

ATTACHMENT 2: GENERAL TERMS AND CONDITIONS – INFORMATION TECHNOLOGY

1. DEFINITIONS

- a.** The Court - Superior Court of California, County of Ventura
- b.** Contractor - An individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, includes joint ventures, contracting with the Court to do Contract Work.
- c.** Buyer - The Court officer or employee who performs day-to-day purchasing and contracting activities.
- d.** Deliverables - Goods, materials or services that Contractor shall complete and deliver to The Court specified under the terms of a contract, purchase order or other agreement.

2. COMPLETE INTEGRATION

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.

3. SEVERABILITY

The contractor and the Court agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

4. INDEPENDENT CONTRACTOR

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Court.

5. ASSIGNMENT AND SUBCONTRACTING

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Court. For the purpose of this paragraph, the Court will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

Contractor may engage a subcontractor to perform any portion of the Work, but only with the prior written consent of the Court. Any subcontracting without the Court's written consent is a material breach of the Agreement. Subcontractors will be subject to the same terms and conditions applicable to the Contractor under the Agreement and shall incorporate the Agreement into any subcontracting relationship. Contractor shall be liable for all subcontractor acts or omissions, including indemnity obligations.

6. WAIVER OF RIGHTS

Any inaction by the Court or the failure of the Court on any occasion to enforce any right or provision of the Contract shall not be construed to be a waiver by the Court of its rights hereunder and shall not prevent the Court from enforcing such provision or right in any future occasion. The rights and remedies of the Court herein are cumulative and are in addition to any other rights or remedies that the Court may have at law or in equity.

7. CHOICE OF LAW

Unless otherwise specified in this agreement, California law governs this agreement. Jurisdiction and venue for any legal action arising from the agreement shall exclusively reside in Ventura, California, and the parties hereby consent to the jurisdiction and venue of such courts.

8. ORDER OF PRECEDENCE

It is the intention of both parties that all Contract Documents be read and construed as a unified whole whenever possible. However, in the event of a conflict between the terms of the Contract Documents, the following order of precedence shall govern and determine which terms prevail:

1. Standard Agreement Cover Sheet(s);
2. Exhibit B – Statement of Work;
3. Exhibit C – Payment Provisions
4. Exhibit D – General Terms and Conditions
5. Exhibit E – Contractor Certification Clauses
6. Exhibit A – Standard Business Definitions, Terms and Conditions.

Any Amendments to this Agreement, starting with the most recent, shall take precedence over existing Contract Documents. In the event of a conflict between an Amendment and the terms of any other Contract Document, the terms of the Amendment shall prevail.

All Court-issued competitive solicitation and related documents (e.g., the Court’s RFP, IFP, Addendum, Questions and Answers), and cost or technical specifications contained in Contractor’s bid or proposal submitted in response to the Court’s competitive solicitation, may be relied upon for the purpose of clarifying, illustrating, or explaining the intention and understanding of the parties as to the performance of this Agreement.

9. NOTICES

Notices under this agreement must be made in writing. Notices may be delivered in person, via a reputable express carrier, or by registered or certified mail. Notice is effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the notice was refused, unclaimed, or deemed undeliverable. Notices must be addressed to the other party’s contract representative as designated in the agreement cover sheet. Either party may change its address for receipt of notice by giving notice at any time to the other party in the manner permitted by this paragraph.

10. LOSS LEADER

Contractor shall not sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

11. ANTITRUST CLAIMS

Contractor shall comply with the requirements of Government Code sections set out below.

- a. The Government Code chapter on antitrust claims contains the following definitions:

- i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of § 16750 of the Business and Professions Code.
 - ii. "Public purchasing body" means the state or the subdivision or agency making a public purchase. See Government Code § 4550.
- b. Contractor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under § 4 of the Clayton Act (15 U.S.C. § 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 Court pursuant to the bid. Such assignment shall be made and become effective at the time the Court tenders final payment to the Contractor. See Government Code § 4552.
- c. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. See Government Code § 4553.
- d. Upon demand in writing by the Contractor, the Court 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
 - i. The Court has not been injured thereby, or
 - ii. The Court declines to file a court action for the cause of action. See Government Code § 4554.

12. PACKING AND SHIPMENT

- a. All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i. Show the number of the container and the total number of containers in the shipment; and
 - ii. The number of the container in which the packing sheet has been enclosed.
- b. All shipments by Contractor or its subcontractors must include packing sheets identifying: the Court's Contract number, item number, quantity and unit of measure, part number and description of the Goods shipped, and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c. Shipments must be made as specified in this Contract, as it may be amended.

13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the Court unless expressly included and itemized in the Contract.

- a. Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B), freight terms and routing instructions. The Court may permit the use of an alternate carrier at no additional cost to the Court with advance written authorization of the Buyer.
- b. On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the Court in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on the request of the Court, shall at Contractor's own expense assist the Court in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

14. DELIVERY

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the Court shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the Court at law or in equity.

15. SUBSTITUTIONS

Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

16. INSPECTION, ACCEPTANCE, AND REJECTION

- a. Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the Court covering Deliverables and services under this Contract and will tender to the Court only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the Court during Contract performance and for three years after final payment. Contractor shall permit the Court to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b. All Deliverables may be subject to inspection and test by the Court or its authorized representatives.
- c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the Court. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d. All Deliverables may be subject to final inspection, test and acceptance by the Court at destination, notwithstanding any payment or inspection at source.

- e. The Court shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. Unless otherwise specified in the Contract, if the Court does not provide such notice of rejection within thirty (30) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the Court will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the Court might have at law or by express reservation in this Contract with respect to any nonconformity.

17. SAMPLES

- a. Samples of items may be required by the Court for inspection and specification testing and must be furnished free of expense to the Court. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b. Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

18. WARRANTY

- a. Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that:
 - i. Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and
 - ii. The Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby.

In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The Court's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

- b. Contractor warrants that Deliverables furnished hereunder
 - i. Will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and

- ii. Will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the Court believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the Court's request, provide a master copy of the Software for comparison and correction.
- c. Unless otherwise specified in the Statement of Work:
 - i. Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - ii. Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from
 - A. A modification made by the Court, unless such modification is approved or directed by Contractor,
 - B. Use of Software in combination with or on products other than as specified by Contractor, or
 - C. Misuse by the Court.
 - iii. Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the Court and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
- d. All warranties, including special warranties specified elsewhere herein, shall inure to the Court, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e. Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the Court's exclusive remedy and Contractor's sole obligation will be limited to:
 - i. Re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - ii. Should the Court in its sole discretion consent, refund of all amounts paid by the Court for the nonconforming Deliverable or service and payment to the Court of any additional amounts necessary to equal the Court's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance.

The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."

- f. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING

WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19. SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on Court premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the Court may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

20. INSURANCE

- a. **Coverage.** When performing work on property in the care, custody or control of the Court, Contractor shall maintain all applicable insurance requirements as specified below. Court may require Contractor to provide proof of other insurance if appropriate under the scope of the Contract.
 - i. **Commercial General Liability.** In addition to any other insurance required under this Agreement, Contractor shall provide and maintain at Contractor's expense Commercial General Liability coverage if this Agreement involves the hazardous activities or as the Court deems necessary. The policy must cover bodily injury and property damage liability, including coverage for the products – completed operations hazard and liability assumed in a contract, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit.
 - ii. **Workers Compensation and Employer's Liability.** The policy is required only if Contractor have employees. It must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;
 - iii. **Professional Liability.** The policy must cover liability resulting from errors or omissions committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1 million per claim.
 - iv. **Commercial Automobile Liability.** The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.
- b. **"Claims Made" Coverage.** If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the Court's acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that Services commence under this Agreement.
- c. **Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.
- d. **Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two

times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

- e. **Deductibles and Self-Insured Retentions.** Contractor shall declare to the Court all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the Court's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- f. **Additional Insured Status.** Contractor shall require Contractor's commercial general liability insurer, Contractor's commercial automobile liability insurer, and, if applicable, Contractor's commercial umbrella liability insurer to name Court and Court Personnel as additional insureds with respect to liability arising out of Contractor's Services under this Agreement.
- g. **Certificates of Insurance.** Before Contractor begin performing Services, Contractor shall give the Court certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 15 or more days' prior written notice to the Court. Any replacement certificates of insurance are subject to the approval of the Court, and, without prejudice to the Court, Contractor shall not perform work before the Court approves the certificates. No payments will be made to the Contractor until all required insurance certificates are on file with the Court.
- h. **Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- i. **Required Policy Provisions.** Each policy must provide, as follows:
 - i. **Insurance Primary; Waiver of Subrogation.** The basic coverage provided is primary and non-contributory with any insurance or self-insurance maintained by the Court and Court Personnel, and the basic coverage insurer waives any and all rights of subrogation against Court and Court Personnel; and
 - ii. **Separation of Insureds.** The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.
- j. **Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:
 - i. **Separate.** Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
 - ii. **Joint.** Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- k. **Consequences of Lapse.** If required insurance lapses during the Term, the Court is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

21. TERMINATION FOR NON-APPROPRIATION OF FUNDS

- a. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the Court under this Contract, and relieve the Court of any further obligation therefor.
- b. COURT AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE COURT, SUBJECT TO NORMAL WEAR AND TEAR. COURT FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

22. TERMINATION FOR CONVENIENCE OF THE COURT

- a. The Court may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Presiding Judge, Court Executive Officer or authorized Court staff determines that a termination is in the Court's interest.
- b. After receipt of a Notice of Termination, and except as directed by the Court, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - i. Stop work as specified in the Notice of Termination.
 - ii. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - iii. Terminate all subcontracts to the extent they relate to the work terminated.
 - iv. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c. Unless otherwise set forth in the Statement of Work, if the Contractor and the Court fail to agree on the amount to be paid because of the termination for convenience, the Court will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
 - i. The Contract price for Deliverables or services accepted by the Court and not previously paid for, adjusted for any savings on freight and other charges; and
 - ii. The total of:
 - A. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;

- B. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
 - C. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- d. The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23. TERMINATION FOR DEFAULT

- a. The Court may, subject to the clause titled “Force Majeure” and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
 - i. Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - ii. Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii. Perform any of the other provisions of this Contract.
- b. The Court’s right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the Court’s cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.
- c. If the Court terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the Court for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled “Limitation of Liability”). However, the Contractor shall continue the work not terminated.
- d. If the Contract is terminated for default, the Court may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the Court, as directed by the Buyer, any:
 - i. Completed Deliverables,
 - ii. Partially completed Deliverables, and,
 - iii. Subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the Court rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the Court has an interest.

- e. The Court shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the Court for the protection and preservation of the property; provided that where the Contractor has billed the Court for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The Court may withhold from these amounts any sum it determines to be necessary to protect the Court against loss because of outstanding liens or claims of former lien holders.
- f. If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Court.
- g. The rights and remedies of the Court in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

24. FORCE MAJEURE

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal or state government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

25. RIGHTS AND REMEDIES OF THE COURT FOR DEFAULT

- a. In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the Court may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the Court, and immediately replace all such rejected items with others conforming to the Contract.
- b. In addition to any other rights and remedies the Court may have, the Court may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c. In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the Court in procuring any items which

the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").

- d. The Court reserves the right to offset the reasonable cost of all damages caused to the Court against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

26. LIMITATION OF LIABILITY

Unless otherwise stated in the Statement of Work:

- a. Contractor's liability for damages to the Court for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b. The foregoing limitation of liability shall not apply
 - i. To liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights;
 - ii. To claims covered by any specific provision herein calling for liquidated damages;
 - iii. To claims arising under provisions herein calling for indemnification for third party claims against the Court for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or
 - iv. To costs or attorney's fees that the Court becomes entitled to recover as a prevailing party in any action.
- c. The Court's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the Court's sovereign immunity or any other immunity from suit provided by law.
- d. In no event will either the Contractor or the Court be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except
 - i. To the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or
 - ii. To the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a. The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the Court, employees of the Court, persons designated by the Court for training, or any other person(s) other than agents or employees of the Contractor, designated by the Court for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the Court's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b. Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

28. INDEMNIFICATION

Unless otherwise specified in the Statement of Work, Contractor agrees to indemnify, defend and save harmless the Court, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a. The Court will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
 - i. When substantial principles of government or public law are involved, when litigation might create precedent affecting future Court operations or liability, or when involvement of the Court is otherwise mandated by law, the Court may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
 - ii. The Court will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
 - iii. The Court will reasonably cooperate in the defense and in any related settlement negotiations.

29. NEWLY MANUFACTURED GOODS

All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

30. CONTRACT MODIFICATION

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

31. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the Court's operation which are designated confidential by the Court and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the Court. The identification of all such confidential data and information as well as the Court's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the Court in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the Court to be adequate for the protection of the Court's confidential information, such methods and procedures may be used, with the written consent of the Court, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

32. NEWS RELEASES

News releases pertaining to this Contract shall not be made without prior written approval of the Presiding Judge, Court Executive Officer or authorized Court staff.

33. DOCUMENTATION

- a. The Contractor agrees to provide to the Court, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the Court in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b. If the Contractor is unable to perform maintenance or the Court desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the Court the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the Court to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the Court may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the Court may have hired to maintain the Equipment to use the above noted Documentation. The Court agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

34. RIGHTS IN WORK PRODUCT

- a. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be

revised in a Statement of Work.

- b. Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order (“Pre-Existing Materials”) do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor’s or its affiliates’ ownership of Pre-Existing Materials.

- b. The Court will have Government Purpose Rights to the Work Product as Deliverable or delivered to the Court hereunder. “Government Purpose Rights” are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. “Government Purpose Rights” also include the right to release or disclose the Work Product outside the Court for any state government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any state government purpose. Such recipients of the Work Product may include, without limitation, state Contractors, California local governments, the U.S. federal government, and the state and local governments of other states. “Government Purpose Rights” do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

- c. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the Court may be used by either party without obligation of notice or accounting.

- d. This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the Court pursuant to this Contract.

35. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA

- a. The Court agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for the Court’s exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. Court agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to California Rule of Court 10.500.

- b. The Court will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

- c. The Court agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

36. PATENT, COPYRIGHT, AND TRADE SECRET INDEMNITY

- a. Contractor will indemnify, defend, and save harmless the Court, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the Court such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the Court with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the Court. Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 39a) will be conditional upon the following:
 - i. The Court will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - ii. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
 - A. when substantial principles of government or public law are involved, when litigation might create precedent affecting future Court operations or liability, or when involvement of the Court is otherwise mandated by law, the Court may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
 - B. The Court will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
 - C. The Court will reasonably cooperate in the defense and in any related settlement negotiations.
- b. Contractor may be required to furnish a bond to the Court against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the Court shall permit the Contractor at its option and expense either to procure for the Court the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the Court shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the Court in procuring substitute Deliverables or Software. If, in the sole opinion of the Court, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the Court 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 Deliverables or Software and refund any sums the Court has paid Contractor less any reasonable amount for use or damage.

- e. The Contractor shall have no liability to the Court under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of Deliverables 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 Court 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. Contractor certifies that it has appropriate systems and controls in place to ensure that Court funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

37. EXAMINATION AND AUDIT

Contractor agrees that the Court, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated. All records are subject to California Rule of Court 10.500. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the Court to audit records and interview staff in any subcontract related to performance of this Contract.

38. DISPUTES

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Assistant Court Executive Officer or authorized Court staff a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the Court, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the Court is liable. If the Contractor is not satisfied with the decision of the Assistant Court Executive Officer or Court authorized staff, the Contractor may appeal the decision to the Presiding Judge or the Court Executive Officer.

- b. Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the Court's instructions.

Contractor's failure to diligently proceed in accordance with the Court's instructions shall be considered a material breach of this Contract.

- c. Any final decision of the Court shall be expressly identified as such, shall be in writing, and shall be signed by the Assistant Court Executive Officer or authorized Court staff, or the Presiding Judge or Court Executive Officer if an appeal was made. If the Court fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The Court's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

39. STOP WORK

- a. The Court may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Court shall either:
 - i. Cancel the Stop Work Order; or
 - ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The Court shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - ii. The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the Court decides the facts justify the action, the Court may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the Court, the Court shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d. The Court shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

40. FOLLOW-ON CONTRACTS

- a. If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
 - i. Will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - ii. Will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b. "Technical Consulting and Direction" means services for which the Contractor received compensation from the Court and includes:
 - i. Development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - ii. Development or design of test requirements;
 - iii. Evaluation of test data;
 - iv. Direction of or evaluation of another Contractor;
 - v. Provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - vi. Provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c. To the extent permissible by law, the Presiding Judge, Court Executive Officer, or authorized Court staff may waive the restrictions set forth in this Section by written notice to the Contractor if the Presiding Judge, Court Executive Officer, or authorized Court staff determines their application would not be in the Court's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
 - i. To follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - ii. Where the Court has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.

- d. The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law (“Conflict Laws”). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

41. SURVIVAL

Terms that will survive termination or expiration of this Agreement include those relating to, but are not limited to: assignment, audit rights and retention of records, confidentiality, indemnification, limitation of liability, and warranties.

42. FOUR-DIGIT DATE COMPLIANCE

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the Court. “Four Digit Date Compliant” Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

43. COUNTERPARTS

This agreement may be executed in counterparts, each of which is considered an original.

End of Attachment 2