

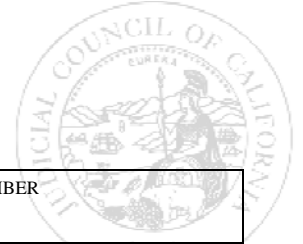
RFP Title: Third Party Claims Administration Services for Trial Courts

RFP No.: LSO 09-13-LM

ATTACHMENT 2 – CONTRACT TERMS AND CONDITIONS

JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS

STANDARD AGREEMENT COVERSHEET (rev 12-08)



AGREEMENT NUMBER
FEDERAL EMPLOYER ID NUMBER

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

- Exhibit A – Standard Provisions
- Exhibit B – Special Provisions
- Exhibit C – Payment Provisions
- Exhibit D – Work to be Performed
- Exhibit E – Attachment
- Appendix A - JBCL Appendix

AOC’S SIGNATURE	CONTRACTOR’S SIGNATURE
JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS	CONTRACTOR’S NAME (if Contractor is not an individual person, state whether a Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized) [CONTRACTOR NAME]
BY (Authorized Signature) 	BY (Authorized Signature)
SAMPLE ONLY – DO NOT SIGN	
ADDRESS Fiscal Services Office, Business Services Unit 455 Golden Gate Avenue San Francisco, CA 94102-3688	ADDRESS

NOTE: As set forth in Section 6 of the RFP: The provisions marked with an (*) within the Terms and Conditions are minimum contract terms and conditions (“Minimum Terms”). A proposal that takes a material exception (addition, deletion, or other modification) to a Minimum Term will be deemed nonresponsive. The AOC, in its sole discretion, will determine what constitutes a material exception.

EXHIBIT A - STANDARD PROVISIONS

1. INDEMNIFICATION(*)

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

2. RELATIONSHIP OF PARTIES

The Contractor and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State of California. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the State. Contractor has no authority to bind or incur any obligation on behalf of the State. If any governmental entity concludes that Contractor is not an independent contractor, the State may terminate this Agreement immediately upon Notice.

3. TERMINATION FOR CAUSE

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

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

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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; or

iii. If the Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.

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. If Contractor is in default, the State may withhold all or any portion of a payment otherwise due to Contractor.

D. 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.

E. If, after Notice of termination for default of this Agreement, it is determined for any reason that the Contractor was not in default under this provision, or that the default was excusable under this provision, the obligations of the State shall be to pay only for the services rendered at the rates set forth in the Agreement.

F. The rights and remedies of either party provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

4. NO ASSIGNMENT

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

5. TIME OF ESSENCE

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

6. VALIDITY OF ALTERATIONS

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

7. CONSIDERATION

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

END OF EXHIBIT

EXHIBIT B - SPECIAL PROVISIONS

1. DEFINITIONS

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

- A. “**Administrative Director**” refers to that individual or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- B. “**Amendment**” means a written document issued by the State and signed by the Contractor, which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- C. “**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.
- D. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “Agreement.”
- E. “**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.
- F. 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.
- G. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- H. “**Day**” means calendar day, unless otherwise specified.

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- I. **“Deliverable(s)”** or **“Submittal(s)”** means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- J. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
 - i. Acts of God or the public enemy;
 - ii. Acts or omissions of any government entity;
 - iii. Fire or other casualty for which a party is not responsible;
 - iv. Quarantine or epidemic;
 - v. Strike or defensive lockout; and,
 - vi. Unusually severe weather conditions.
- K. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- L. **“Notice”** means a written document initiated by the authorized representative of either party to this Agreement and given by:
 - i. Depositing in the U.S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
 - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- M. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.
- N. 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.
- O. **“State Standard Agreement”** means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual “Contract Counterpart.”
- P. **“Stop Work Order”** means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this Exhibit B, Special Provisions.

- Q. **“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 material men.
- R. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- S. **“Term”** comprises the **Initial Term, First Option Term and Second Option Term.**
- T. **“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.
- U. **“To Be Determined”** or **“TBD”** is the item that is not yet identified. Any and all To Determined items, set forth herein, shall be determined prior to award or by mutual agreement between the Contractor and the State and incorporated into the Agreement via Amendment(s).
- V. **“Transition Period”** means a period of time commencing (i) two months prior to the expiration of this Agreement or on an earlier date as the State may request and Contractor may agree, (ii) upon any notice of termination or non-renewal of this Agreement, or (iii) two months prior to any other ceasing of services under this Agreement, as applicable, and continuing through the effective date of expiration, termination or cessation, but for no less than two months.
- W. **“Transition Plan”** refers to the plan set forth in Exhibit B to this Agreement as necessary to allow the Work to continue without interruption or adverse effect and facilitate the orderly transfer of the Work to the State or the State’s designee.
- X. **“Trial Court(s)”** or **“Court(s)”** means one or more of the fifty-eight (58) superior courts in the California state trial court system.
- Y. **“Work”** or **“Work to be Performed”** or **“Contract Work”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

2. MANNER OF PERFORMANCE OF WORK

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

3. TERMINATION OTHER THAN FOR CAUSE

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

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

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
 - i. The State will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
 - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
- C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

5. AGREEMENT ADMINISTRATION/COMMUNICATION

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

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Judicial Council of California
Administrative Office of the Courts
Attn: [TBD], AOC Project Manager
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Other than for Notices, the AOC Project Manager may be contacted as follows:

[TBD], AOC Project Manager
Telephone: [TBD]
Facsimile: [TBD]
Email: [TBD]

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

[TBD]

6. STANDARD OF PROFESSIONALISM

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

7. STOP WORK

A. The State may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

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

B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume Work. The State shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:

- i. The Stop Work Order results in an increase in the time required for, or in the

Contractor's cost properly allocable to the performance of any part of this Agreement; and

- ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- C. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State's Obligation Subject to Availability of Funds provision, as set forth under this Exhibit B, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

8. ASSIGNMENTS OR SUBCONTRACTING

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

9. EVALUATION OF CONTRACTOR

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

10. AGREEMENT TERM AND OPTIONS TO RENEW

- A. The **Initial Term** of the Agreement shall commence on **October 1, 2013** and expire on **September 30, 2014**. Thereafter, the State, in its sole discretion, has the option to extend the term of the Agreement for two (2) additional periods on the same terms and conditions applicable during the **Initial Term**, as defined below:

First Option Term: October 1, 2014 through September 30, 2015

Second Option Term: October 1, 2015 through September 30, 2016

- B. In the event the State elects to exercise the option to extend the Agreement as set forth in this provision, the expiration date of the Agreement shall become the ending date of the option term exercised.

11. CONFIDENTIALITY

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

12. SERVICES WARRANTY

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

13. CHANGES AND AMENDMENTS

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

14. ACCOUNTING SYSTEM REQUIREMENT

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

15. RETENTION OF RECORDS

The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with State and Federal law, a minimum retention period being no less than four (4) years. The retention period starts from the date of the submission of the final payment request. The Contractor is also

obligated to protect Data adequately against fire or other damage.

16. RIGHT TO AUDIT

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

17. OWNERSHIP OF RESULTS

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

18. LIMITATION ON PUBLICATION

The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the State without prior review and written permission by the State's Business Services Senior Manager or the Public Information Officer.

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

19. 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.

20. TRANSITION SERVICES

- A. During the Transition Period, the Contractor shall provide to the State or the State's designee, the services set forth in the Transition Plan, and any other services reasonably necessary to enable the State to obtain from another contractor, or to provide for itself, services to substitute for or replace the services provided by Contractor under this Agreement without interruption or adverse effect and to facilitate the orderly transfer of the Services to the State or the State's designee (collectively, "Transition Services"). Contractor shall provide Transition Services to the State or the State's designee regardless of the reason for termination or expiration.

- B. Transition Services shall be provided at no cost to the State or the State's designated successor except as otherwise provided for in Exhibit C, Payment Provisions.

21. 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. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.
- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
- i. Workers' Compensation at statutory requirements of the State of residency.
 - ii. Professional Liability must cover Contractor's performance under this Agreement, at minimum limits of \$1,00,000.00 per claim.
 - iii. Employers' Liability with limits not less than \$1,000,000.00 for each accident.
 - iv. Commercial General Liability Insurance with limits not less than \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage.
 - v. Business Automobile Liability Insurance with limits not less than \$500,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the State. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the State and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
- i. The State, its officers, officials, employees and agents are to be covered, in accordance with Contractor's blanket additional insured endorsement, as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
 - ii. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the State, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the State, its officers,

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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, and worker's compensation within 30 days mailed to the following address: Judicial Council, Administrative Office of the Courts, Senior Manager, Business Services, 455 Golden Gate Avenue, 6th Floor, San Francisco, CA 94102-3688.

22. CONFLICT OF INTEREST

- A. The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or (v) adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- B. The Contractor certifies and shall require any Subcontractor to certify to the following:

Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from state service.

23. COVENANT AGAINST GRATUITIES

The Contractor warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the

Contractor, to any officer, official, agent, or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring, on the open market, any items, which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

24. DRUG-FREE WORKPLACE

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

25. AMERICANS WITH DISABILITIES ACT

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

26. 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.

27. CALIFORNIA LAW

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

28. 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.

29. 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.

30. SIGNATURE AUTHORITY

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

31. 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.

32. ENTIRE AGREEMENT

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

END OF EXHIBIT

EXHIBIT C - PAYMENT PROVISIONS

1. CONTRACT AMOUNT

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*, and allowable expenses, shall be the actual cost not to exceed the Contract Amount of **[\$[TBD]**, as set forth in this Exhibit C.

2. COMPENSATION FOR CONTRACT WORK

- A. For performing the Work of this Agreement, as set forth in *Attachment 2 Contract Terms, Exhibit D - Work to be Performed*, the State shall compensate the Contractor at the hourly rate of **[TBD]**.
- B. The Contractor shall not charge nor shall the State pay any overtime rate.

3. COMPENSATION FOR ALLOWABLE EXPENSES

- A. The State shall reimburse the Contractor as follows:
 - i. For necessary private vehicle ground transportation usage, the State will reimburse the Contractor at the applicable IRS approved rate per mile.
- B. The Contractor shall keep and maintain original invoices and receipts for reimbursement of mileage and photograph expenses, and provide them for review if requested by the AOC Project Manager.
- C. The total amount the State may pay the Contractor for allowable expenses sought under this paragraph shall be deducted from the Contract Amount as set forth in paragraph 1 of this Exhibit C.

3. PAYMENT PER TERM

The total amount the State may pay the Contractor for the Initial Term, pursuant to this Exhibit C, shall not exceed **[\$[TBD]**.

4. DIRECT EXPENSES

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

5. OTHER EXPENSES

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

6. METHOD OF PAYMENT

A. The Contractor shall submit an invoice for Work provided no more often than once a month. After receipt of invoice, the State will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

B. The State will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate the following:

- i. The Contract number;
- ii. A unique invoice number;
- iii. The Contractor's name and address;
- iv. The taxpayer identification number (the Contractor's social security number);
- v. A description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate;
- vi. The appropriate receipts for reimbursement of allowable expenses, if this Agreement provides for reimbursement;
- vii. The dates and hours worked;
- viii. The contractual charges, including the appropriate allowable under this Contract; and,
- ix. A preferred remittance address, if different from the mailing address.

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

Judicial Council of California
Administrative Office of the Courts
Attn: [TBD]
455 Golden Gate Avenue
San Francisco, CA 94102-3688

D. Invoices or vouchers not on printed bill heads shall be signed by the Contractor or the person furnishing the supplies or services.

7. 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.

8. 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.

9. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any payment by the State as provided in this Exhibit C shall in no way lessen the liability of the Contractor to replace unsatisfactory Work or Material, even if the unsatisfactory character of such Work or Material may not have been apparent or detected at the time such payment was made. Materials, Data, components, or workmanship that do not conform to *Exhibit D, Work to Be Performed*, shall be rejected and shall be replaced by the Contractor without delay.

10. MOST FAVORABLE PRICE

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

END OF EXHIBIT

EXHIBIT D - WORK TO BE PERFORMED

1. SCOPE OF SERVICES

The scope of services for this Project is to provide claims administration services to the AOC for third party claims affecting trial courts, judicial officers, court executives, and court employees.

2. STATEMENT OF THE WORK

- A. The service provider will provide the services set forth below for an Initial Term beginning October 1, 2013 and ending September 30, 2014. Two consecutive one-year terms, First Option Term and Second Option Term will be exercised at the sole discretion of the AOC.
- B. When services are requested, the service providers will provide the following services within the timeframes noted:
 - i. Conduct an investigation of each claim to the extent requested by the responsible LSO attorney.
 - ii. Within thirty (30) days of receipt of a claim, if requested by the LSO attorney, send to the LSO attorney a report containing any evaluation of liability and damages and describing the nature and timing of any remaining work necessary to resolve the claim.
 - iii. Provide any additional report as requested by the LSO attorney.
 - iv. If the LSO attorney agrees that settlement should be attempted, the service provider will communicate with the claimant, as necessary, to achieve settlement within the given authority.
 - v. If settlement is reached, obtain the claimant's signature on the AOC-approved release document and a completed W-9, and forward the original documents to the LSO attorney within 5 business days of receipt from the claimant.
 - vi. For each claim, maintain a file containing documentation of any investigation and all telephone conversations, discussions, or meetings, which shall be available for review by the AOC at any reasonable time.
- C. The services may be provided in certain counties or throughout the state.

3. TRANSITION PLAN

Contractor shall develop and maintain a Transition Plan that provides for Transition Services, as set forth in paragraph 20 of Exhibit B, that will allow the Work to continue without interruption or adverse effect and will facilitate an orderly transfer of the Work to the State or the State's

designee, when and if Transition Services become necessary. Contractor shall make such Transition Plan available for review by the State upon request by the AOC Project Manager.

4. CONTRACTOR'S RESPONSIBILITIES

The Contractor will have the following responsibilities under this Contract:

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

5. AOC'S RESPONSIBILITIES

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

END OF EXHIBIT

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EXHIBIT E- ATTACHMENT

This Exhibit includes the following attachment:

Appendix A – JBCL Appendix

APPENDIX A
JBCL APPENDIX

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

- 1. Contractor Certification Clauses.** Contractor certifies that the following representations and warranties are true. Contractor shall cause these representations and warranties to remain true during the term of this Agreement, and Contractor shall promptly notify the JBE if any representation and warranty becomes untrue.
 - 1.1. Non-discrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California’s Fair Employment and Housing Act (Government Code section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of non-discrimination.
 - 1.2. National Labor Relations Board.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
 - 1.3. Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBE.
- 2. Provisions Applicable Only to Certain Agreements.** The provisions in this section are *applicable only to the types of agreements specified in the title of each subsection*. If the Agreement is not of the type described in the title of a subsection, then that subsection does not apply to the Agreement.
 - 2.1. Agreements over \$10,000.** This Agreement is subject to examinations and audit by the State Auditor for a period of three years after final payment.

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- 2.2. Agreements over \$50,000.** No JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term).
- 2.3 Agreements of \$100,000 or More.** Contractor certifies that it is, and will remain for the term of the Agreement, in compliance with PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits regarding marital or domestic partner status. Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 2.4 Agreements for Services over \$200,000 (Excluding Consulting Services).** Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
- 2.5 Agreements of \$1,000,000 or More.** Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran (“Iran List”) created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the JBE to enter into this Agreement pursuant to PCC 2203(c).
- 2.6 Agreements for the Purchase of Goods.** Contractor shall not sell or use any article or product as a “loss leader” as defined in Business and Professions Code section 17030.
- 2.7 Agreements for the Purchase of Certain Goods, and Printing, Parts Cleaning, Janitorial, and Building Maintenance Services Agreements.** If Contractor will sell to the JBE, or use in the performance of this Agreement, goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), then with respect to those goods: (i) Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible, and (ii) upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
- 2.8 Agreements for Furnishing Equipment, Materials, Supplies, or for Laundering Services.** Contractor certifies that no apparel, garments or corresponding accessories,

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equipment, materials, or supplies furnished to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the JBE.

- 2.9 Agreements for which Contractor Has Committed to Achieve DVBE Participation.** Contractor shall within sixty (60) days of receiving final payment under this Agreement certify in a report to the JBE: (i) the total amount the prime Contractor received under this Agreement; (ii) the name and address of any disabled veterans business enterprise ("DVBE") that participated in the performance of this Agreement; (iii) the amount each DVBE received from the Contractor; (iv) that all payments under this Agreement have been made to the DVBE; and (v) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
- 2.10 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.
- 2.11 Agreements for Legal Services.** Contractor shall: (i) adhere to legal cost and billing guidelines designated by the JBE; (ii) adhere to litigation plans designated by the JBE, if applicable; (iii) adhere to case phasing of activities designated by the JBE, if applicable; (iv) submit and adhere to legal budgets as designated by the JBE; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the JBE; and

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

- 2.12 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.
- 2.13 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.
- 2.14 Agreements that the JBE Cannot Terminate for Convenience.** The JBE's obligations under this Agreement are subject to the availability of applicable funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the initial appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. Upon notice, the JBE may terminate this Agreement in whole or in part, without prejudice to any right or remedy of the JBE, for lack of appropriation of funds. Upon termination, the JBE will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total contract amount

(rev. 9-17-12)

END OF APPENDIX