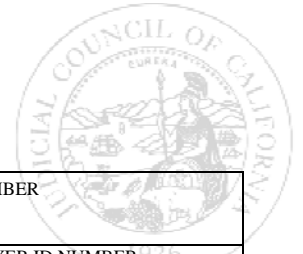


RFP Title: Distance Learning Course for Mediators
 RFP No.: LSO-ADR-06-LM



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 Appendix A, the following is the descending order of precedence: Appendix A, Exhibit A, B, C, D and E.

- Exhibit A – Standard Provisions
- Exhibit B – Special Provisions
- Exhibit C – Payment Provisions
- Exhibit D – Work to be Performed
- Exhibit E – Contractor's Key Personnel
- Exhibit F – Attachments
 - Appendix A - JBCL Appendix
 - Appendix B - Acceptance of the Work and Sign-off Form

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
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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, losses, and expenses, including attorneys’ fees and costs, accruing or resulting from (i) a latent or patent defect in any Work, Materials, or Data, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the State’s prior written consent, which consent shall not be unreasonably withheld; and the State shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor’s duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

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

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any extension thereof, (b) fails to perform any requirements of this Agreement, or (c) so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, after receipt of a written Notice from the State specifying failure due to any of the preceding three (3) circumstances, the Contractor does not cure such failure within a period of five (5) business days or a longer period, if authorized in the Notice of failure; or,

- ii. If the Contractor should cease conducting business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer or permit the appointment of the receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any State authority relating to insolvency or protection from the rights of creditors; 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. **“Acceptance”** means the written acceptance issued to the Contractor by the State after the Contractor has completed a Deliverable or other Contract requirement, in compliance with the Contract Documents, including without limitation, Exhibit D, Work to be Performed and Exhibit E, Attachments, Attachment 1, Acceptance of the Work and Sign-off Form.
- B. **“Administrative Director”** refers to that individual or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- C. **“Amendment”** means a written document issued by the State and signed by the Contractor, which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- D. **“Confidential Information”** means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State’s business or the business of its constituents. Confidential Information does not include: (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- E. The **“Contract”** or **“Contract Documents”** constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms **“Contract”** or **“Contract Documents”** may be used interchangeably with the term **“Agreement.”**
- F. **“Contract Amount”** means the total amount encumbered under this Agreement for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.
- G. The **“Contractor”** means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.

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- H. **“Data”** means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- I. **“Day”** means calendar day, unless otherwise specified.
- J. **“Deliverable(s)”** or **“Submittal(s)”** means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- K. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i. Acts of God or the public enemy;
 - ii. Acts or omissions of any government entity;
 - iii. Fire or other casualty for which a party is not responsible;
 - iv. Quarantine or epidemic;
 - v. Strike or defensive lockout; and,
 - vi. Unusually severe weather conditions.
- L. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- M. **“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.
- N. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.
- O. 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.
- P. **“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.”

- Q. **“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.
- R. **“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.
- S. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- 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. **“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. ACCEPTANCE OF THE WORK

- A. The AOC Project Manager shall be responsible for the sign-off Acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the AOC Project Manager will apply the Acceptance Criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
- B. Acceptance Criteria for Work (**“Criteria”**) provided by the Contractor pursuant to this Agreement:
- i. Timeliness: The Work was delivered on time;
 - ii. Completeness: The Work contained the Data, Materials, and features required in the

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Contract; and

- iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the State, in accordance with direction from the AOC Project Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The AOC Project Manager shall use the Acceptance and Sign-off Form, provided as Exhibit E, Attachments, Attachment 1, Acceptance of the Work and Sign-off Form, Acceptance and Sign-off Form to this Agreement, to notify the Contractor of the Work's acceptability.
- D. If the State rejects the Work provided, the AOC Project Manager shall submit to the Contractor a written rejection using Exhibit E, Attachments, Attachment 1, Acceptance of the Work and Sign-off Form, Acceptance and Sign-off Form, describing in detail the failure of the Work as measured against the Criteria. If the State rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- E. If the AOC Project Manager requests further change, the Contractor shall meet with the AOC Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.
- F. If agreement cannot be reached between the AOC Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the State may terminate this Agreement pursuant to the terms set forth in Exhibit A, Standard Provisions, paragraph 3.

4. 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.

5. 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.

6. 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:

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

ii. 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]

7. STANDARD OF PROFESSIONALISM

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

8. 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, Special Provisions, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

9. SUBCONTRACTING

The Contractor shall not subcontract this Agreement or services provided under this Agreement, unless the State agrees to the subcontracting in writing. Any authorized subcontract(s) shall be executed in the same manner as this Agreement. No party to this Agreement shall in any way contract on behalf of or in the name of another party to this Agreement.

10. EVALUATION OF CONTRACTOR

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

11. CONFIDENTIALITY

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

12. COPYRIGHTS AND RIGHTS IN DATA

- A. Contractor hereby assigns to the State ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. The State reserves the

right to use and copyright, in whole or in part, any Deliverables and Data produced with funding from this Agreement.

- B. The Contractor agrees not to assert any rights at common-law, or in equity, or establish a copyright claim to any Data produced with funding from this Agreement unless the State gives the Contractor express permission to do so. If such permission is obtained and the Data is copyrighted, the State will be given an exemption that reserves for it the right to use, duplicate, and disseminate the Data without fee.
- C. Contractor shall not publish or reproduce any Data in whole or part, in any manner or form, or authorize others to do so, without the written consent of the State.

13. 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.

14. OWNERSHIP OF RESULTS

- A. Unless the Contractor and the State reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the State's requirement (i) all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the State shall be treated as if it were "work for hire" for the State, and (ii) the Contractor will immediately disclose to the State all discoveries, inventions, enhancements, improvements, and similar creations (collectively, "Creations") made, in whole or in part, by the Contractor in the course of or related to providing services to the State.
- B. All ownership and control of the above Data, Materials, and Creations, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the State, without any

additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the State. The Contractor agrees to execute any documents required by the State to register its rights and to implement the provisions herein.

15. 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.

16. ACCOUNTING SYSTEM REQUIREMENT

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

17. 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.

18. AUDIT

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

19. 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. 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.

20. 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.

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 \$500,000.00 per claim.
 - iii. Employers' Liability with limits not less than \$500,000.00 for each accident.
 - iv. Commercial General Liability Insurance with limits not less than \$500,000.00 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

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agents. Any insurance and/or self-insurance maintained by the State, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way,

- iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the State certificates of insurance satisfactory to the State evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the State's request.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the State, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the State, the Contractor shall, upon Notice to that effect from the State, promptly obtain a new policy, and shall submit the same to the State, with the appropriate certificates and endorsements, for approval.
- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, 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. In accordance with Exhibit B, Special Provisions, paragraph 3, Acceptance of the Work, the State will pay the Contractor the firm fixed price per Deliverable, as set forth in Table 1, below, upon the completion and acceptance of each Deliverable as identified in Exhibit D, Work to be Performed. The firm fixed prices set forth in Table 1, below, shall be inclusive of all costs, benefits, expenses, overhead and fees payable to the Contractor for services rendered to the State.

Table 1: Deliverable Number, Due Date, and Firm Fixed Price

Deliverable	Due Date	Firm Fixed Price per Deliverable
1	[TBD]	[TBD]
2	[TBD]	[TBD]
3	[TBD]	[TBD]
4	[TBD]	[TBD]
Total Contract Amount		[TBD]

B. For completion and acceptance of the Deliverables, as set forth in *Exhibit C*, the total amount the State may pay the Contractor, pursuant to this paragraph, shall be **[\$[TBD]]** for the Work of this Agreement.

3. 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.

4. OTHER EXPENSES

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

5. METHOD OF PAYMENT

- A. The Contractor shall submit an invoice for Work provided no more often than once a month with Appendix B. 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 dates worked;
 - vii. The contractual charges, including the appropriate allowable under this Contract; and,
 - viii. A preferred remittance address, if different from the mailing address.
- C. The Contractor shall submit one (1) original and two (2) copies of invoices to:
- Judicial Council of California
Administrative Office of the Courts
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.

6. 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.

7. DISALLOWANCE

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

8. 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

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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.

9. 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 distance learning program must:

- 1.1 Be targeted to and suitable for mediators who have already completed a basic mediation training program and have varied levels of actual mediation experience;
- 1.2 Include one three-hour core segment that identifies, explores, and provides techniques, tools, and strategies to address key issues that commonly arise for attorney and non-attorney mediators when mediating cases with self represented litigants (SRLs);
- 1.3 Include three one-hour segments that supplement the core segment by addressing specific issues that may arise and be particularly challenging (1) for attorneys mediating with SRLs; (2) for non-attorneys mediating with SRLs; and (3) when attorneys or non-attorneys mediate particular types of cases;
- 1.4 Be presented in an easy-to-use and visually appealing format employing well-documented user controls and high quality graphics;
- 1.5 Incorporate video vignettes that serve as discussion points and other multi-media elements, such as animations, slides, and narration;
- 1.6 Require user interaction with the course content, including case study scenarios and interactive questions, with feedback and discussion of issues;
- 1.7 Include written materials, such as job aids and other handouts, to support the course work;
- 1.8 Be professionally produced and suitable for use on the internet (California Courts website) and on CD-ROM;
- 1.9 Meet the AOC's Web Manual: Technical Design Standards and Guidelines, (including all Accessibility Guidelines) and be Shareable Content Object Reference Model (SCORM) compliant;
- 1.10 Be authored in dynamic HTML, Adobe Flash, Adobe Captivate, or other authoring software approved by the AOC;
- 1.11 Avoid the usage of atypical plug-ins; and
- 1.12 Be compatible with the following system environment:
 - Unix platform, Sun Solaris, OS 5.6
 - Novell Netware 5.1 file server OS

- Cold Fusion 5.0
- Oracle 8, Oracle 9i
- Microsoft Windows 2000 desktop
- Microsoft Exchange
- Apache web server 1.3.37

1.13 Contractor must warrant that the product does not infringe the copyrights, trademarks or other intellectual property rights of third parties, and that all model/actor/participant releases have been obtained.

2. TASKS AND DELIVERABLES

The Contractor shall complete the following Tasks and submit the following Deliverables:

2.1 **Task 1 - Research and Development of Content.** Facilitate focus groups and/or interviews with AOC staff and subject matter experts (SMEs) identified by the AOC to identify challenges and desirable knowledge, skills, and abilities (KSAs) for attorneys and non-attorneys mediating with SRLs.

2.1.1 **Tasks:**

- Review information about California court-connected mediation programs for SRLs
- Review literature about mediating with SRLs
- Obtain input from judicial officers and court ADR program staff, persons who assist SRLs (e.g., self-help center and legal services provider staff), and attorney and non-attorney mediators to identify: the perceived challenges and benefits of SRL participation in mediation, the assistance SRLs require to effectively prepare for and participate in mediation, and mediators' concerns, challenges, practices, and approaches with respect to mediating with SRLs. The result of these sessions will guide the content development for the course.

2.1.2 **Deliverable 1:** Narrative report identifying and discussing KSAs for mediating with SRLs.

2.2 **Task 2 - Proposed curriculum package.**

2.2.1 **Tasks:** Conduct gap analysis to determine what KSAs for mediating with SRLs are not covered in current basic mediation trainings; develop overall learning objectives; identify content to support the instruction of the objectives; determine overall instructional strategies for the distance learning product; develop interactive strategies for delivery of content identified in learning objectives; develop storyboards.

2.2.2 **Deliverable 2:** Complete proposed curriculum package, including all items mentioned above for each of the four modules described above (1.2 and 1.3) for AOC and SME review and feedback on content development and delivery methodology.

2.3 **Task 3 – Revised curriculum package.**

2.3.1 **Tasks:** Complete all modifications based upon feedback provided by SMEs to the satisfaction of the AOC.

2.3.2 **Deliverable 3:** A complete revised curriculum package, including all items mentioned above for each of the four modules described above (1.2 and 1.3), and addressing AOC and SME feedback on draft curriculum (Deliverable 2).

2.4 **Task 4 – Produce distance learning program.**

2.4.1 **Tasks:** Development and integration of multi-media program elements, including video, audio, graphics, text, and interactive components.

2.4.2 **Deliverable 4:** Submission of all of the following to the AOC:

- All raw video footage that was shot in producing the course, in one or more commonly used high definition formats;
- Five master DVDs of high definition videos of all scenarios used in the course;
- Five master DVDs of the complete training program;
- An external hard drive with electronic files of the complete distance learning program in a format suitable for hosting on the California Courts website;
- Source files of all other multimedia components, including audio and animation source files; and
- SCORM 2004 compliant ZIP publication package.

3. PROGRESS REPORTS

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

4. CONTRACTOR'S RESPONSIBILITIES

The Contractor will have the following responsibilities under this Contract:

- i. Work closely with AOC Project Manager;
- ii. Perform and prepare Work as delineated;
- iii. Proactively assist with resolution of issues with any aspect of the Work;
- iv. Proactively anticipate Project deviations and is responsible for taking immediate corrective action; and
- v. 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

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Project activities, including Project plans, timelines, and resources, and escalating issues for resolution to AOC management.

END OF EXHIBIT

EXHIBIT E - CONTRACTOR'S KEY PERSONNEL

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

Contractor's Key Personnel	Title
[TBD]	[TBD]
[TBD]	[TBD]

2. Contractor's Key Personnel Resume are attached below:

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EXHIBIT F- ATTACHMENTS

This Exhibit includes the following:

Appendix A – JBCL Appendix

Appendix B, Acceptance of the Work and Sign-off Form

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.
 - 1.4. **Iran Contracting Act.** 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 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. **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 AOC Auditor for a period of three years after final payment.
- 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, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees. Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable AOC 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 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,

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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.(*)

- 2.6. 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.
- 2.7. 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.
- 2.8. Agreements with Contractors that Have Employees.** Contractor must maintain during the term of this Agreement workers' compensation coverage 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.

END OF APPENDIX

APPENDIX B
ACCEPTANCE OF WORK AND SIGN-OFF FORM

Description of Work provided by Contractor:

Date submitted: _____

Work is:

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

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

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

Please note level of satisfaction: Poor Fair Good Very Good Excellent

Comments, if any:

Work is accepted. Work is unacceptable as noted above.

Name: _____

Title: _____

Date: _____

END OF FORM