

Attachment B  
Minimum Terms and Conditions

**EXHIBIT A**  
**SCOPE OF WORK**

**To Be Determined (TBD)**

*END OF EXHIBIT*

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**EXHIBIT B**  
**PAYMENT PROVISIONS**

1. Contract Amount

- A. The total amount the State may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, and any allowable expenses if allowed under this Agreement, shall be **TBD**, as set forth in this Exhibit.
- B. The Contractor has estimated the costs and expenses necessary to complete the Work of this Agreement. The State's acceptance of the Contractor's proposal and price does not (i) imply that the State approves of or adopts the Contractor's plan, means, methods, techniques, or procedures required to perform the Work, nor (ii) relieve the Contractor from the sole responsibility for the accuracy of its estimate and timely completion of the Work of this Agreement within the total amount for compensation set forth herein.

2. Compensation for Contract Work (*if Work is contracted for on a cost reimbursable basis at hourly rate(s)*)

- A. For performing the Work of this Agreement, the State shall compensate the Contractor for the actual cost, at the hourly rates set forth as follows:  
  
**TBD**
- B. The hourly rate set forth herein are inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for services rendered to the State.
- C. The Contractor shall not charge nor shall the State pay any overtime rate.
- D. The Contractor shall not request nor shall the State consider any reimbursement for non-production work including but not limited to time spent traveling to and from the job site or any living expenses.
- E. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed **TBD**.

3. Compensation for Allowable Expenses (*if Work is contracted at a cost reimbursable basis at hourly rate(s), and if expenses are allowed*)

The State shall reimburse the Contractor as follows:

- A. Administrative and Operating Expenses

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- i. The State shall reimburse the Contractor for itemized administrative and operating expenses that are reasonably incurred in performing the Work of this Agreement, provided that the Project Manager approves them. These expenses may include communication, clerical assistance, graphics, production, duplicating, and reasonable costs.
- ii. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed **TBD**.

B. Transportation, Meals, and Lodging Expenses

- i. The State shall reimburse the Contractor for actual expenses incurred for reasonable and necessary transportation, meals, lodging, and other travel-related expenses required to perform the Work of this Agreement.
- ii. The Contractor shall submit a written travel plan to the Project Manager prior to incurring any travel expenses, including the reason for the trip, number of persons traveling, types of expenses the Contractor expects to incur and the estimated costs. Prior approval of the travel plan is required.
- iii. For necessary air transportation, the State will reimburse the Contractor for the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) days prior to travel, unless the Project Manager agrees otherwise in writing.
- iv. For overnight travel, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the State will reimburse the Contractor for meal and lodging expenses in an amount not to exceed **\$150.00** per Day, plus sales tax. Meals shall be reimbursed at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~**\$6.00**; lunch~**\$10.00**; dinner~**\$18.00**; and/or incidentals~**\$6.00**. Hotel room rental shall be reimbursed for the actual cost not to exceed **\$110.00** per Day plus tax and/or energy surcharge.
- v. For necessary private vehicle ground transportation usage, the State will reimburse the Contractor up to **\$0.585** cents per mile.
- vi. Upon the Project Manager's request, the Contractor shall provide copies of receipts for reimbursement of transportation, lodging, and meal expenses.
- vii. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed **TBD**.

4. Payment for Contract Work (if Work is contracted for on a firm fixed price basis)

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- A. For performing the Work of this Agreement, the State shall compensate the Contractor at the firm fixed price(s), as set forth below, for the completion and acceptance of each Deliverable, as set forth in Exhibit A, Work to be Performed, inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for services rendered to the State.

**TBD**

- B. The total amount the State may pay the Contractor, pursuant to this provision, shall be **TBD**.

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. Direct Expenses

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

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. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement.

8. Method of Payment

- A. The Contractor shall submit an invoice for Work provided upon completion of the Deliverables and/or Tasks and/or Work (as applicable), as set forth in Exhibit A, Work to be Performed, but 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. An unique invoice number;

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- 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 and hours worked;
- vii. The contractual charges, including the appropriate cost, price, rate, progress payment, or expenses, if allowable under this Contract;
- viii. The appropriate itemization and receipts for reimbursement of allowable expenses, if this Agreement provides for reimbursement of expenses; 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  
Finance Division, Accounts Payable  
455 Golden Gate Avenue, 7<sup>th</sup> Floor  
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.

9. 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

10. Payment Does Not Imply Acceptance of Work

The granting of any payment by the State as provided in this Exhibit, 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.

*END OF EXHIBIT*

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**EXHIBIT C**  
**STANDARD PROVISIONS**

1. Representations and Warranties

A. **Contractor's Representations and Warranties.** Contractor represents and warrants that the following statements are true:

- i. **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- ii. **No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under California Government Code section 1090 et seq. or section 87100 et seq., or under California Rules of Court 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- iii. **Authority.** Contractor has the authority to enter into this Agreement, to perform the obligations set out in this Agreement, and its representative who signs this Agreement has the authority to do so. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms.
- iv. **No Interference with other Agreements.** This Agreement does not constitute a conflict of interest or default under any other of Contractor's other agreements.
- v. **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform its obligations under this Agreement.
- vi. **Drug Free Workplace.** Contractor provides a drug-free workplace as required by California Government Code sections 8355-8357.
- vii. **Work Eligibility.** Contractor's personnel assigned to this Agreement are able to work legally in the United States and possess valid proof of work eligibility.
- viii. **GAAP.** The Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- ix. **Compliance.**
  - a. **Obligations.** Contractor pays all undisputed debts when they come due.
  - b. **Laws-General.** Contractor is in compliance with all laws, rules and regulations applicable to its business, including all federal, state and local laws and regulations with respect to employment matters.

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c. **Laws-Specific:**

- i) **Non-discrimination.** 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 or AIDS), marital or domestic partner status, medical condition (including cancer or genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender identity), and sexual orientation.
- ii) **No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement. Contractor takes all reasonable steps to prevent unlawful harassment from occurring.
- iii) **Employment and Labor Laws.** Contractor also complies with applicable provisions of the federal Americans with Disabilities Act (42 U.S.C. 12101, et seq.), California's Fair Employment and Housing Act, California Government Code section 12990 et seq., and California Code of Regulations, title 2, section 7285 et seq.
- iv) **Americans with Disabilities Act.** Contractor complies with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Sections 012101 *et seq.*), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

B. **Contractor's Covenant -Representations and Warranties to Remain True.**

During the Term, Contractor will not take an action, or omit to perform any act, that may result in a representation and warranty becoming untrue. Contractor must immediately notify the AOC if any representation and warranty becomes untrue.

2. 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.

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3. 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 officer or employee of the State of California. Contractor is an independent contractor to the AOC. No employer-employee, partnership, or joint venture exists between Contractor or its personnel and the AOC. Nothing Contractor does, or fails to do, in the performance of this Agreement will make Contractor or its personnel an employee of the AOC. The AOC will not provide to Contractor or its personnel the benefits that the AOC gives to employees. If the Internal Revenue Service or any other federal or State governmental agency inquires about Contractor's status as an independent contractor, Contractor must inform the AOC and let the AOC participate in any discussion or negotiation with the Internal Revenue Service or any federal or State governmental agency.

4. 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.

5. Manner of Performance of Work

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction. The Contractor shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement.

6. Services Warranty

The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services under 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 be performed in a competent and professional manner. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors and assigns.

7. Permits and Licenses

The Contractor will, and will ensure that each of its employees, independent contractors or agents assigned to perform any services under this Agreement, observe and comply with all federal, state, city, and county laws, rules, and regulations affecting services under this Agreement. The Contractor will, and will ensure that its employees, independent contractors and agents, 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.



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8. Personnel

- A. The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel assigned to perform Work under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. The State agrees to provide Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor will immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- B. The Contractor will endeavor to retain the same individuals on the Work during the term of this Agreement. Contractor will immediately notify the State if any of Contractor's Key Personnel become unavailable during the term of this Agreement. Contractor will supply a substitute acceptable to the Project Manager, and if Contractor cannot furnish an acceptable replacement, the State may terminate this Agreement.
- C. The Contractor's Key Personnel for the purposes of this Agreement are set forth in Exhibit E, Contractor's Key Personnel
- D. The provision of **TBD**'s personal services are a material condition of this Agreement.

9. Insurance

- A. **Basic Coverage.** Contractor must maintain at its expense the following insurance during the Term:
  - i. **Commercial General Liability.** This policy must include all coverage in the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, CG 0001 (including products and completed operations and blanket contractual liability covering the indemnities contained in this Agreement) with no coverage deletions or exceptions, with limits not less than \$1,000,000.00 for each occurrence, combined single limit bodily injury and property damage.
  - ii. **Professional Liability.** This policy must cover Contractor's performance under this Agreement, at minimum limits of \$1,000,000.00 per claim.
  - iii. **Workers' Compensation/Employer's Liability.** This policy is required only if Contractor has employees, or hires employees any time during the Term. The policy must include workers' compensation coverage that meets applicable statutory requirements, and employer's liability coverage for bodily injury and property damage at minimum limits of \$500,000.00 each for (i) each accident, (ii) disease policy limit, and (iii) disease – each employee.

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- iv. **Automobile Liability.** This policy must cover bodily injury and property damage and be applicable to all vehicles, whether owned, non-owned, leased, or hired. Contractor may substitute personal automobile liability insurance, if Contractor has no transportation or hauling responsibilities under this Agreement. The minimum liability limit will be \$1,000,000.00 per occurrence, combined single limit.
- B. **Claims Made” Coverage.** If any required policy is written on a “claims made” form, Contractor must maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the AOC’s acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any “claims made” policy must be no later than the date that Services commence under this Agreement.
- C. **Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella coverage.
- D. **Deductibles and Self-Insured Retentions.** Contractor must declare to the AOC all deductibles and self-insured retentions, and they are subject to the AOC’s approval. Deductibles and self-insured retentions do not limit Contractor’s liability.
- E. **Certificates of Insurance.** Contractor must have its insurance broker or agent send the AOC certificates of insurance and endorsements attesting to the existence of coverage and providing that the policies cannot be canceled, allowed to lapse, terminated or amended to reduce coverage without thirty (30) days’ prior written notice to the AOC. The certificates must reference the agreement number of this Agreement. Contractor must require its Commercial General Liability policy carrier to endorse Contractor’s policy to include the Judicial Branch Entities and Judicial Branch Individuals as additional insureds with respect to liability arising out of its Services. Contractor must send all certificates and endorsements sent to the AOC’s Business Services Manager, at the address listed on the Coversheet.
- F. **Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by a carrier with an A.M. Best rating of A-/VII or better that is authorized to transact business in the State.
- G. **Required Policy Provisions.** Each policy must provide, as follows:
  - i. **Insurance Primary; Waiver of Subrogation.** The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by Judicial Branch Entities and Judicial Branch Personnel. For Workers’ Compensation and Professional Liability insurance, the insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel.
  - ii. **Application.** The policy applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer’s liability.

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- H. **Subcontractors; Partnerships.** Contractor must include all subcontractors as insureds under Contractor's policies or Contractor must furnish separate certificates and endorsements for each subcontractor. If Contractor is an association, partnership, or other joint business venture, the insurance may be provided by either of the following methods:
- i. **Separate.** Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
  - ii. **Joint.** Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- I. **Consequences of Lapse.** If required insurance lapses during the Term, the AOC is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

10. Agreement Administration/Communication

- A. Under this Agreement, the 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 Project Manager.
- i. Any Notice from the Contractor to the State shall be in writing and shall be delivered the Project Manager as follows:

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

- ii. Notice to the Contractor shall be directed in writing to:

**TBD**

11. Default and Remedies

- A. A default exists under this Agreement if:
- i. Any of the representations or warranties set forth in this Exhibit become untrue, or Contractor makes a material misrepresentation regarding the personnel involved in or any aspect of its performance of the Work; or
  - ii. Contractor fails or is unable to meet or perform any of its duties under this Agreement, and
    - a. if capable of cure, such failure is not cured within 10 days of receipt of notice of failure; or

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- b. the failure is not capable of being cured.
- B. Whether or not any failure by Contractor is capable of cure, or is cured, is within the sole discretion of the State. Contractor will notify the State immediately if a default occurs, or if Contractor receives information that a third party claim or dispute that alleges facts that would constitute a default under this Agreement is filed or threatened.
- C. The State may terminate this entire Agreement for cause upon notice to Contractor that a default exists. The State may reduce the amount of Work and, proportionately, the compensation, if it determines that having Contractor perform the Work has become infeasible due to changes in applicable laws or regulations. If the Agreement is terminated, the State may proceed with the Work in any manner it deems proper. The cost to the State to perform this Agreement shall be deducted from any sum due the Contractor under this Agreement or any other agreement, and the balance, if any, shall be paid to the Contractor upon demand.

12. Termination; Effect of Expiration or Termination

A. **Early Termination.**

- i. The AOC may terminate this Agreement in whole or in part “for cause” if Contractor is in default.
- ii. The AOC may terminate this Agreement in whole or in part, or modify or limit the Services and, proportionately, Contractor’s compensation, if:
  - a. The AOC determines that having Contractor provide the Services has become infeasible due to changes in applicable laws or regulations, or
  - b. Expected or actual funding to compensate Contractor is withdrawn, reduced or limited.
- iii. The AOC may terminate this Agreement in whole or in part at any time for any or no reason upon ten (10) days written notice.
- iv. In the event a federal or State tax or employment agency concludes that an independent contractor relationship does not exist, either Contractor or the AOC may terminate this Agreement immediately upon written notice.

B. **Effect of Expiration and Early Termination; Survival.**

- i. Upon receipt of any termination notice from the AOC, Contractor must promptly discontinue all affected Services unless the notice specifies otherwise.
- ii. Upon the End Date:

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- a. The AOC will be released from compensating Contractor for Services other than those Contractor satisfactorily performed prior to the End Date.
  - b. Contractor must submit Contractor's final invoice for payment within sixty (60) days of the End Date. The AOC will not pay any Contractor invoice received after this period.
  - c. Contractor will be released from performing Services, except for Services in any non-terminated portion of the Agreement.
- iii. All rights and duties in this Exhibit C, as well as the Disallowance and Payment Does Not Imply Acceptance of Work provisions of Exhibit B, will survive the expiration or termination of this Agreement.
  - iv. 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.

13. Acceptance of the Work

- A. The Project Manager shall be responsible for the sign-off acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the Project Manager will apply the acceptance criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
- B. Acceptance Criteria for Work ("**Criteria**") provided by the Contractor pursuant to this Agreement:
  - i. Timeliness: The Work was delivered on time;
  - ii. Completeness: The Work contained the Data, Materials, and features required in the Contract; and
  - iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the State, in accordance with direction from the Project Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The State's Project Manager shall use the Acceptance and Signoff Form, provided as Attachment 1 to this Agreement, to notify the Contractor of the Work's acceptability.

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- D. If the State rejects the Work provided, the State's Project Manager shall submit to the Contractor a written rejection using Attachment 1, the Acceptance and Signoff Form, describing in detail the failure of the Work as measured against the 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 Project Manager requests further change, the Contractor shall meet with the Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.
- F. If agreement cannot be reached between the State's Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the State may terminate this Agreement pursuant to the terms of the Default and Remedies provision of this Exhibit C.

14. Ownership of Results

- A. **Deliverables.** All Data and Deliverables prepared by the Contractor specifically for delivery to the State shall become the property of the State.
- B. **Technical Elements.** In performing the Work, the Contractor may use certain data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, leading practices, and specifications developed or used by Contractor or its licensors, or to which the Contractor otherwise has rights, including all additions, improvements and modifications made thereto in the course of the Contractor performing the Work (collectively, "Technical Elements"). The State shall have no rights in or to the Technical Elements, except with respect to Technical Elements solely to the extent necessary for the State to use the Deliverables as permitted by this Agreement. The Contractor retains all right to use its knowledge, experience and know-how, including the Technical Elements, in providing services to other clients.
- C. The Contractor agrees not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data. The Contractor shall not

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publish or reproduce such Data in whole, or part, or any manner or form, or authorize others to do so without the written consent of the State.

15. Ownership of Intellectual Property, Etc.

- A. The Contractor acknowledges and agrees that all Exams, whether Certified Court Interpreter Exams or Registered Court Interpreter Exams, and Exam Materials are the proprietary property of the State, and furnished hereunder, are provided for the Contractor's use for the purposes of this Agreement only. All such proprietary Exams and Exam Material shall remain the property of the State and all ownership and control of the above Exams and Exam Materials, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State. The Contractor agrees to take all reasonable steps to insure that such proprietary Exams and Exam Materials are not disclosed to others, without prior written consent of the State.
- B. 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 (a) 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 (b) 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.
- C. All ownership and control of the Data, Materials, and Creations set forth in subparagraph B above, 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.

16. Copyrights and Rights in Data

- A. The State reserves the right to use and copyright, in whole or in part, any Data, produced with funding from this Agreement.
- B. The Contractor agrees not to copyright any Data produced with funding from this Agreement unless the State gives the Contractor express permission to do so. If such permission is obtained and the Data is copyrighted, the State will be given an

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exemption that reserves for it the right to use, duplicate, and disseminate the Data without fee.

17. Confidentiality

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

18. Subcontracting

- A. **Permitted Subcontracts.** Contractor may not subcontract its duties under this Agreement without the AOC's prior written consent. Consent may be withheld for any reason or no reason.
- B. **Requirements.** Any subcontract by Contractor will take effect only if there is a written agreement between Contractor and each subcontractor, stating each subcontractor:
  - i. Makes the representations and warranties made by Contractor in this Agreement; and
  - ii. Appoints the AOC an intended third party beneficiary under the written agreement.
- C. **No Release.** No subcontract will release Contractor from its duties under this Agreement.



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19. Assignment; Successors

A. **Permitted Assignments.**

- i. Contractor may not assign Contractor's rights or duties under this Agreement without the AOC's prior written consent. Consent may be withheld for any reason or no reason. Any attempted assignment will be void or invalid.
- ii. The AOC may assign its rights and duties to any State entity. The AOC will notify Contractor in writing within thirty (30) days following the assignment.
- iii. Any assignment by Contractor will take effect only if there is a written agreement between Contractor and all assignees, stating the assignees:
  - a. Are jointly and severally liable to the AOC for performing Contractor's duties in this Agreement;
  - b. Affirm the rights granted in this Agreement to the AOC;
  - c. Make the representations and warranties made by Contractor in this Agreement; and
  - d. Appoint the AOC an intended third party beneficiary under the written agreement.
- iv. No assignment will release either party of its duties under this Agreement.

B. **Successors.** This Agreement binds the parties as well as their heirs, successors, and assignees.

20. 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

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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.

21. 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

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provision or the State's Obligation Subject to Availability of Funds provision, as set forth under 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.

22. Limitation on Publication

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

23. Disabled Veteran Business Enterprise Participation *[If DVBE is proposed]*

- A. The Contractor has committed, as part of its proposal, to subcontract for [TBD] percent (TBD%) of the total Contract Amount to [TBD], a certified DVBE. Contractor acknowledges that that commitment is a part of the inducement for this Agreement, therefore, *Contractor hereby agrees to award a subcontract for [TBD]% of the total Contract Amount to [TBD], a certified DVBE.* During the performance of this Agreement, all requests for substituting the DVBE(s) named in the proposal must be made in accordance with the provisions of California Code of Regulations, Title 2, Section 1896.64(c).
- B. The Contractor agrees that the State or its designee shall have the right to review, obtain, and copy all Data pertaining to performance of this Agreement. The Contractor agrees to provide the State or its designee with any relevant information requested and shall permit the State or its designee access to its premises, upon reasonable Notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such Data, books, records, and other accounts that may be relevant to determining compliance with Public Contract Code Sections 10115 et seq., Military and Veterans Code, Section 999 et seq. and California Code of Regulations, Title 2, Section 1896.60 et seq. pertaining to DVBEs. The Contractor further agrees to maintain such Data for a period of four (4) years after final payment under the Agreement.

24. 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.

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25. Changes and Amendments

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

26. 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.

27. 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 and billing to the State under this Agreement. The Contractor further agrees to maintain such Data for a period of four (4) years after final payment under this Agreement.

28. Publicity

Contractor must not make any public announcement, press release, or other writing relating to this Agreement that is not itself part of the Services without the AOC Business Services Manager's prior written approval. In no event will the AOC Business Services Manager approve any writing that could be construed as an endorsement of the Contractor.

29. Choice of Law

California law, without regard to its choice-of-law provisions, governs this Agreement.

30. 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.

31. Evaluation of Contractor

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

32. 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.

33. Negotiated Agreement

The parties have negotiated this Agreement. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.

34. Counterparts

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

35. Time of Essence

Time is of the essence in this Agreement.

36. Non-Exclusive Nature of Agreement

Contractor may perform work for any other person or entity, provided that the other work does not interfere with the Services. The AOC may use other contractors to perform any work. The AOC does not guarantee Contractor will work a certain number of hours or be offered a certain number of projects.

37. Authority and Binding Effect

Each party warrants it has the authority to enter into this Agreement, it may perform as provided for in this Agreement, and its representative who signs this Agreement has the authority to do so. Each party warrants this Agreement constitutes a valid and binding obligation of the party, enforceable in accordance with its terms. This Agreement will not bind the AOC until it is signed by a duly authorized representative of the AOC.

38. Agreement Term and Option to Extend

A. The initial term of the Agreement for Project \_\_\_ shall commence on **TBD** and shall expire on **TBD** ("Initial Term"). This Agreement is of no force and effect until signed by both parties and all approvals are secured. Any commencement of performance prior to Agreement approval shall be done so at the Contractor's own

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risk; notice to proceed shall not be official until this Agreement is fully executed. The State, in its sole discretion, has the option to extend the term of the Agreement for Project \_\_\_ and Project \_\_\_, on the same terms and conditions applicable during the Initial Term, for up to two (2) individual one-year option terms, as defined below:

**First Option Term: TBD**

**Second Option Term: TBD**

- B. The State may exercise each of the options by written notice to the Contractor. In the event the State elects to exercise an 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.

39. 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.

*END OF EXHIBIT*

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**EXHIBIT D**  
**DEFINITIONS**

40. Definitions

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

- A. **“Acceptance”** is the written acceptance issued by the AOC after the Contractor has completed a Deliverable, submittal, Task, or other contract requirement, in compliance with this Agreement.
- 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. **“Annual Summary of Examination Activities”** means the report summarizing the Work that includes, but is not limited to the following: number of Exam administrations, total number of applicants examined, total number of successful (passing) applicants, total number of applicant appeals and grievances and decisions made thereon, revision or rotation of Exam Items or Exam Materials, and results of inter-Rater reliability studies.
- E. **“Application Fees”** are the fees that the Contractor is authorized by the State to collect from Exam applicants who wish to take one (1) of the Exams.
- F. **“Certified Court Interpreter Examinations”** or **“Certified Court Interpreter Exams”** means the oral or written portion or both portions of the test for interpretation fluency in a Designated Language in court proceedings that serves as part of the assessment and certification by the State of certified court interpreters in the California court system. **Certified Court Interpreter Examinations** or **Certified Court Interpreter Exams** are the proprietary property of the State.
- G. **“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

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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.

- H. 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**.”
- I. “**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.
- J. “**Contract Staff**” means the Subcontractors and/or Subject Matter Experts that the Contractor retains in connection with this Agreement to proctor Exams, rate oral Exams on the Rater Panel, and/or provide skilled input regarding Exam content, development, and maintenance.
- K. 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.
- L. “**Coversheet**” means the signature page of this Agreement.
- M. “**Credentialing**” refers to qualifying an individual to serve as a court interpreter through the certification process for designated languages, and the registration process for nondesignated languages.
- N. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- O. “**Day**” means calendar day, unless otherwise specified.
- P. “**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.
- Q. “**Designated Languages**” means those languages selected by the State as subject matter for Exams for the certification program for court interpreters in the California court system. The Designated Languages under this Agreement are Arabic, Cantonese, Eastern Armenian, Japanese, Korean, Mandarin, Portuguese, Russian, Spanish, Tagalog, Vietnamese, and Western Armenian.



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- R. **“Disabled Veteran Business Enterprise”** or **“DVBE”** means any person or entity that has been certified by the California Department of General Services’ Office of Small Business and Disabled Veteran Business Enterprise Services as a “Disabled Veteran Business Enterprise.”
- S. **“End Date”** means the date when this Agreement as a whole expires or is terminated pursuant to Exhibit C, Section 11.
- T. **“Exam Item”** means a particular question and its associated answer or acceptable response on an Exam.
- U. **“Exam Materials”** means Exam information packets, the Exam booklet containing questions and/or instructions, answer sheets, worksheets, and related Materials that are distributed to applicants either before or during an Exam and that are collected after administration of an Exam for either Certified Court Interpreter Exams or Registered Court Interpreter Exams. **Exam Materials** are the proprietary property of the State.
- V. **“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.
- W. **“Judicial Branch Entity”** has the meaning stated in Government Code sections 900.3 and 940.3: the Supreme Court, the Courts of Appeal, any superior court, the Judicial Council, or the Administrative Office of Courts.
- X. **“Judicial Branch Personnel”** means judges, judicial officers, subordinate judicial officers, directors, officers, members, employees, agents, consultants and volunteers of a Judicial Branch Entity.
- Y. **“Judicial Council Court Interpreters Advisory Panel”** is the advisory panel established by the Judicial Council of California to oversee the court interpreters program in California, including the establishment of policy with regard to the certification and registration of court interpreters in the California court system.
- Z. **“Key Personnel”** refers to the Contractor’s personnel named in Exhibit E, Contractor’s Key Personnel, whom the State has identified and approved to

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perform the Work of the Contract. Qualifications of Key Personnel are represented by the resumes set forth in Exhibit E. Roles of Key Personnel are set forth in Exhibit D, Work to be Performed.

- AA. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- BB. **“Nondesignated Languages”** means those languages that the State has not designated for the certification program for court interpreters in the California court system.
- CC. **“Norm”** or **“Norming”** means the level of training necessary to achieve and maintain reliability in Rater knowledge and performance.
- DD. **“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.
- EE. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.
- FF. **“Rater”** means the skilled and experienced individual employed or retained by the Contractor to evaluate the content, accuracy, speed, effectiveness, and reliability of an applicant’s oral interpretation performance. Minimum qualifications of raters include ownership of a post graduate degree with a focus in an applicable area of study and ten years of language-related experience. The process of this evaluation, including applying performance criteria, scoring, and recommendation of certification is called **“Rating.”**
- GG. **“Rater Panel”** is a team of trained professionals, who meet the minimum qualifications as defined in subsection 7.5.1 of this agreement, that assess applicant performance and provide a comprehensive score based upon a scoring rubric that means previously approved standards by the State.
- HH. **“Registered Court Interpreter Examination”** or **“Registered Court Interpreter Exam”** means the oral or written portion or both portions of the test for English fluency in court proceedings that currently serve as part of the assessment and registration by the State of registered court interpreters in the

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California court system. **Registered Court Interpreter Examinations** or **Registered Court Interpreter Exams** are the proprietary property of the State.

- II. **“Staff Employees”** means the Contractor’s regular employed staff who perform services in connection with this Agreement.
  
- JJ. The **“State”** refers to the Judicial Council of California / Administrative Office of the Courts (**“AOC”**).
  
- KK. **“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.”**
  
- LL. **“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.
  
- MM. **“Subcontractor”** shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term **“Subcontractor”** includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
  
- NN. **“Subject Matter Experts”** or **“SME”** means a person retained by the Contractor with a recognized particular expertise in one (1) or more of the following: (i) interpreting a Designated or Non-designated Language; (ii) teaching and/or testing the interpretation skills and abilities of others in a Designated or Non-designated Language; and/or (iii) administering, maintaining and/or developing test materials. SMEs are often Contract Staff, but occasionally, they are employed as Staff Employees who have the minimum qualifications as defined in subsection 1.I of this agreement.
  
- OO. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
  
- PP. **“Term”** means the period specified in Section 2 of the Coversheet.
  
- QQ. **“Test Cycle”** means the administration of oral and written Examinations for both Certified Court Interpreter and Registered Court Interpreter Exams, at different

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times, with the following frequency: two (2) Test Cycles for Designated Languages, and two (2) Test Cycles for Nondesignated Languages.

- RR. **“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.
- SS. **“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.

*END OF EXHIBIT*

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**ATTACHMENT 1  
ACCEPTANCE AND SIGNOFF FORM**

Description of Work provided by Contractor:

\_\_\_\_\_

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

Work is:

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please note level of satisfaction:

Poor  Fair  Good  Very Good  Excellent

Comments, if any:

\_\_\_\_\_  
\_\_\_\_\_

Work is accepted.

Work is unacceptable as noted above.

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

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

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

**END OF ATTACHMENT**