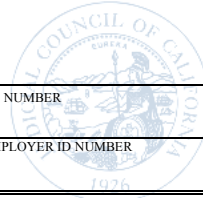


JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS
STANDARD AGREEMENT COVERSHEET (rev 12-08)



AGREEMENT NUMBER @
FEDERAL EMPLOYER ID NUMBER @

- In this agreement (the "Agreement"), the term "Contractor" refers to @, and the term "AOC" or "State" refers to the **Judicial Council of California, Administrative Office of the Courts.**
- This Agreement becomes effective as of @ (the "Effective Date") and expires on @.
- The title of this Agreement is: **Computer Aided Facilities Management Software Upgrade.**

The title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.
- The maximum amount that the AOC may pay Contractor under this Agreement is \$@
- The parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement contains the parties' entire understanding related to the subject matter of this Agreement. If there are any inconsistent terms in the exhibits, the following is the descending order of precedence: Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, and Exhibit F. Any Amendments, starting with the most recent, shall take precedence over the existing Contract Documents. There will be various written documents, schedules, specifications, plans, details, etc. that will be drafted at different times throughout the term of the Agreement to advance the Work being performed. Any provision of any such document, schedule, specification, plan, detail, etc. that conflicts with any Contract Document shall be null and void and without effect, and the Contract Documents shall govern.
- This Agreement is composed of the following documents that are collectively referred to as the "Contract Documents":


- This Standard Agreement Coversheet
 - Exhibit A, Standard Provisions
 - Exhibit B, Special Provisions
 - Exhibit C, Payment Provisions
 - Exhibit D, Work to be Performed
 - Exhibit E, Contractor's Key Personnel
 - Exhibit F, Attachments, including Attachment 1, Acceptance and Signoff Form
- and any modifications to the foregoing or additions made in accordance with this Agreement.

AOC'S SIGNATURE	CONTRACTOR'S SIGNATURE
Judicial Council of California, Administrative Office of the Courts	CONTRACTOR'S NAME (If Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.) @
BY (Authorized Signature) 	BY (Authorized Signature)
PRINTED NAME AND TITLE OF PERSON SIGNING Grant Walker, Senior Manager – Business Fiscal Services	PRINTED NAME AND TITLE OF PERSON SIGNING
ADDRESS Attn: Business Services Unit Fiscal Services Office 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS @

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Administrative Office of the Courts Use Only

Fund Title	Program/ Category	Item	Chapter	Statute	Fiscal Year	Object of Expenditure	Amount
Amount Encumbered by this Document:		Prior Amount Encumbered for this Contract:			Total Amount Encumbered to Date:		
\$		\$0.00			\$		
I hereby certify upon my own personal knowledge that budgeted funds are available for the period of the expenditure stated above.							
SIGNATURE OF ACCOUNTING OFFICER						DATE	
							

**EXHIBIT A
STANDARD PROVISIONS**

1. Indemnification

The Contractor shall indemnify, defend, and save harmless the State of California, the Judicial Council of California, and the Administrative Office of the Courts and their respective elected and appointed officials, judges, officers, and employees from any and all claims and losses accruing or resulting to or from its, or any of its employees, agents, 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 employees, agents, Subcontractors, suppliers, and laborers, and any other person, firm, or corporation furnishing or supplying Work, Materials, Data, or services in the performance of this Agreement.

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

2. Relationship of Parties

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

3. Termination for Cause

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

- i) If the Contractor (a) fails to perform the Work 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

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permit the appointment of a receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any State authority relating to insolvency or protection from the rights of creditors.

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

Contractor shall not voluntarily or involuntarily assign (e.g. assignment by operation of law), encumber, novate, or otherwise transfer or delegate ("Assign") all or any interest in this Agreement ("Assignment") without the prior advance written consent of the AOC. Any request from Contractor to Assign this Agreement shall be provided to AOC in the form of a Notice. The AOC shall have the right to impose conditions upon any Assignment. The AOC's consent to Assignment shall be evidenced by a written agreement between the Parties which shall take the form of an Amendment to this Agreement. The AOC shall consent to such Assignment only if assignee assumes in writing all of the Contractor's obligations hereunder; provided, however, Contractor shall not be released from its obligations hereunder by reason of such assignment. Any voluntary Assignment by Contractor or Assignment by operation of law (e.g. involuntarily assignment) of all or any portion of Contractor's interest in this Agreement shall be deemed a default allowing the AOC to exercise all remedies available to it under this Agreement and applicable law.

5. Time of Essence

Time is of the essence in this Agreement.

6. Validity of Alterations

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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 efforts, expenses, and any other costs incurred or experienced as a result of Contractor's activities under this Agreement.

END OF EXHIBIT

EXHIBIT B
SPECIAL PROVISIONS

1. Definitions

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

- A. “**Acceptance**” means the written acceptance issued to the Contractor by the State after the Contractor has completed a Deliverable, in compliance with the Contract Documents, including without limitation, Exhibit D, Work to Be Performed. Said Acceptance is subject to the Acceptance Criteria as well as the Acceptance of the Work provision set forth in this exhibit. See “Final Acceptance” for system solution requirements.
- B. “**Amendment**” means a State Standard Agreement Coversheet issued by the State and signed by both the State and the Contractor which specifies any agreed to change(s) to the Contract Documents. An Amendment shall, as applicable identify the following: (1) a change in the Work; (2) a change in Contract Amount; (3) a change in time allotted for performance; and/or (4) a modification to the Agreement terms.
- C. The “**Assessment Phase**” is the first phase of the Contract Work, as set forth in Exhibit D, Work to be Performed. The Contractor shall commence with the Work of the Assessment Phase upon execution of this Agreement. During the Assessment Phase, the Contractor shall access the migration requirements and plan the business and technical execution of the Project.
- D. “**Change Order**” means an Amendment which modifies the Work.
- E. “**Change Proposal**” means a document prepared by the Contractor at the request of the State, which proposes in detail changes to the Work and/or adjustments to pricing, to the Contract Amount, and/or time for performance.
- F. “**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.

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- G. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the State and the Contractor. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “**Agreement**.”
- H. “**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.
- I. “**Contract Counterpart**” means the several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, each representing this Agreement.
- J. 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.
- K. The “**Contractor’s Technology**” refers to various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques including, without limitation, function, process, system and data models, templates, generalized features of the structure, sequence and organization software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and, logic, coherence and methods of operation of systems which the Contractor has created, acquired or otherwise has rights in and may, in connection with the performance of services hereunder, create, acquire or otherwise obtain rights in.
- L. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- M. “**Day**” means calendar day, unless otherwise specified.
- N. “**Deliverable(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. Certain Deliverables shall have Milestone Payments associated with them.
- O. “**Final Acceptance**” is the written Acceptance issued by the State, by and through its Project Manager, that accepts as final and complete the testing of all of the business system flows, including custom processes and reports, in a fully migrated and tested, integrated business system solution, in accordance with the terms and conditions of the Contract Documents, including without limitation Exhibit D, Work to Be Performed, the applicable test criteria to be agreed upon by the parties, and the Acceptance of the Work provision of this Exhibit. Final Acceptance shall occur upon the AOC’s first productive use of the software upgrade, which is conditioned upon the AOC’s issuance of the written Acceptance.

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- P. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i) Acts of God or the public enemy;
 - ii) Acts or omissions of any government entity;
 - iii) Fire or other casualty for which a party is not responsible;
 - iv) Quarantine or epidemic;
 - v) Strike or defensive lockout; and,
 - vi) Unusually severe weather conditions.
- Q. **“Key Personnel”** refers to the Contractor’s personnel named in Exhibit E, Contractor’s Key Personnel, whom the State has identified and approved to perform the Work of the Contract.
- R. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- S. **“Milestone(s)”** means one or more events or dates, if specified in the Contract Documents, by which Work, as identified, must be provided by the Contractor.
- T. **“Milestone Payment(s)”** means payments to Contractor that are associated with the Acceptance of certain designated Deliverables, as specified in Exhibit C.
- U. **“Notice”** “Notice” means a written document provided in accordance with the provisions of the Article entitled “Notices” set forth in Exhibit B.
- V. **“Post Go-Live Support Services”** means and includes certain Work, further described in Exhibit D, that will be provided in the period following the AOC’s first productive use of the software upgrade.
- W. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.
- X. **“Reimbursable Item(s)”** or “Reimbursable(s)” means tangible item(s) utilized by Contractor’s employees in the performance of the Work.
- Y. 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. The term State shall also include any individual designated to perform technical and/or administrative functions, as set forth herein.
- Z. **“State Standard Agreement Coversheet”** means the form used by the State to enter into agreements with other parties.

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- AA. “**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.
- BB. “**Suspend Work Order**” means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to suspend all, or any part, of the Work of this Agreement, for the period set forth in the Suspend Work Order. The Suspend Work Order shall be specifically identified as such and shall indicate it is issued to the suspend work provision under Exhibit B.
- CC. “**Task(s)**” means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- DD. “**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.
- EE. “**Travel and Living Expense(s)**” means expense(s) for travel and living costs actually incurred or that are expected to be incurred by Contractor’s employees in the course of performing the Work.
- FF. The “**Upgrade Phase**” is as set forth in Exhibit D, Work to be Performed. Pursuant to the terms of this Agreement, the Contractor shall not commence with the Work of the Upgrade Phase until and unless the State provides written Notice to proceed with such Work. During the Upgrade Phase, the Contractor shall implement the upgrade, including customizations, into a fully integrated system and provide necessary training.
- GG. “**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, in accordance with the Project Schedule set forth in Exhibit D, and in compliance with the Nondiscrimination Clause, as set forth in this Exhibit B.

3. Termination Other Than for Cause

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- A. In addition to termination for cause under Exhibit A, Standard Provisions paragraph 3, the State may terminate this Agreement for convenience. 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 Work rendered before the termination, not to exceed the total Contract Amount.

4. Agreement Administration/Communication

- A. Under this Agreement, the **State's Project Manager** (or "**Project Manager**"), named below, 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:

Tirence McCoy
Administrative Office of the Courts

- B. Under this Agreement, the Contractor's Project Manager shall be:

@

5. Contractor's Personnel -- Replacement

- A. The State has the right to review resumes and interview the Contractor's proposed personnel provided to the State under this Agreement prior to commencement of the Work. 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.
- B. The responsibilities of the Key Personnel are set forth in Exhibit D, Work to be Performed. The Contractor's Key Personnel will have the ability and authority to make decisions commensurate with his or her role and level of responsibility regarding the Work of this Contract.
- C. The individuals assigned as the Contractor's Key Personnel at the time of agreement, supported by their resumes, are included in Exhibit E. Although an Amendment will not necessary, any revision to the individuals identified as Key Personnel must be approved in writing by the State's Project Manager.
- D. The Contractor shall endeavor to retain the same individuals during the performance of the Work of this Agreement. However, the Contractor may, with approval of the State's Project Manager, introduce personnel with specific skill sets or release

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personnel, except for the Contractor's Project Manager, from the Project whose skill set is not needed at the time. If any of the Contractor's personnel become unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the State.

- E. The State reserves the right to disapprove the continuing assignment of the Contractor's personnel, including Key Personnel, provided to the State under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. If the State exercises this right and approves a replacement candidate, the Contractor shall immediately within a commercially reasonable time assign the replacement personnel, possessing equivalent or greater experience and skills.
- F. If any of the Contractor's Key Personnel become unavailable and the Contractor cannot furnish a substitute acceptable to the State, the State may terminate this Agreement for cause pursuant to Standard Provisions paragraph 3, as set forth in Exhibit A.

6. Subcontracting

The Contractor shall not subcontract this Agreement or services provided under this Agreement, unless the State agrees to the subcontracting in writing. No party to this Agreement shall in any way contract on behalf of or in the name of another party to this Agreement.

7. Standard of Professionalism

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

8. 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 a Milestone Payment associated with the Work necessary to provide a Deliverable, 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. Rejection of any Work will be resolved as set forth in this provision.
- B. The acceptance criteria ("Acceptance **Criteria**") for the Work to be provided by the Contractor pursuant to this Agreement include the following:
 - i) Timeliness: The Work was delivered on time;
 - ii) Completeness: The Work provides the Data, Materials, functionality and (if any) performance characteristics required by this Contract, is in accordance

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with the AOC Business Requirements and any specific testing criteria set forth in or established pursuant to the testing plans specified in Exhibit D;

- 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); and
 - iv) Conformity to any other requirements given in the Statement of Work.
- 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 Acceptance Criteria. The State's Project Manager shall use the Acceptance and Signoff Form, provided as Attachment 1 to this Agreement, to notify the Contractor of the Work's acceptability.
 - D. If the State rejects the Work provided, the State's Project Manager shall submit to the Contractor a written rejection using Attachment 1, the Acceptance and Signoff Form, describing in detail the failure of the Work as measured against the Acceptance Criteria. If the State rejects the Work, then the Contractor shall have a period of at least ten (10) business days, or such other longer period that the State's Project Manager may in writing agree to, from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Acceptance Criteria.
 - E. If Contractor has failed to correct the Work within the time period established, the AOC Project Manager will, within three (3) business days, meet with the Contractor's Project Manager and set an additional allowable period for the final submission of the corrected Work. Contractor shall have a period of at least three (3) business days, or such other longer period that the State's Project Manager may in writing agree to, from the date of the meeting to correct the failure(s) to conform to the Acceptance Criteria. .
 - F. If the State still rejects the Work, or Contractor disputes such rejection, and the dispute cannot be resolved in accordance with the provisions of Exhibit B, Article 37, 1.1.4, the State shall have the right to terminate this Agreement pursuant to the terms of Standard Provisions Article 3, as set forth in Exhibit A.

9. Suspend Work

- A. The State may, at any time, deliver a Suspend Work Order requiring the Contractor to suspend Work in accordance with the Order, for the period set forth in the Order that the State determines appropriate for the convenience of the State, and/or for any further period to which the parties may agree. The State will not suspend Work pursuant to this provision for an initial period longer than one (1) week without entering into an Amendment to this Agreement with the Contractor.
- B. Upon receipt of the Suspend Work Order, the Contractor shall immediately comply with its terms and take all commercially reasonable steps to minimize the incurrence

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of costs allocable to the Work covered by the Suspend Work Order during the period of Work suspension. Within a period specified in the Suspend Work Order, or within any extension of that period, the State shall either:

- i) Cancel the Suspend Work Order; or
- ii) Terminate the Work covered by the Suspend Work Order as provided for in the termination provisions of this Agreement.

- C. If a Suspend Work Order issued under this provision is canceled or the period of the Suspend Work Order or any extension thereof expires, the Contractor shall resume Work.
- D. The State shall not be liable to the Contractor for loss of profits or indirect or consequential damages because of the Suspend Work Order issued under this provision.

10. State's Obligation Subject to Availability of Funds

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. . If this Agreement is terminated for non-appropriation:
 - i) The State will be liable only for payment in accordance with the terms of this Agreement for satisfactory Work rendered prior to the effective date of termination; and
 - ii) The Contractor shall be released from any obligation to provide further Work pursuant to the Agreement..
- 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 will terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

11. Notices

- A. Notice must be provided in any of the following events:

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- i) In the event of any need to assign, novate, or change the name of either party to this Agreement;
- ii) In the event of any replacement of Key Personnel;
- iii) In the event that Contractor disputes a rejection of the Work by the AOC;
- iv) In the event that Contractor and the State's Project Manager cannot agree on the classification of a defect during the Post Go Live Support period.
- v) In the event of any claim of any material breach of this Agreement; and
- vi) In the event that a Third Party claim or dispute that alleges facts that would constitute a breach of this Agreement is brought or threatened against Contractor or its Subcontractors.

B. A Notice must:

- i) Be in writing;
- ii) Identify this Agreement, citing both the Agreement Name and Agreement Number given on the Standard Agreement Coversheet.
- iii) Unambiguously be identified as a "Notice brought in accordance with the provisions of the this Article 11 of Exhibit B of this Agreement;"
- iv) Delivered in person, pre-paid by a reputable express carrier, or by registered or certified mail (postage pre-paid). If delivered in person, the Notice must be delivered to the reception desk of the 7th Floor at 455 Golden Gate Ave, San Francisco, CA 94102; and
- v) Addressed to the representative(s) of the Parties as follows:

If provided to the AOC:

~~Ms. Patricia Haggerty~~~~Mr. Grant Walker~~
~~e/o Business Services~~Fiscal Services Office
Administrative Office of the Courts
455 Golden Gate Ave, ~~Floor 7~~
San Francisco, CA 94102-3660

If provided to the Contractor:

@

- C. Notice is effective on the date of receipt; however, if the date of receipt does not occur upon a Business Day, Notice is effective on the first Business Day following the date of receipt.

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12. Progress Reports

- A. The Contractor shall submit to the State's Project Manager weekly progress reports in writing immediately following the end of every week during the Project, or more often, if requested by the State's Project Manager. Each progress report is to provide the Contractor and the State with an evaluation of Project progress in the performance of the tasks set forth in this Agreement.
- B. Each progress report shall include, but is not limited to, the following sections:
 - i) Narrative summary: This section shall be a thorough statement of the Project activities and progress during the previous week. It should include a discussion of any problems encountered, and any proposed changes to the tasks set forth in this Agreement necessitated by these problems.
 - ii) Schedule status: This section shall state whether the Project is progressing according to the schedule set forth in the Contract Documents. If delays have been experienced, the section shall include a discussion of how the Project will be brought back on schedule or any necessary revision to the schedule.
 - iii) Activities planned for the next week: This section shall include a discussion of the accomplishments anticipated in the next week. When appropriate, this section shall include a discussion of difficulties expected in the next week and methods proposed for dealing with these difficulties.
 - iv) Issues that need resolution by the State's Project Manager.

13. Accounting System Requirement

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

14. Audits and Access to Records

- A. Contractor must retain and maintain easily available all Records pertaining to Contractor's performance of its obligations under this Agreement. Records ("Records") include but are not limited to any books, reports, accounts, estimates, documents, detailed financial information, certified payrolls, invoices, or any other documentation, as well as any documents utilized in the preparation of Proposals, Invoices, and Disputes, related to or prepared under this Agreement. Records must be maintained in accordance with industry standards and generally accepted accounting principles and practices consistently applied.
- B. The provisions of Article 14A above shall not apply to any work product that is the result of Contractor's collaboration with legal counsel or to any of Contractor's

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confidential or proprietary information that does not fall within the definition of a Record as given above.

- C. The AOC and/or its designated representative(s) will have access upon 24 hours advance written notice, at all reasonable times during Contractor's normal business hours, to all of Contractor's Records for the purposes of inspection, audit, and copying. Contractor will, at no cost to AOC, provide access and proper facilities for such purposes.
- D. Contractor shall ensure that all Subcontractor(s) and Supplier(s), of all tiers, are bound to all provisions of this Article 14.
- E. Records must be retained and maintained available throughout the period of the performance of the Work and for a period of five (5) years after all obligations of the parties under this Agreement have been met, or until 5 years after final settlement of all Disputes, Claims, or litigation to which the Records relate, whichever event occurs later.
- F. If an audit or AOC internal review reveals that the Contractor has overcharged the AOC, the Contractor will immediately pay to the AOC the overcharged amount plus interest from the date of overpayment. The rate of interest will be equal to eighteen percent (18%) per year or the maximum rate permitted by applicable law, whichever is less. The audit or AOC internal review will be conducted at the AOC's expense, unless the audit or review reveals that the Contractor has overcharged the AOC by ten percent (10%) or more on any invoice, in which case the Contractor will reimburse the AOC for all costs and expenses incurred by the AOC in connection with such audit or review, including direct and indirect costs associated with AOC employees.
- G. The obligations of this Article 14 shall survive any expiration or termination of this Agreement.

15. 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.

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- 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, provided that before making such disclosure Contractor shall give AOC an adequate opportunity to interpose an objection or take legal action, as necessary, to seek protective orders or to assure confidential handling of such information..

16. Changes to the Contract

All changes to the Contract must be made in the form of an Amendment. The Contractor shall not request the State to encumber additional funds under this Agreement due to an act of Force Majeure, although the Contractor may request that the State amend the performance period of the Agreement due to an act of Force Majeure.

17. Changes to the Contract Work

- A. If the State is considering a change to the Contract Work, it shall, in writing, request that Contractor provide a Change Proposal. The State's Project Manager shall be responsible for issuing request(s) for Change Proposal(s). If so requested, the Contractor shall submit a written Change Proposal within the time period specified in the State's request. The Contractor shall provide Change Proposal(s) at no additional cost to the State, and any Proposal(s) so made shall represent Contractor's offer to make the requested change. The Change Proposal shall, as applicable, include: (1) a detailed description of the proposed change, including any changes to the Requirements and any suggested modifications to the Contract Documents necessary to reflect the change; (2) if there is an increase in the Work, a full, complete, and final amount that shall be owed Contractor as compensation for the requested change, provided in accordance with Exhibit C; (3) if there is a decrease in the Work, any reduction in compensation that shall result from the State's acceptance of the proposed change; (4) any impact to any other Contract Work; and, (5) any adjustments in the time for performance, including a modified Project Schedule.
- B. Change Proposals shall be priced and Contractor shall be compensated for Change Orders in accordance with the provisions of Exhibit C. If there is a reduction in the Work, such reduction shall be in accordance with Exhibit C.
- C. Change Proposals shall be provided substantially in the format of the Change Proposal sample form provided in this Agreement as an attachment in Exhibit F.

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D. The Contractor shall not proceed with any changes in the Contract Work until it has received a fully executed Amendment accompanied by the appropriate modified Contract Documents.

E. If the parties cannot agree on a change, any continuing disagreement shall be handled pursuant to the dispute resolution provisions of this Agreement given in Exhibit B, Article 37.

18. Contractor Performance

The Contractor will be required to participate with appropriate State personnel in testing the functionality of the upgraded system to ascertain conformance with the Acceptance criteria before the system will be finally accepted by the State.

19. Warranty

A. The Contractor warrants and represents that each of its employees, Subcontractors and/or agents assigned to perform any services or provide any technical assistance in assessment, requirements review, design, build, testing, and production or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of responsibility, so as to be able to perform in a competent and professional manner, in accordance with generally accepted industry standards.

B. The Contractor warrants that, for a period of twelve (12) months after Final Acceptance of the upgraded system:

- i) The Work provided hereunder will conform to the requirements of this Agreement; and
- ii) The Work will conform to the business requirements as approved by the State's project management and will be free from technical design flaws.

C. The State's approval of designs or specifications furnished by the Contractor shall not relieve the Contractor of its obligations under this warranty, the duration of which is controlled by subparagraph B of this paragraph.

D. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, constituent agencies, and any other recipients of the Work provided hereunder.

E. In the event the Contractor fails to perform according to any warranty hereunder, the State shall provide prompt Notice of such nonconformance. The Contractor shall immediately within a commercially reasonable period correct any deficiencies or repair or replace any errors and/or malfunctions, at no additional charge to the State, so long as the deficiencies, errors or malfunctions were not caused by any act of the

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State or a Third Party. If the Contractor can demonstrate to the reasonable satisfaction of the State that the deficiencies, errors or malfunctions identified by the State is not under warranty, then the Contractor shall submit a change request to the State requesting reimbursement of its actual costs in analyzing the deficiencies, errors or malfunctions, pursuant to the changes provision herein.

20. 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, expenses and attorney fees, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, trademark, trade secret, patent, or appliance furnished or used in connection with the Agreement.
- B. The Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Data or Materials supplied by the Contractor or the operation of such Data or Materials pursuant to a current version of Contractor-supplied operating software or the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, trademark, trade secret, patent, or appliance furnished or used in connection with the Work of this Agreement, infringes a United States patent or copyright or violates a trade secret. The Contractor shall pay those costs, damages and/or attorney fees finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the Contractor shall be notified within a reasonable time in writing by the State of any Notice of such claim; and,
 - ii) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- C. Should the Data, Materials, or the operation thereof, or the use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, trademark, trade secret, patent, or appliance furnished or used in connection with the Work of the Agreement, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright or 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 the use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, trademark, trade secret, patent, or appliance furnished or used in connection with the Work of this Agreement, or to replace or modify the same so that they become non-infringing. If none of these options can be taken reasonably, or if the use of such Data, Materials or composition, secret process, patented or un-patented invention, article, trademark, trade secret, patent, or appliance, by the State shall be prevented by injunction, the Contractor agrees to take back such Data, Materials or other item, and make every

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reasonable effort to assist the State in procuring substitute Data, Materials or items. If, in the sole option of the State, the return of such infringing Data, Materials or other items makes the retention of other Data, Materials or other items 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, Materials or other items and refund any sums that the State has paid the Contractor less any reasonable amount for use or damage.

- 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.

21. 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.

22. Insurance Requirements

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the 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

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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) Statutory workers' compensation insurance for all of the employees who are engaged in the work including special coverage extensions where applicable and employer's liability insurance with limits not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.
- ii) Commercial General Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) for all of its operations written on an occurrence form with limits of not less than \$2,000,000 per occurrence and a \$2,000,000 annual aggregate limit of liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract.
- iii) Commercial Automobile Liability Insurance with limits not less than \$1,000,000.00 for each accident combined single limit bodily injury and property damage, covering liability arising out of the operation, use, loading or unloading of a motor vehicle, including owned and non-owned and hired motor vehicles assigned to or used in connection with the Work.
- iv) Professional Liability insurance covering the Contractor's acts, errors, omissions committed or alleged to have been committed, which arise out of rendering or failure to render the Work required under this Agreement. The policy shall provide limits of not less than \$1,000,000 per claim or per occurrence and \$1,000,000 annual aggregate.

C. General Requirements. General Requirements for Contractor's insurance that is required during the term of the Agreement:

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- i) Contractor shall maintain the required insurance for its operations with an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide, and are authorized to do business in the State of California. If the contractor is a public agency the insurance may be provided through a joint powers authority formed for the purpose of jointly self-insuring the cost of claims and insurance costs.
- ii) For all insurance policies required by this Paragraph 22 the Contractor shall declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance.
- iii) If self-insured, the Contractor agrees to administer its self-insurance program in a commercially reasonable manner so as to ensure the availability of funds to cover losses required to be insured against by General Contractor under the terms of this Paragraph 22.
- iv) Contractor, prior to commencement of the Work, shall provide the State with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the State, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that the State of California, the Judicial Council of California, and the Administrative Office of the Courts, and their respective elected and appointed officials, judges, officers, and employees have been added as additional insureds on the insurance policy being referenced.
- v) The Certificates of Insurance shall be addressed as follows:

Mr. Grant Walker
Fiscal Services Office
Administrative Office of the Courts
455 Golden Gate Ave
San Francisco, CA 94102-3660

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vi) All insurance policies required under this Paragraph 22 shall be in force until the end of the term of this Agreement or completion of the Work, whichever comes later.

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vii) If the insurance expires during the term of the Agreement the Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsements, or it may be declared in breach of Agreement. The State reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the Court. Contractor must provide renewal insurance certificates and signed policy endorsements to the State at least ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements.

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viii) In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.

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ix) The commercial general liability and automobile liability insurance required by the "Insurance Requirements", as well as any excess liability or umbrella liability insurance that Contractor maintains to comply with the terms of this Paragraph 22 shall be endorsed to include the State of California, the Judicial Council of California, the Administrative Office of the Courts, and their respective elected and appointed officials, judges, officers, and employees as additional insureds, but only with respect to liability assumed by Contractor under the terms of this Agreement or liability arising out of the performance of the Work.

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x) Contractor, and any insurer providing insurance required under the terms of this Paragraph 22 shall waive any right of recovery or subrogation it may have against the State of California, the Judicial Council of California, the Administrative Office of the Courts and their respective elected and appointed officials, judges, officers, and employees for direct physical loss or damage to the Work, or for any liability arising out of the Work performed by Contractor under this Agreement.

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xi) All insurance policies required under this Paragraph 22 shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days prior written notice to the Court. Notice to the Court of cancellation or material change is the responsibility of the Contractor.

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~~xii) Contractor shall be responsible for and may not recover from the State of California, the Judicial Council of California, or the Administrative Office of the Courts any deductible or self-insured retention that is connected to the insurance required under this Paragraph 22.~~

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~~xiii) The commercial general liability insurance, automobile liability insurance, and any excess liability or umbrella liability insurance required under this Paragraph 22 shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California, the Judicial Council of California, or the Administrative Office of the Courts.~~

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~~xiv) The cost of all insurance required by this Paragraph 22 is the sole cost of the Contractor and is a component part of the Contractor's agreed compensation.~~

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~~xv) Contractor shall require insurance from Subcontractors and their Sub-subcontractors with substantially the same terms and conditions as required of the Contractor under "Insurance Requirements" herein below and with limits of liability, which in the opinion of the Contractor are sufficient to protect the interests of the Contractor, State of California, the Judicial Council of California, and the Administrative Office of the Courts.~~

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- ~~i) Workers' Compensation at statutory limits and Employers' Liability limits not less than \$1,000,000.00 for each accident.~~
- ~~ii) Comprehensive General Liability Insurance with limits not less than \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage.~~
- ~~iii) Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.~~
- ~~iv) Professional Liability: Errors and Omissions; \$1,000,000.00.~~

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~~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~~

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~~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 Courts, Contracting Officer, 455 Golden Gate Ave., 5th Floor, San Francisco, CA 94104.~~

23. Ownership of Data and Materials

- A. Any interest of the Contractor in the Data and Materials prepared or collected by the Contractor in the performance of the Work of this Contract, in any form, whether in hard copy or stored computer files shall become the property of the State. Upon the State's written request, the Contractor shall provide the State with all these Data and Materials within thirty (30) Days of the request.
- B. The Contractor agrees not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data and Materials. The Contractor shall not publish or reproduce such Materials in any form, in whole or in part, or any manner or form, or authorize others to do so without the written consent of the State.
- C. Notwithstanding the foregoing, the parties acknowledge that the Contractor may, employ, disclose, provide or modify the Contractor's Technology in connection with the performance of the Work hereunder. The parties acknowledge and agree that the Contractor shall own all right, title, and interest, including without limitation, all rights under all copyright, patent, and other intellectual property laws, in and to the Contractor's Technology and the Contractor may employ, modify, disclose, and otherwise exploit the Contractor's Technology (including, without limitation, providing services or creating programming for other clients). Except as otherwise provided, upon full and final payment hereunder, the Data and Materials prepared or collected by the Contractor in the performance of the Work of this Contract, in any form, whether in hard copy or stored computer files related to this Project shall

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become the State's property. To the extent that any of the Contractor's Technology is contained in any of the Data and Materials resulting from the Work, the Contractor hereby grants the State, a royalty-free, fully paid, worldwide, non-exclusive license to use the Contractor's Technology in connection with the Data and Materials resulting from the Work hereunder. To the extent that the Contractor uses any of its property, including the Contractor's Technology or any hardware or software of the Contractor's in connection with the performance of the Work hereunder, such property shall remain the property of the Contractor and, except for the license expressly granted herein, the State shall acquire no right or interest in such property.

- D. The State shall have the right to use the Material and Data that result from the Work of this Agreement, as it deems appropriate, however the parties acknowledge that the Work is intended for internal use of the State and its contingents. The State may use the Materials or Data in conjunction with other works or works at its sole discretion.

24. Protection of Proprietary Materials

- A. The State agrees that all Materials that belong to the Contractor and appropriately marked or identified in writing as Confidential Information of the Contractor, and furnished to the State hereunder as exemplars or samples, are provided for the State's exclusive use for the purposes of this Agreement only. All such Confidential Information shall remain the property of the Contractor. However, in accordance with the Work of this Agreement, the State, the Contractor, or both of them may use and adapt such exemplars to the State's specific purposes and requirements hereunder and such Work, Deliverables, and end results shall no longer be the Confidential Information of the Contractor.
- B. The ideas, concepts, know-how, or techniques relating to Data processing, Work, Deliverables, and end results developed during the course of this Agreement by the Contractor or jointly by the Contractor and the State can be used by either party in any way it may deem appropriate.

25. Limitation on Publication

The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's Work for the State without prior review and written permission by the State. The State review shall be completed within thirty (30) Days of submission to the Project Manager and, if permission is denied, the State shall provide its reasons for denial in writing.

26. Preparation and Distribution of Recordings

The Contractor shall permit the State, at its option, to make audio or video recordings, or both, of the Contractor's presentations and to distribute the recordings for educational purposes and not for profit. Any copyright shall be held by the Judicial Council of

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California. The Contractor shall receive no additional compensation or royalties from the distribution or use of these recordings.

27. 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.

28. No-Hire

The State and the Contractor agree that, during the term of this Agreement and for a period of one hundred eighty (180) days thereafter, each party will not directly or indirectly employ or otherwise engage any person who has been involved in performing services hereunder as an employee or contractor of the other party, without the express written consent of the other party.

29. 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 (1) use of an official position with the government for private gain; (2) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (3) loss of independence or impartiality; (4) a decision made outside official channels; or (5) 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.

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

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31. Drug-Free Workplace

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

32. Nondiscrimination Clause

- A. During the performance of this Agreement, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. The Contractor shall comply with the 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.
- C. 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.
- D. The Contractor shall include the nondiscrimination and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

33. Americans with Disabilities Act

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

34. 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 Contactor agreed to supply, shall be borne and paid for by the Contractor. The

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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.

35. Provisions Applicable Only to Certain Agreements (SB78).

The provisions in this Article 35 are applicable only to the types of agreements specified in the title of each subsection. If the Agreement is not of the type described in the title of a subsection, then that subsection does not apply to the Agreement.

A. Agreements over \$10,000. This Agreement is subject to examinations and audit by the State Auditor for a period three years after final payment.

B. Agreements over \$50,000. Contractor will not assist, promote or deter union organizing by employees performing work on a service contract; (ii) no JBE funds received under this Agreement will be used to assist, promote or deter union organizing; (iii) Contractor will not, for any business conducted under this agreement, use any JBE property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the JBE property is equally available to the general public for holding meetings; and (iv) if Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

C. Agreements of \$100,000 or More. Contractor certifies that it is, and will remain for the term of the Agreement, in compliance with PCC 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees. Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code Section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

D. Agreements for which Contractor Has Committed to Achieve DVBE Participation. Contractor shall within 60 days of receiving final payment under this Agreement certify in a report to the JBE: (i) the total amount the prime Contractor received under this Agreement; (ii) the name and address of any disabled veterans business enterprise (“DVBE”) that participated in the performance of this Agreement; (iii) the amount each DVBE received from the Contractor; (iv) that all payments under this Agreement have been made to the DVBE; and (v) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

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

F. Agreements for Consulting Services. Contractor must (i) provide a detailed analysis of the costs of performing this Agreement, and (ii) attach to this Agreement a resume for each employee who will exercise a major administrative, policy, or consultant role, as identified by Contractor. The JBE will evaluate Contractor's performance. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Subject to certain exceptions, no person, firm, or subsidiary thereof who has been awarded a Consulting Services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the Consulting Services contract.

G. Agreements Allowing for Reimbursement of Contractor's Costs. Contractor must include with any request for reimbursement from the JBE a certification that the Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

H. Agreements Performed in California by Contractors that are Corporations, LLCs, or LPs. Contractor is, and will remain for the term of the Agreement, qualified to do business and in good standing in California.

36. Governing Law: Jurisdiction

This Agreement, and all of the rights and duties of Contractor and the AOC arising out of or related to this agreement or to the relationship of Contractor and the AOC, are governed by the laws of the State of California without regard to its conflicts of law rules. This provision applies to all claims and causes of action that Contractor has or may acquire against the AOC, whether based on contract, tort, statute, or anything else.

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Contractor agrees that any claims that it has or may acquire against the AOC shall be commenced in and decided exclusively by a court of competent jurisdiction located in the State of California. Contractor agrees to submit to the personal and exclusive jurisdiction of courts located in the State of California. Contractor waives all defenses and arguments that the courts located in the State of California constitute an inconvenient forum based upon the residence or domicile of Contractor, the location of the Project that is the subject of the litigation or the location of witnesses, the location of documents, or anything else.

37. Disputes

- 1.1.1. Informal Negotiations. If the dispute does not involve an issue that requires submission of a Notice pursuant to the Article entitled “Notices” herein, each Party’s Project Manager must make a good faith attempt to promptly resolve the dispute by informal negotiation.
- 1.1.2. Demand. If the dispute involves an issue that requires submission of a Notice pursuant to the Section entitled “Notice” herein, or if the dispute is not settled pursuant to informal negotiations, the Party submitting a dispute (“Submitting Party”) must make written demand (“Demand”) in the form of a Notice to the Party receiving the Demand (“Receiving Party”). The Demand must be submitted in compliance with the Section entitled “Notice” herein, and (i) be fully supported by detailed factual information and supporting documentation; (ii) state the specific Agreement provisions on which the Demand is based; and (iii) if the Demand regards a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand. The Demand shall include a written statement signed by an authorized representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested accurately reflects the adjustment for which the Submitting Party thinks the Receiving Party is responsible.
- 1.1.3. Response to Demand. The Receiving Party shall within ten (10) Business Days, provide a written response (“Response”), in the form required by the Section entitled “Notice” herein, to the Submitting Party. The Response should state whether the Receiving Party accepts or rejects the Demand or whether the Receiving Party needs any additional information in order for it to fully analyze the Demand. The Submitting Party shall promptly comply with Receiving Party’s request for additional information. Any delay caused by Submitting Party’s failure to respond to a request for additional information shall extend the period within which the Receiving Party must provide the Response. In no event, however, shall the time period for a Response be extended beyond twenty (20) Business Days from the date the Receiving Party receives the Demand. Failure of the Receiving Party to provide a Response within the time period prescribed by this Article shall be deemed a rejection of the Demand by the Receiving Party.

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- 1.1.4. Senior Level Negotiations. If the Demand remains unresolved after the time period for a Response, the Parties shall attempt to resolve the Demand by negotiations between assigned representatives of the parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The Parties shall make a good faith effort to resolve the Demand within a period of thirty (30) Days after the time period for a Response.
- 1.1.5. Mediation. If the Demand is not resolved by negotiations of the Party's assigned representatives, the Parties shall submit the dispute to mediation prior to either Party initiating an action in court.
- 1.1.6. Litigation. If, after mediation as indicated above, the Parties have not resolved the dispute, either Party may initiate an action in a court of competent jurisdiction. In the event of litigation of a dispute arising from or related to this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs.
- 1.1.7. Confidentiality. All discussions and negotiations conducted pursuant to this Article 37 are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code Section 1152 apply. Mediation shall be confidential and shall be subject to the provisions of California Evidence Code Sections 703.5 and 1115 through 1128.

1.2. Performance During Dispute And Claim Resolution Process. Contractor shall diligently proceed with Work at the same time that disputes and claims are addressed under this Article 37. Contractor's failure to diligently proceed in accordance with this Agreement will be considered a material breach of this Agreement.

38. 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.

39. 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.

40. Signature Authority

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

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41. 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.

42. 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 officer of the State.

END OF EXHIBIT

**EXHIBIT C
PAYMENT PROVISIONS**

1. Total Contract Amount

- A. . With the exception of any Work authorized under Change Orders made in accordance with this Agreement, 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 not exceed the firm fixed price of \$@. This firm fixed price is inclusive of all costs, travel and living and other expenses, and any overhead and profits owed Contractor for the provision of the Work rendered to the State.
- B.
- C. The Contractor has estimated the costs and expenses necessary to complete the Project. The State’s acceptance of the Contractor’s proposal and price does not:
 - (1) imply that the State approves of or adopts the Contractor’s plan, means, methods, techniques, or procedures required to perform the Work, nor
 - (2) 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. Payments for for Tririga System Upgrade Work

With the exception of any Work provided under Change Orders authorized in accordance with this Agreement, the State shall compensate the Contractor for such Work in the amounts specified for Milestone Payments set forth in Table 1, below. A Milestone Payments shall be made upon the Acceptance by the State of all Work associated with the provision of a particular Deliverable, as set forth below.

Table 1: Firm Fixed Price by Deliverable for the Upgrade Phase

Phase	#	Deliverable Name Receipt and Acceptance of the Following Written Reports	Expected Due Date	% of Firm Fixed Price	Firm Fixed Price Milestone Payment
Preparation					
		Implementation Plan			
		Test Plan			
		Test Scripts – Unit test			
		Test Scripts – Regression test			
		Report on Upgraded Prototype Environment			

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Phase	#	Deliverable Name Receipt and Acceptance of the Following Written Reports	Expected Due Date	% of Firm Fixed Price	Firm Fixed Price Milestone Payment
		List of new features, components, GUI's, workflows, reports and other objects from Tririga			
		Technical Specifications Receipt and Approval			
		Report detailing Prototype Implementation steps			
		Technical Design document			
		Object Migration packages			
		Receipt and approval of Change management and communication strategy report			
		Risks and Issues Report			
		Report with testing results for Prototype upgrade			
Build and Test					
		Updated Implementation Plan			
		Updated test scripts – Unit test			
		Updated test scripts – Regression test			
		Test scripts – End User Testing			
		Report and Sign off on Upgraded Development environment			
		Report with testing results for Development upgrade			
		Updated Functional Specifications Receipt and Approval			
		Updated Technical Specifications Receipt and			

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Phase	#	Deliverable Name Receipt and Acceptance of the Following Written Reports	Expected Due Date	% of Firm Fixed Price	Firm Fixed Price Milestone Payment
		Approval			
		Upgrade installation instructions			
		Training Plan			
		Training Materials			
		Updated Implementation Plan – with stakeholder signoff			
		Updated test scripts – Unit test			
		Updated test scripts – Regression test			
		Test scripts – End User Testing			
		Object Migration packages			
		Upgraded Staging environment report			
		Report with testing results for Staging upgrade			
		Detailed Production Go- Live implementation plan			
		Acceptance and Sign off on Train the Trainers Report			
		List of changes between Tririga 9i and 10i			
		Receipt and approval of a report documenting mission critical items to be tested during Production upgrade window			
Production Implementation					
		Updated Upgrade installation instructions			
		Update Training Materials			
		Execute Implementation Plan and provide a report with detailed results			
		Updated test scripts – Regression test			

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Phase	#	Deliverable Name Receipt and Acceptance of the Following Written Reports	Expected Due Date	% of Firm Fixed Price	Firm Fixed Price Milestone Payment
		Updated Test scripts – End User Testing			
		Updated Functional Specifications			
		Updated Technical Specifications			
		Object Migration packages			
		Sign off on a report describing the Upgraded Production environment			
		Detailed report with testing results for Production upgrade and resolution plan for any outstanding issues			
		Document meeting and approval for Go No Go Decision with outstanding risks and issues			
Go Live		Report and Sign off on Go- Live			

3. Invoicing and Method of Payment for Deliverables:

- A. Upon completion of the Work applicable to a Deliverable associated with a Milestone Payment, but no more often than monthly, the Contractor shall submit an invoice for Milestone Payment(s) associated with accepted Deliverable(s). Each invoice for payment for a Deliverable must be accompanied by a signed Acceptance and Signoff Form, as set forth in Exhibit F, Attachment 1. 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
 - i) The Contract number;
 - ii) A unique invoice number;

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- iii) The Contractor's name and address;
- iv) Taxpayer identification (Contractor's federal employer identification number);
- v) Description of the Deliverable(s) being invoiced;
- vi) The price associated with the Deliverable.

C. The Contractor shall submit one (1) original and two (2) copies of invoices to:
Judicial Council of California
Administrative Office of the Courts
c/o Finance Division, Accounts Payable
455 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102-3688

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

4. Change Order Process and Pricing of for Change Orders

Contractor shall, upon receipt of a request for a Change Order Proposal provide the AOC with a Change Order Proposal priced as follows:

Contractor's shall, in the form of spreadsheet accompanying the Change Order Proposal, provide the State's Project Manager with Contractor's most realistic assessment of the types of personnel necessary to provide the proposed Change Order Work, the number of hours necessary to perform the Work, and a total for each job title accompanied by a grand total of all job titles, or in the event of a requested reduction in the Work, a listing of the personnel titles, hours, and hourly rates that will no longer be necessary because of the reduction in Work. Contractor's hourly rates shall be priced as specified in this Exhibit C.

If the expenditure of travel and/or living expenses is necessary to provide the Change Order Work, Contractor shall provide a description and summary of the expected charges in the Change Order Proposal. Any travel and living expenses quoted must be in accordance with the rules and rates provided in the AOC's Travel and Living Expense Guidelines, given below.

If it is necessary for Contractor to purchase Reimbursable Items to perform the Change Order Work, Contractor shall provide a description of and summary of the expected charges in the Change Order Proposal. Reimbursable Items, and the amounts to be charged for them, are subject to the AOC's rules for Compensation for Reimbursable items, given below.

The Change Order Proposal shall be provided to the State's Project Manager, who may suggest changes, additions and deletions to the proposed Work. Contractor will provide revised and re-priced Change Order Proposals as requested by the State's Project Manager.

If the State desires to proceed with a Change Order Proposal, the Change Order shall be incorporated into this Agreement in form of an Amendment.

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Contractor shall be compensated for Change Order Work and will be reimbursed for Travel and Living Expenses and Reimbursables pertaining to Change Orders as detailed below, not to exceed the total amounts specified as charges for each of these areas in the Change Order, however once a Change Order has been authorized, Contractor shall be responsible for fully providing all of the Work specified in the Work Order as well as bearing all costs and expenses for any Travel and Living Expenses and the costs of any Reimbursables actually necessary to provide the Change Order Work in full, regardless of the amount of Contractor's actual costs and expenses incurred to do so.

5. Invoicing and Method of Payment for Change Order Work:

Contractor shall invoice and shall be compensated for the Work, Travel and Living Expenses, and Reimbursable Items applicable to a Change Order, as follows:

A. Contractor shall, not more frequently than once monthly, and separately for each Change Order authorized, submit an invoice that specifies the following, in separate sections:

i) A section entitled "Hourly Rates Invoiced Work" that specifies, for each job title / individual name being invoiced:

- a. The applicable job title / individual name;
- b. The number of hours actually worked during the previous month;
- c. The applicable Hourly Rate, as specified in this Exhibit C
- d. the extended price; and
- e. The total for all Hourly Rates Invoiced Work ("Hourly Rates Invoiced Work") being invoiced.

ii) A section entitled "Reimbursable Items" that specifies:

- (a) The name(s) of any Reimbursable Item(s) actually utilized in the performance of Work during the previous month, using the same language as provided in the Work Order;
- (b) The quantity of the Reimbursable Item(s) utilized;
- (c) The unit price, as specified in the Change Order;
- (d) The extended amount; and
- (e) The total of all Reimbursable Items ("Reimbursable Items Total") being invoiced.

iii) A section entitled "Travel and Living Expenses" that specifies, for each individual for whom such charges are being invoiced:

- (a) The name of the individual to whom the expenses apply;
- (b) Date(s) of any travel or living expense;

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- (c) Cost of travel or living expense as actually incurred during the previous month, but not to exceed the allowance specified in the AOC's Travel and Living Expense Guidelines; and
- (d) The total of all Travel and Living Expenses ("Travel and Living Expenses") being invoiced.

6. Post Go-Live Support Services

- A. The AOC shall compensate Contractor for the Post Go-Live Support Services for the duration specified in this Agreement at the price of \$@ per month.
- B. Contractor shall at the end of each month (30 days) of the Post Go-Live Support Services, invoice the AOC at the above rate.
- C. Contractor shall submit an invoice that specifies the following:
 - i) The Contract number;
 - ii) A unique invoice number;
 - iii) The Contractor's name and address;
 - iv) Taxpayer identification (Contractor's federal employer identification number);
 - v) Description of the Post-Go Live Support period being invoiced;
 - vi) The monthly charge for the Post-Go Live Support services.

7. AOC Travel and Living Expenses Guidelines

- A. If so specified in a Change Order, the AOC shall reimburse Contractor for actual and reasonable transportation, meals, and lodging expenses actually incurred by Contractor's employees when actually incurred in the course of their performance of the Work, but subject to the following:
 - i) If air transportation is authorized, the AOC will reimburse Contractor only at the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) Days prior to travel, unless the State's Project Manager agrees in writing to a shorter period in the Change Order.
 - ii) If overnight lodging expense is authorized, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the AOC will reimburse Contractor only (i) for hotel room rental at the actual cost, but not to exceed \$110.00 per Day, plus occupancy tax and/or energy surcharge; and (ii) for meals, at the actual cost but not to exceed the following maximum amounts per person per Day: breakfast \$6.00; lunch \$10.00; dinner \$18.00; and incidentals \$6.00.
 - iii) If private vehicle ground transportation expense is authorized, the AOC will reimburse Contractor at \$0.55 cents per mile.

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- iv) The AOC is not obligated to pay for, and Contractor shall not invoice for any hours of non-production work expended by the Contractor's employees that are spent traveling to or from the location where the Work is performed.
- v) Travel and Living Expenses shall be invoiced to the AOC at Contractor's actual cost, including any discounts or rebates accorded to Contractor. Travel and Living Expenses shall not be subject to any markup, fee, or other charge.

8. AOC Rules for Compensation for Reimbursable Items

- A. Reimbursable Items shall consist solely of tangible items necessary for Contractor's performance of the Work.
- B. Reimbursable Item(s) are not services and services shall not be provided or charged for as Reimbursable Item(s) under this Agreement.
- C. In order for a Reimbursable Item to be compensated for under this Agreement, such items must be expressly identified by name and price in an authorized Change Order.
- D. Charges for Reimbursable Item(s) shall be invoiced to the AOC at Contractor's actual cost, including any discounts or rebates accorded to Contractor. Charges for Reimbursable Item(s) are not subject to any markup, fee, or other charge.
- E. Any Reimbursable Items that are still of use at the end of the Work will be provided to the AOC's Project Manager prior to the final invoice submitted under this Agreement.

9. Contractor's Hourly Rates:

(Table of Hourly Rates goes here)

10. Payment:

- 1.1. The State will make payment for invoices within sixty (60) days after receipt of a correct, itemized invoice. In no event shall the AOC be liable for interest or late charges for any late payments.
- 1.2. Payment shall be made by the AOC to the Contractor at the address specified on the invoice.

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1.3. The AOC may withhold full or partial payment to the Architect in any instance in which the Contractor has failed or refused to satisfy any material obligation specified in this Agreement.

11. 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.

12. Retention

Fifteen percent (15%) shall be withheld from all amounts to be paid by the AOC pursuant to the software upgrade work and to any Change Order(s). Contractor will invoice the AOC for release of such retention only on or after the date of the AOC's first productive use of the software upgrade.

13. 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.

14. Payment Does Not Imply Acceptance of Work

The granting of any firm fixed price payment by the State as provided in this exhibit shall in no way lessen the liability of the Contractor to replace unsatisfactory Work even if the unsatisfactory character of such Work may not have been apparent or detected at the time such payment was made.

END OF EXHIBIT

EXHIBIT D
WORK TO BE PERFORMED
[SUMMARY SCOPE OF WORK]

A. CAFM Upgrade Project

- i) The Contractor will upgrade existing Tririga application version 9i, platform version 2 to the most current application and platform version.
- ii) The scope of services includes project management, functional and technical expertise required for the upgrade, migration of existing development, configurations, any additional configuration requirements identified in the Due Diligence phase to meet functional and technical requirements, testing, production migration and Post Go-Live production support services.
- iii) Contractor will configure a Tririga 10i AOC environment to use during the gap analysis between Tririga 10i out-of-the-box features and the AOC's Tririga 9i implementation.
- iv) The upgrade will be accomplished in a phased approach by environment and implementation milestone. The project timeline will require crossing AOC Fiscal Years (FY12/13 and FY13/14). In consideration of the cross year implementation it will be critical that the Contractor create a project plan with logical milestones to end with one Fiscal Year at a strategic position to accommodate the year end and complete the project in the following Fiscal Year.

B.1 Build.

The goal of this Work will be to configure, develop, document, and test the full CAFM upgraded solution in all environments. The Contractor will Lead/Assist the AOC technical and functional resources with the installation, upgrade, testing, documentation and training of the CAFM upgraded solution. The AOC will provide the prototype, development, staging and production environments.

- i) **Install, Configure and Develop.** The Contractor's resources will prepare detailed functional and technical designs; develop and configure modules, screens, reports, queries, workflows, interfaces, conversion programs, and batch programs identified during the Work set forth under the AOC Due Diligence Activities, above.
- ii) **Testing.** The AOC will provide prototype, development, and staging environments for thorough testing. The testing phase will include Contractor knowledge transfer to AOC functional and technical personnel including the documented upgrade solution. The Contractor will lead/assist in full unit, integration, regression, performance and user acceptance testing of all functionality with accompanying documentation and training materials. The Contractor will ensure that quality assurance and version control systems are put in place and utilized. The Contractor, with assistance from the AOC, will

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write test plans to verify all business tasks performed on a day-to-day basis. The Contractor will Lead in troubleshooting issues with assistance from the AOC. The Project team will ensure these tasks are logically sequenced and then grouped into different system test “periods.” Then, the Project team will schedule test plans for execution according to the system test time periods. Once all pieces are functional, the standard and the custom work will be integrated into a single working business solution. The computer hardware, networks, and software will be configured and assembled in preparation for the production system.

- iii) **Documentation and Training.** The Contractor will create the required Materials, as planned in the Requirements Analysis Phase, in parallel with development and configuration of the upgraded solution. The Contractor will train key users, i.e. providing train-the-trainer approach, on changes in Tririga 10i and assist in executing the overall training strategy.
- iv) The goal of this Work will be to provide user-friendly and easy-to-access Materials and assistance to ensure that users and support staff understand system functions as they relate to day-to-day business processes. The Contractor will provide effective documentation and training to help facilitate transfer of system knowledge that will allow users and the support community to be at maximum efficiency and effectiveness. The Contractor will start with identifying the documentation needs, delivery media, and audience. The Contractor will develop a documentation strategy that may include creation of end user training documents, end user reference Materials, or technical reference documents for procedures such as install, restart, backup, failover, and disaster recovery. The Contractor will develop a training strategy, which may include the following: one-on-one training, train-the-trainer sessions, classroom training, self-study programs, etc.

B.2 Testing.

The goal of this Work will be to verify the full system solution against the AOC’s business processes. The Contractor, with assistance from the AOC, will direct the integration, regression and acceptance testing of all of the business system flows, integration, Security, including custom processes and reports. The result of this phase will be a fully tested, integrated solution, documented by actual results of the system test.

- i) **System Solution Testing.** This Work will be critical to the successful migration of the Project. The goal of this Work will be to verify the integrated system solution against processes. The Contractor, with assistance from the AOC, will document and direct the integration, regression and user acceptance testing of all of the system flows, including any manual processes and reports. Results of system testing will be documented and compared against

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anticipated results. Issues identified during the testing may be pursued with the software vendor or resolved by one of the parties to this contract.

- ii) **Performance Stress Testing.** The Contractor, with assistance from the AOC, will conduct stress testing on the system to measure and predict system performance against anticipated load, as determined in the Requirements Analysis Phase.
- iii) **Dry Run.** This Work will be critical to the entire migration process. The Contractor will complete the readiness checklist and execute the migration transition plan. The final step in the testing plan will be the data and system validation. The emphasis will be on having minimum possible production downtime without compromising data integrity. The Contractor will test the production migration process and transition plan in its entirety and refine timelines based upon the results. The Contractor will conduct two (2) practice test runs or dry runs: the first conducted by the Contractor, with assistance from AOC staff, and the second conducted with a wider involvement of end users.

B.3 Production Implementation of CAFM Upgrade Project

The goal of this Work will be to move all aspects of the new system to productive use.

- i) **Cutover Planning.** Production planning will be essential for a smooth transition to the new release of the application. The Contractor will identify all tasks related to install, technical architecture, systems setup, and data conversion, applicable after the dry run, and create a sequence and timeline for Go-Live execution. The Contractor with assistance from the AOC will plan the production cutover steps, to create the production environment and to set up the application.
- ii) **Documentation and Training.** The Contractor will assist the AOC in executing any planned training and making any planned documentation accessible, prior to commencement of production, in order to maximize users' productivity.
- iii) **Production Commencement.** Once production commences, the Contractor will work closely with the AOC to ensure a smooth transition. The Contractor will assist AOC staff in dealing with post-production issues and streamlining the support process.
- iv) **Post Production Go-Live Support.** The Contractor will assist the AOC with measuring and auditing the business improvements against project objectives, the implementation metrics against plans, and system performance against predictions. The Contractor will also assist AOC support staff in resolving post-production issues and streamlining the support process for a minimum of sixty (60) days up to a maximum period of one hundred and eighty (180) days.

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B.4 Tasks and Deliverables.

The Contractor shall provide the Tasks and Deliverables of each phase, as outlined in the document. Unless specified, Contractor will be performing all tasks. Upgrades made to the production environment must occur over a weekend and be completed by Sunday 5 PM. All deliverables for each phase are due no later than 2 (two) weeks after the end date of each phase, as set forth in the document.

The Contractor shall complete and provide the AOC with each of the following Tasks:

i) Application Upgrade – Prototype Environment – Execution period: 4 Weeks
Tasks

1. Meet with AOC ISD and to review implementation plan and obtain resources the upgrade.
2. Create end user testing scripts for unit and regression testing
3. Prepare Hardware (Servers) for the Upgrade
4. Install and prepare new Oracle database for Tririga 10i.
5. Install Upgrade CAFM to Tririga 10i
6. Install all necessary Oracle and Tririga patches.
7. Test new system
8. Unit Test upgraded applications
9. Produce list of new features, component, GUI's, workflows, reports and other objects from Tririga
10. Perform a complete regression test on the development environment
11. Document testing results and identify a resolution plan for any issues.

Deliverables

1. Sign off by stake holders of implementation plan with any changes proposed by the ISD and CCTC teams
2. End user testing scripts for unit and regression testing
3. Prototype Tririga10i environment
4. List of new features, components, GUI's, workflows, reports and other objects from Tririga
5. Report detailing implementation and testing results with details on any issues found and their resolution.

ii) Application Upgrade – Development Environment – Execution period: 6 Weeks
Tasks

1. Meet with AOC ISD and CCTC to review implementation plan and obtain resources the upgrade.
2. Update/create end user and regression testing scripts
3. Prepare AOC Development Hardware (Servers) for the Upgrade
4. Prepare existing Oracle database for Tririga 10i.
5. Upgrade/Migrate AOC Development to Tririga 10i
6. Unit test upgraded CAFM system

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7. Modify custom reports, queries, GUI's, objects and workflows to work with Tririga 10i
8. Provide the AOC with a detailed unit test plan and the results of the Contractors unit testing.
9. Provide the AOC with all necessary object migration packages
10. Provide the AOC with installation documentation detailing the steps and order for performing the migration and any manual actions that must be performed as part of the migration. Perform a complete regression test on the development environment
11. Report detailing implementation and testing results with details on any issues found and their resolution.

Deliverables

1. Sign off by stake holders of implementation plan with any changes proposed by the ISD and CCTC teams
2. Updated end user testing scripts
3. Modified regression test scripts
4. Report detailing implementation and testing results with details on any issues found and their resolution.
5. A completely upgraded Development environment
6. Report detailing implementation and testing results with details on any issues found and their resolution All necessary object migration packages
7. Installation document and directions

iii) Application Upgrade – Staging Environment – Execution period: 2 Weeks

Tasks

1. Meet with AOC ISD and CCTC to review implementation plan created for the upgrade of Production.
2. If necessary, update user and regression test scripts based upon Development upgrade results
3. AOC will follow Contractor's documentation to perform upgrade of staging environment
4. Contractor will provide support for the upgrade process of the CAFM CCTC Staging environment
5. Perform a complete regression test on the Staging environment
6. Document testing results and identify a resolution plan for any issues.
7. Documented implementation plan and instructions for performing upgrade in Production in under two days

Deliverables

8. Sign off by stake holders of implementation plan with any changes proposed by the ISD and CCTC teams
9. Updated End user testing scripts
10. Modified regression test scripts
11. Report detailing implementation and testing results with details on any issues found and their resolution
12. Detailed Production Go-Live implementation plan

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iv) Application Upgrade – Production Environment – Execution period: 2 Weeks
Tasks

1. Meet with AOC ISD and CCTC to review implementation plan created during the upgrade of Development.
2. If necessary, update end user testing scripts based upon Developments upgrade results
3. Identify ‘mission critical’ items to be tested during the Production upgrade window.
4. Upgrade the CAFM Production environment
5. Perform regression testing on ‘mission critical’ items in Production
6. If necessary, update IBM Rational testing scripts based upon the results from Staging.
7. Document testing results and identify a resolution plan for any issues.

Deliverables

8. Sign off by stake holders of implementation plan with any changes proposed by the ISD and CCTC teams
9. End user testing scripts
10. Modified regression test scripts
11. Rational testing scripts
12. Report detailing implementation and testing results with details on any issues found and their resolution

v) Training and Production Go Live Phase – Execution Period: 6 Weeks

Tasks

1. Create a list of the delta between Tririga 9i and 10i
2. Create a detailed document identifying the effects of the delta between versions.
3. Provide ‘train the trainer’ sessions on the new features of the application per the project plan
4. Review and update existing AOC training documentation for use with new version of application.
5. Support the end user training performed by the AOC

Deliverables:

1. List of delta between Tririga 9i and 10i
2. Detailed document identifying the training requirements of the delta between versions.
3. Conduct ‘train the trainer’ sessions on the new upgraded CAFM application
4. Revise existing documentation to level 10i of Tririga
5. Provide support to the AOC during the end user training

B.5 Post Go-Live Support

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This Support shall begin upon first productive use (“Go-Live”) of the CAFM 10i System. Contractor will provide the following services:

- A. This Support shall begin upon first productive use (“Go-Live”) of the CAFM 10i System and shall continue for a period of sixty (60) Days. The AOC shall have the right to extend these services at the same monthly price for a period of up to one hundred and eighty days (180) thereafter ("Post Go-Live Support Period").
- B. If the State identifies defect(s) in the Services provided during the Post Go-Live Support Period, Contractor shall either re-perform the Services or otherwise correct the defect to the satisfaction of the State.
- C. Contractor shall respond to provide a cure upon Notice from the State’s Project Manager of the existence of a defect per the tables below.
 - (1) Contractor shall identify a person or persons to serve as the primary point of contact for Post Go-Live Support issues.
 - (2) Upon the occurrence of a Post Go-Live Support issue, the AOC project manager shall contact the Contractors representative via electronic mail and via telephone. The Contractors representative shall acknowledge receipt of the issue within 2 hours.
 - (3) Within 1 hour of acknowledgement, the Contractor and AOC project manager and/or designee shall meet to discuss the severity of the issue and identify a plan of action to meet the response deadline

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D. Reference tables below for specifics on Service Level Response:

i) Definition of Priorities:

P1	<p>A Priority 1 Incident is generated if (System Down)</p> <ul style="list-style-type: none"> ▶ A critical component of an application or the entire application has stopped or is so severely impacted that the application or component cannot reasonably continue to operate and there is no Workaround available; ▶ A critical business process has stopped or is so severely impacted that the business process cannot reasonably continue to occur and there is no Workaround; or ▶ Data is corrupted or data integrity issues related to security/confidentiality pose a risk to the Judicial Branch.
P2	<p>A Priority 2 Incident is generated if (System Component Down)</p> <ul style="list-style-type: none"> ▶ A critical component of the application is unavailable or will not work or the entire application has stopped or is so severely impacted that the application or component cannot reasonably continue to operate, but a Workaround is available; ▶ A critical business process is unavailable or is so severely impacted that the business process cannot reasonably continue to occur, but a Workaround is available. ▶ A non-critical component of the application is unavailable, will not work or is not operating as expected and there is no Workaround available; ▶ A non-critical business process is unavailable or is not occurring as expected and there is no Workaround available.
P3	<p>A Priority Level 3 Incident is generated if (Non-critical component is down or if 1 person is affected)</p> <ul style="list-style-type: none"> ▶ a non-critical component of the application is unavailable, will not work or is not operating as expected and there is a Workaround available; or ▶ a non-critical business process is unavailable or is not occurring as expected and a Workaround is available
P4	<p>A Priority Level 4 Incident is generated if (Default Priority and Service Requests) there is a Problem other than Priority Level 1, Priority Level 2, and Priority Level 3 Incidents.</p>

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ii) Definition of Service Levels for Incident Resolution:

Service Level Response	Service Measure	Performance Target
Incident Resolution - Priority Level 1	Time to Resolve	<4 hours
Incident Resolution - Priority Level 2	Time to Resolve	<8 hours
Incident Resolution - Priority Level 3	Time to Resolve	Next Business Day -12 HOURS
Incident Resolution - Priority Level 4	Time to Resolve	Next Business Day or as prioritized by vendor
Root Cause Analysis	Time to provide initial report of Incident cause	Within 24 hours of Incident Resolution for Priority Level 1 or 2
	Time to provide Formal Root Cause Analysis report	Within 5 Business Days of Incident Resolution for Priority Level 1 or 2

E. In no event shall the State be responsible for any costs incurred by Contractor to remedy any deficiencies in the Services or defects in the CAFM 10i System.

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AOC Business Requirements

Module	Description of Business / User Requirement *	Out of box (OB) Configurable (CB) Custom (C) *	Method to Perform Work *
Tririga Trees			
Tririga Work Place Management			
Tririga Facilities			
Tririga Operations			
Tririga Workplace Enterprise Management			
Tririga Strategic Facility Planning			
Tririga Real Estate			
Tririga Projects			
Tririga Facility Assessment			
Tool	Description of Business / User Requirement *	Out of box (OB) Configurable (CB) Custom (C) *	Method to Perform Work *
Tririga Document Manager			
Tririga CAD Integrator			
Crystal Report Server			
Tririga Offline			

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Report	Description of Business / User Requirement *	Out of box (OB) Configurable (CB) Custom (C) *	Method to Perform Work *
Interface	Description of Business / User Requirement *	Out of box (OB) Configurable (CB) Custom (C) *	Method to Perform Work *
Security	Description of Business / User Requirement *	Out of box (OB) Configurable (CB) Custom (C) *	Method to Perform Work *

Description of Business / User Requirement

Provide a concise written description of the Business need or User need that the software, when installed, configured and/ or customized, must fulfill. Example: A Business Requirement might be "Provide daily, weekly, and monthly reports listing all User input data elements present in all Service Work Orders".

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A User Requirement might be "Be able to access the following (list follows) data elements of a Service Work Order instantaneously via CRT through use of a menu driven screen".

Definitions:

OB - Out of Box means that the new version of the software being deployed fulfills the Business/User Requirement without the need for any change to the software whatsoever.

CB - Configurable means that the Business/User Requirement will be fulfilled using the standard configuration options available in the Out of the Box product.

C - Custom means that the Business/User Requirement will be fulfilled through the writing of custom software code.

Method to Perform Work:

OB - If you designate the Business / User Requirement as OB, leave the Method to Perform Work box blank.

CB - If you designate the Business / User Requirement as CB, leave the Method to Perform Work box blank.

C - If you designate the Business / User Requirement as C, briefly describe the complexity of the custom code that will be written to fulfill the Requirement.

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EXHIBIT E
CONTRACTOR'S KEY PERSONNEL

1. The following individuals shall be the Key Personnel designated to perform the Work of this Agreement:

Name of Contractor's Key Personnel	Title

2. The resumes of the Key Personnel are included in this Exhibit.

The remainder of this page left blank intentionally

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END OF EXHIBIT

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EXHIBIT F
ATTACHMENTS

1. Attached to this exhibit are the following forms:
 - Attachment 1, Acceptance and Signoff Form
 - Attachment 2, Contract Change Proposal Form

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**EXHIBIT F
ATTACHMENT 1
ACCEPTANCE & SIGNOFF FORM**

Description of Work provided by Contractor:

Date submitted: _____

Work is:

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

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

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

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

Work is accepted.

Work is unacceptable as noted above.

Name: _____

Title: _____

Date: _____

END OF FORM

**EXHIBIT F
ATTACHMENT 2
CONTRACT CHANGE PROPOSAL FORM**

The State: Judicial Council of California

The Contractor:

Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3660

Page 1 of _____

Contract No: _____	Date: _____
Change Proposal No: _____	
To the State: In connection with the State's request dated _____, Contractor hereby furnishes its proposal to perform the changes outlined below and detailed on the following attached Contract Documents: (List of modified Contract Documents goes here. Include any applicable changes to the Project Schedule.)	
Proposal	
To the State: We have attached hereto cost sheets detailing the requested change in accordance with the provisions of Attachment C applicable to Change Orders. We propose to perform all changes described in the above request for a maximum total ADDITION/DEDUCTION (circle one) to the Contract Amount, in the sum of \$_____ (sales tax not included). The foregoing amount covers all costs and expenses related to this change and any effects of the change on the remaining Contract Work. <i>Signed:</i> Contractor's Authorized Representative: _____ Date: _____	
AOC Preliminary Approval	
To the Contractor: The foregoing proposal is: <input type="checkbox"/> Accepted as is. Authority to proceed will be provided in a separate change order or amendment, as appropriate. <input type="checkbox"/> Rejected because: _____	
Final approval and authorization is subject to the AOC's issuance and the signature of both parties on a Amendment to the Agreement.	

State's Representative: _____
Date: _____

END OF FORM

END OF EXHIBIT
END OF AGREEMENT