 3) Special Record Keeping;
- 4) Petition to Invalidate State Court Action – federal or state court?
- 5) Request for Return of Custody of Indian Child; and
- 6) Indian Child’s Right to Information upon Age 18
- 7) Other issues as identified

#### 4. DELIVERABLE DESCRIPTION AND DUE DATES

The Contractor will deliver the Deliverables by the due dates set forth in Table 1 below:

**Table 1: Deliverables and Due Dates**

Deliverable	Due Date
<b>Deliverable 1:</b> Meeting between AOC Project Manager and the Contractor to discuss formation of the Indian Child Welfare Act Advisory Group (ICWAAG).	<b>TBD</b> but no later than May 31, 2010
<b>Deliverable 2:</b> Invitations sent to prospective members of the ICWAAG. Meeting 1 with ICWAAG Group occurs. Summary of e-mail correspondence among members of the ICWAAG members for month of May.	<b>TBD</b> but no later than June 30, 2010

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<b>Deliverable</b>	<b>Due Date</b>
<b>Deliverable 3:</b> Draft of competencies and learning objectives for module 3. Invitations sent for Meeting 2 with ICWAAG Group. Summary of e-mail correspondence among members of the ICWAAG members for month of June.	<b>TBD</b> but no later than July 31, 2010
<b>Deliverable No. 4:</b> Draft of competencies and learning objectives for modules 4 and 5. Meeting 2 with ICWAAG Group. Summary of e-mail correspondence among members of the ICWAAG for the months of July and August.	<b>TBD</b> but no later than August 30, 2010
<b>Deliverable No. 5:</b> Meeting 3 with ICWAAG Group. Summary of e-mail correspondence among members of the ICWAAG for the month of September.	<b>TBD</b> but no later than September 30, 2010
<b>Deliverable No. 6:</b> Meeting 4 with ICWAAG Group. Summary of e-mail correspondence among members of the ICWAAG for the months of October.	<b>TBD</b> but no later than October 30, 2010
<b>Deliverable No. 7:</b> Delivery of all remaining work product listed in scope of services.	<b>TBD</b> but no later than November 30, 2010

**5. PROGRESS REPORTS**

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

**6. CONTRACTOR’S RESPONSIBILITIES**

The Contractor’s Project Manager will have the following responsibilities under this Contract:

- i. Works closely with AOC Project Manager;
- ii. Manages, prepares and refines the Contract’s deliverables;
- iii. Proactively assists with resolution of issues with any aspect of the Work;
- iv. Proactively anticipates Project deviations and is responsible for taking immediate corrective action; and

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- v. Works with Project Manager to manage and coordinate work and knowledge transfer.

**7. AOC'S RESPONSIBILITIES**

The State's 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 - ACCEPTANCE OF WORK AND  
SIGN-OFF FORM FOR DELIVERABLES**

▶ Description of Work for Deliverable No. \_\_\_\_\_ provided by Contractor:

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▶ Date submitted: \_\_\_\_\_

▶ Work is:

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

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

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

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▶ Please indicate the level of satisfaction:  Poor  Fair  Good  Very Good  Excellent

▶ Comments, if any:

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▶ Work:  is accepted.  is unacceptable as noted above.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

***END OF FORM***

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### **EXHIBIT F – GRANT TERMS AND CONDITIONS**

**The program, under which this Agreement is funded, is governed by the following terms:**

1. 2 CFR Part 225 - Cost Principles for State, Local and Indian Tribal Governments
2. 45 CFR Part 16 - Procedures of the Departmental Grant Appeals Board;
3. 45 CFR Part 30 - Claims Collection;
4. 45 CFR Part 76 - Debarment and Suspension from Eligibility for Financial Assistance (Nonprocurement);
5. 45 CFR Part 80 - Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services, Effectuation of Title VI of the Civil Rights Act of 1964;
6. 45 CFR Part 81 - Practice and Procedure for Hearings Under Part 80 of this Title;
7. 45 CFR Part 84 - Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance;
8. 45 CFR Part 86 - Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance;
9. 45 CFR Part 87 - Equal Treatment for Faith-Based Organizations;
10. 45 CFR Part 91 - Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;
11. 45 CFR Part 92 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State, and Local, and Tribal Governments;
12. 45 CFR Part 93 - New Restrictions on Lobbying;
13. 45 CFR Part 95, Subpart E - Cost Allocation Plans;



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14. 45 CFR 100.12 - How may a State simplify ... Federally required State plans?
15. Audit requirements under Office of Management and Budget Circular A-133 - Audits of States, Local Governments and Non-Profit Organizations, and cost principles according to recipient type:
  - Non-Profit Organizations: 2 CFR Part 230;
  - Educational Institutions: 2 CFR Part 220;
  - Commercial Vendors or Subcontractors: 48 CFR Part 31.
16. Federal funds awarded under this grant program must constitute no more than 75 percent of total program expenditures. The remaining 25 percent of program expenditures must be derived from non-Federal sources, including State funds, local funds or cash or in-kind contributions.
17. Federal funds awarded under this program must not be used for construction or the purchase of land.
18. The U.S. Government Accountability Office (GAO) maintains FraudNET, a system for reporting allegations of fraud, waste and abuse under Federal grants and cooperative agreements. Reports are kept confidential; you need not provide your name. Information provided through the Internet web site is secure and all information is safeguarded against unauthorized disclosure.

Report the possible misuse of federal funds, through one of the following methods:

Phone: (800) 424-5454;  
Fax: (202) 512-3086;  
E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov) ;  
Mail: GAO FraudNET  
441 G Street NW.  
Washington, D.C. 20548

Please provide as much detailed information as possible in your report.

19. Audit requirements of the Single Audit Act of 1984 (Public Law 98-502)

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20. Public Law 103-333, "Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1995," the following provisions are applicable to these awards:
- Section 507: "Purchase of American-Made Equipment and Products - It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made."
  - Section 508: "When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all States receiving Federal funds, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources."
21. Title XII of Public Law 103-227, the "PRO-KIDS Act of 1994," smoking may not be permitted in any portion of any indoor facility owned or regularly used for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments. Federal programs include grants, cooperative agreements, loans and loan guarantees, and contracts. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug and alcohol treatment.
22. Direct federal grants, sub-awards, or contracts under the grant program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time and location, their inherently religious activities from the services funded under this program. (See 45 CFR 87)
23. Federal grant funds provided under these awards may not be used by the Grantee or any sub-grantee to support lobbying activities to influence proposed or pending Federal or State legislation or appropriations. This prohibition is related to the use of Federal grant funds and is not intended to affect an individual's right or that of any organization, to petition Congress, or any other level of Government, through the use of other resources. (See 45 CFR Part 93.)

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24. These awards are subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000 (22 USC 7104). The full text of this requirement is found at <http://www.acf.gov/.grants/awardterms.html>
25. No organization may participate in this program in any capacity or be a recipient of Federal funds designated for this program if the organization has been debarred or suspended or otherwise found to be ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." (See 45 CFR 92.35.)
26. Debarment and Suspension - For federally funded agreements, Contractor certifies that to the best of his/her knowledge and belief that he/she and their principals or affiliates are not debarred or suspended from federal financial assistance programs and activities nor proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. The Contractor also certifies that it is not listed on the Excluded Parties Listing System (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17).
27. Certification Regarding Lobbying - For Agreements with Contractors who are State entities not under the authority of the Governor, or cities, private firms or agencies which are receiving in excess of \$100,000 in federal funds from CDSS to perform services, the Contractor agrees to sign and submit to CDSS the 'Certification Regarding Lobbying' form which is being forwarded to the Contractor with this Agreement. (Section 1352, Title 31 of the U.S. Code).
28. A-133 Audit - For any contract with a state or local agency, non-profit agency, or an institution of higher education containing at least \$500,000 of federal funds, the Contractor agrees to obtain an agency-wide, independent audit in accordance with the Federal Office of Management and Budget (OMB) Circular A-133. All OMB Circular A-133 audit reports shall meet the reporting requirements established in OMB § \_\_ .320 "Report Submission" and a copy shall be forwarded to the CDSS Project Representative identified in Exhibit A, Scope of Work.
29. Indirect Costs/Administrative Overhead - For agreements with other governmental entities and public universities, indirect costs are expenses incurred for administrative services such as, but not limited to, accounting; personnel and payroll administration; accounts payable services; general and specialized insurance coverage; compliance and regulatory monitoring; independent audit services; and legal services. Indirect costs are applied to personnel, operating expenses, supplies, equipment, and travel expenses. Per State Contracting Manual, Section 3.06.B, agencies shall

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assure that all administrative fees are reasonable considering the services being provided. Agencies may only pay overhead charges on the first \$25,000 of each subcontract. Any subcontractor receiving \$25,000 or more must be clearly identified in the budget display and excluded when the total indirect costs are calculated.

### 30. Dispute Provisions

- a. If the Contractor disputes a decision of the State's designated representative regarding the performance of this Agreement or on other issues for which the representative is authorized by this Agreement to make a binding decision, Contractor shall provide written dispute notice to the State's representative within 15 calendar days after the date of the action. The written dispute notice shall contain the following information:
  - i. the decision under dispute;
  - ii. the reason(s) Contractor believes the decision of the State representative to have been in error (if applicable, reference pertinent contract provisions);
  - iii. identification of all documents and substance of all oral communication which support Contractor's position; and
  - iv. the dollar amount in dispute, if applicable.
  
- b. Upon receipt of the written dispute notice, the State program management will examine the matter and issue a written decision to the Contractor within 15 calendar days. The decision of the representative shall contain the following information:
  - i. a description of the dispute;
  - ii. a reference to pertinent contract provisions, if applicable;
  - iii. a statement of the factual areas of agreement or disagreement; and
  - iv. a statement of the representative's decision with supporting rationale.
  
- c. The decision of the representative shall be final unless, within 30 days from the date of receipt of the representative's decision, Contractor files with the California Department of Social Services a notice of appeal addressed to:

California Department of Social Services  
744 P Street, M.S. 7-747  
Sacramento, CA 95814

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Attention: Chief, Contracts and Financial Analyst Bureau

Pending resolution of any dispute, Contractor shall diligently continue all contract work and comply with all of the representative's orders and directions.

31. Computer Software Copyrights - Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
32. Priority Hiring - For any contract in excess of \$200,000, the Contractor is obligated to give priority hiring consideration in filling vacancies for positions funded by this contract to qualified recipients of aid under Welfare and Institution Code Section 11200. The requirement shall not interfere with or require a violation of a collective bargaining agreement, a federal affirmative action obligation or hiring disabled veterans of the Vietnam era, or nondiscrimination compliance laws of California and does not require the employment of unqualified recipients of aid.
33. For Contracts With Federal Funds
  - a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of Congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
  - b. This Agreement is valid and enforceable only if sufficient funds are made available to the CDSS by the United States Government for the term of this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms, or funding of this Agreement in any manner.
  - c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
  - d. The CDSS has the option to invalidate the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction of funds.

***[End of Exhibit F]***