

ATTACHMENT 3 – MINIMUM TERMS

I. DEFINITIONS

Defined terms for purposes of these Minimum Terms and Conditions are as follows:

“**AOC**” shall mean the Judicial Council of California, Administrative Office of the Courts.

“**State**” shall mean the AOC and state, local and other government entities where applicable.

II. TERM OF CONTRACT

A. Term

1. The term of the Agreement will be three (3) years (“Term”), subject to the availability of funds, unless earlier terminated in accordance with the termination provisions contained in the Agreement. The AOC, in its sole discretion, shall have the ability to renew the Agreement for up to two additional successive periods of up to two (2) years each. The maximum amount payable to Contractor under the Agreement will not exceed that amount stated in the Pricing Schedule to the Agreement, payable solely from funds appropriated for the purpose of the Agreement. This amount may be changed during the term of the Agreement only by amendment to the Agreement.

B. Effective Date.

The Agreement will be effective after signing by the Contractor and the AOC (“Effective Date”).

III. SERVICES

A. Scope of Services.

The Contractor will provide the services, functions and responsibilities described in the Statement of Work (“SOW”) to be attached to the Agreement, as they may evolve during the Term and as they may be supplemented, enhanced, modified or replaced (collectively, the “Services”).

B. Performance of Services.

1. The AOC will have the right, at its sole discretion at any time, to perform itself or to contract with third-parties to perform any part of the Services.
2. The Contractor will cooperate with the AOC and with third parties retained by the AOC to perform information technology or other services, which cooperation will include (i) providing access to the facilities being used by the Contractor to provide the Services as necessary for the AOC or a third party to perform its work; (ii) providing access to the equipment and software used to perform the Services to the extent permitted under any underlying agreements with third parties; and (iii) providing such information regarding the operating environment, system constraints and other operating parameters as a person with reasonable commercial skills and expertise would find reasonably necessary for the AOC or a third party to perform its work.
3. Except as otherwise provided in the Agreement, the Contractor will support all of the technologies which are identified in the SOW and employed by the AOC as of the Effective Date, and will be proactive in identifying opportunities to implement new technologies that will improve service and support at a reduced cost.

4. In performing the Services under the Agreement on State premises, the Contractor will conform to any specific safety and security requirements contained in the Agreement or as required by law or regulation. The Contractor will take any additional precautions as the State or the AOC may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, will be grounds for termination of the Agreement in accordance with the termination for cause provisions of the Agreement.
5. In the event the Contractor fails to deliver in accordance with the Agreement requirements, the Contractor agrees that the delay will interfere with the proper implementation of the AOC's programs, to the loss and damage of the AOC. From the nature of the situation, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The Contractor agrees that in the event of any such delay, the amount of the damage which will be sustained from a delay will be the amounts set forth in the SOW, and the Contractor agrees that in the event of any such delay, the Contractor will pay such amounts as liquidated damages and not as a penalty. Amounts due the AOC as liquidated damages may be deducted by the AOC from any money payable to the Contractor. The AOC will notify the Contractor in writing of any claim for liquidated damages on or before the date the AOC deducts such sums from money payable to the Contractor.
6. Time of performance is of the essence in the Agreement.

C. Stop Work

1. The AOC may, at any time, by written stop work order to the Contractor, require the Contractor to stop all, or any part, of the work called for by the Agreement for a period of up to ninety (90) days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to end the incurrence of the costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of up to 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 AOC shall either:
 - (i) Cancel the stop work order; or
 - (ii) Terminate the work covered by the stop work order as provided for in the Termination provisions of the Agreement.
2. If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The AOC shall make an equitable adjustment in the delivery schedule, the Agreement price, 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 the 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; provided, that if the AOC decides the facts justify the action, the AOC may receive and act upon a proposal submitted at any time before final payment under the Agreement.

3. If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provision entitled Termination for the Convenience, the AOC shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

D. Acceptance

1. Acceptance testing is required for all Contractor-supplied technology, software, services and other deliverables supplied under the Agreement, including all software or other deliverables developed or initially installed, improved versions of any software, any software which has been altered by the Contractor to satisfy the AOC requirements, and any substitute software provided by the Contractor in lieu thereof, unless the Agreement provides otherwise. The specific procedures for the accomplishment of such tests will be contained in the Statement of Work attached to the Agreement.
2. If successful completion of the acceptance test is not attained within the time frame as specified in the Statement of Work, the AOC will have the option to request substitute software, cancel that portion of the Agreement which relates to the unaccepted software, or continue the acceptance tests. The AOC's option will remain in effect until such time as the tests are successfully performed in full, or the timeframe as specified in the Statement of Work, whichever occurs first.
3. Unless otherwise provided in the Statement of Work, software will not be accepted by the AOC and no charges associated with such software will be paid by the AOC until the software has fully and satisfactorily completed the acceptance tests.

E. Service Levels.

1. Service Levels and the mechanisms to baseline and measure them will be defined prior to contract signing and will be effective and enforced from the Effective Date.
2. The Contractor's level of performance will at all times be consistent with acceptable industry standards and will comply with the specific Service Levels identified in the Agreement.
3. Each failure to achieve a Service Level will create a service credit obligation on the Contractor.
4. There will be pre-defined processes by which the AOC can add, change or delete existing Service Levels.
5. There will be a defined automatic mechanism for continuous improvement of the service levels.
6. The Contractor will be responsible for implementing and operating all measurement and monitoring tools and procedures required to measure and report its performance relative to the applicable Service Levels.

F. Customer Satisfaction Surveys

1. Within sixty (60) days after the Effective Date, the Contractor will select an independent third party and define a process for conducting customer satisfaction surveys, both subject to the AOC's approval. The third party will conduct a baseline customer satisfaction survey within that sixty-day period.
2. Annually thereafter or as requested from time to time by the AOC, the customer satisfaction survey process will be repeated.
3. Increasing measures of customer satisfaction will be used by the Contractor as a key performance factor in determining the incentive compensation of the Contractor's Key Personnel and such other account personnel as appropriate.
4. The AOC may also identify the customer satisfaction measure as a Service Level.

5. The Contractor will be responsible for all costs associated with conducting the customer satisfaction survey process.

G. Regulatory Compliance

1. The Contractor will be responsible for obtaining and keeping current all necessary licenses, approvals, permits and authorizations required by applicable law for it to perform the Services. The Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations.
2. The Contractor will, with the AOC's approval, conform the Services to any changes in applicable law or regulation.

IV. FACILITIES

1. The space, furnishings and fixtures provided by the AOC ("AOC Facilities") will be made available to the Contractor on an "as is, where is" basis.
2. The Contractor will maintain and enforce, at the Facilities where the Services are provided, safety and physical security procedures that are at least equal to the highest of the following: (1) industry standards for locations similar to the Contractor's locations; (2) those procedures applicable to the AOC's locations, as such may be amended by the AOC from time to time; and (3) any higher standard otherwise agreed by the AOC and the Contractor. The Contractor will comply with the safety and security policies and procedures in effect at the AOC's Facilities.
3. The Contractor will use the AOC Facilities for the sole purpose of providing the Services and will use the AOC Facilities in an efficient manner. The Contractor will be responsible for damages to and fines for the AOC Facilities caused by the Contractor, its agents, subcontractors, employees or invitees. The Contractor will permit the AOC and its agents and representatives to enter into those portions of the AOC Facilities occupied by the Contractor staff at any time. When the AOC Facilities are no longer required for performance of the Services, the Contractor will return the Facilities to the AOC in substantially the same condition as when the Contractor began use of the Facilities, subject to reasonable wear and tear.

V. EQUIPMENT, SOFTWARE AND THIRD PARTY SERVICE CONTRACTS

1. Except where the Agreement specifically provides otherwise, the Contractor is responsible for providing any and all facilities, assets, and resources (including personnel, facilities, equipment, and software) necessary and appropriate for delivery of the Services and to meet the Contractor's obligations under the Agreement.
2. Assets to which access is being provided for use by the Contractor (including equipment, software licenses and third party service contracts) will be provided on an "as is, where is" basis, and the AOC will not be required to give the Contractor any representations or warranties regarding such assets.
3. The parties will mutually agree upon allocation of responsibilities with respect to equipment, software and third party service contracts.

B. Required Consents.

The Contractor will obtain and maintain all consents required to implement any transfer of assets or grant of rights described in the Agreement, including with respect to equipment, software or third party services contracts ("Required Consents") and the AOC will cooperate as commercially reasonable with the Contractor in obtaining and maintaining the Required Consents.

VI. PROPRIETARY RIGHTS

A. AOC Works.

As between the Contractor and the AOC, the AOC will be the sole and exclusive owner of all inventions, discoveries, literary works or other works of authorship (“Works”) owned by it as of the Effective Date of the Agreement, including all domestic and foreign intellectual property rights in such Works and all modifications, enhancements and derivative works thereof (“AOC Works”). As of the Effective Date, the Contractor will be granted a limited, non-exclusive license during the Term to use, access, copy, maintain, modify, enhance and create derivative works of AOC Works for the sole purpose of providing the Services. The Contractor may not use AOC Works for any other purpose, and may not sublicense any rights with respect to AOC Works. The Contractor will cease use of AOC Works upon expiration or termination of the Agreement.

B. Contractor Works.

1. As between the Contractor and the AOC, the Contractor will be the sole and exclusive owner of all Works owned by it as of the Effective Date of the Agreement including all domestic and foreign intellectual property rights in such Works and all modifications, enhancements and derivative works thereof (“Contractor Works”).
2. The AOC will have the right to approve the introduction of any Contractor Works prior to the Contractor's use of such Works to provide the Services.
3. Upon introduction of any Contractor Works in providing the Services, the Contractor grants to the AOC and its subcontractors rights of access to, and use of, such Works during the Term as reasonably necessary for the conduct of the AOC's business. At the expiration or upon any whole or partial termination of the Agreement, the Contractor will provide the AOC (and designees thereof for the purpose of providing services to the AOC), without additional charge, (a) a perpetual, irrevocable, fully paid-up, non-exclusive license to use, copy, maintain, modify, enhance and create derivative works of such Works (including, with respect to software, source code, programmer interfaces, available and to sublicense such rights to other entities for the purpose of providing services to the AOC; and (b) with respect to Contractor Works that are software, copies of machine-readable and human-readable source code and technical documentation for such software.

C. Third Party Works.

1. The AOC will have the right to approve the introduction of any third party Works prior to the Contractor's use of such Works to provide the Services.
2. Prior to introducing any third party Work in providing the Services, the Contractor will (i) obtain the right to grant the AOC (and designees thereof for the sole purpose of providing services to the AOC), without additional charge and (ii) upon the expiration or any whole or partial termination of the Agreement, a perpetual, irrevocable, fully paid-up, non-exclusive license to use, copy, maintain, modify, enhance and create derivative works of such Works and to sublicense such rights to other entities for the purpose of providing services to the AOC.

D. Rights in Developed Works.

The Contractor hereby irrevocably assigns, transfers and conveys to the AOC without further consideration all worldwide right, title and interest in and to all Works created pursuant to the Agreement and modifications or enhancements to such Works developed by or on behalf of the Contractor, the Contractor's agents or any combination of the Contractor, the Contractor's agents, and the AOC (“Developed Works”) and those works of authorship, trade secrets, inventions, discoveries and improvements which are first conceived, reduced to practice, originated or

developed under and pursuant to the Agreement in creating the Developed Works, including worldwide ownership of trade secret rights, copyright and patent rights that may be granted by any country based on Developed Works or those works of authorship, trade secrets, inventions, discoveries and improvements which are first conceived, reduced to practice, originated or developed under and pursuant to the Agreement in creating the Developed Works (collectively, "AOC Intellectual Property"). The Contractor further agrees to execute any documents or take any other actions as may be reasonably necessary, or as the AOC may request, to perfect the AOC's or its designee's ownership of any such Developed Works and AOC Intellectual Property and to obtain and enforce intellectual property rights in or relating to Developed Works and AOC Intellectual Property. The Contractor may use such Developed Works and AOC Intellectual Property solely to provide the Services during the Term.

VII. OWNERSHIP OF AOC INFORMATION; CONFIDENTIALITY

A. AOC Information

1. All data and information (i) submitted to the Contractor or the Contractor's agents or contractors by or on behalf of the AOC; or (ii) obtained, developed or produced by the Contractor or the Contractor's subcontractors or agents in connection with the Agreement, including information relating to the AOC or its respective contractors, agents, employees, technology, operations, facilities, markets, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter, patents and other intellectual property and proprietary information ("AOC Information") is and will remain the property of the AOC or its respective contractors or agents, as applicable. The AOC will have all right, title and interest, including worldwide ownership of trade secret rights, copyright and patents, in and to the AOC Information and all copies made from it. Without the AOC's prior written approval (in its sole discretion), the AOC Information will not be (1) used by the Contractor or the Contractor's agents other than in connection with providing the Services, (2) disclosed, sold, assigned, leased or otherwise provided to third parties by the Contractor or the Contractor's agents, or (3) commercially exploited by or on behalf of the Contractor or the Contractor's agents. The Contractor and the Contractor's agents will irrevocably assign, transfer and convey to the AOC without further consideration all of its right, title and interest in and to the AOC Information, including all rights of patent, copyright, trade secret or other proprietary rights in and to such materials.
2. From time to time and upon the AOC's request, AOC Information will be returned to the AOC in a form acceptable to the AOC, or if the AOC so elects, will be destroyed.
3. The Contractor will establish and maintain safeguards against the unauthorized access, destruction, loss or alteration of AOC Information in the possession of the Contractor which are no less rigorous than the most rigorous practices of the AOC or the Contractor as of the Effective Date. The Contractor personnel and subcontractors will not attempt to access, and will not or allow access to AOC Information that is not required for the performance of the Services by such personnel.
4. All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the AOC and made available to the Contractor in order to carry out the Agreement, or which become available to the Contractor in carrying out the Agreement ("Confidential Information") will remain the property of the AOC. The Contractor will protect the Confidential Information from unauthorized use and disclosure and will use at least the same degree of care, but no less than a reasonable degree of care, to safeguard the Confidential Information of the AOC as it employs with respect to its own information of a similar nature. The identification of all such Confidential Information as well as the AOC's procedural requirements for protection of such Confidential Information from unauthorized use

and disclosures will be provided by the AOC in writing to the Contractor. The Contractor will require that its employees, agents, and subcontractors comply with the confidentiality restrictions of the Agreement. In the event of unauthorized disclosure or loss of Confidential Information, the receiving party will immediately notify the furnishing party in writing.

5. All technical communications and records originated or prepared by the Contractor pursuant to the Agreement including papers, reports, charts, computer programs and other documentation, but not including the Contractor's administrative communications and records relating to the Agreement will be delivered to and become the exclusive property of the AOC and may be copyrighted by the AOC.

VIII. AOC - CONTRACTOR RELATIONSHIP

A. Project Administration.

1. The Contractor will appoint a Project Manager prior to the signing of the Agreement. The Contractor's Project Manager will be assigned full time throughout the Term of the Agreement and will have the authority to act for and bind the Contractor and its subcontractors in connection with all aspects of the Agreement.
2. The AOC will appoint a Contract Manager within thirty (30) days after contract signing to communicate directly with the Contractor's Project Manager. The AOC's Contract Manager will be responsible for the ongoing management of the Agreement, including billing activities.
3. The parties will form a Steering Committee to facilitate communications between them. The AOC's Contract Manager and the Contractor's Project Manager will determine the composition of the committee.

B. Contractor Personnel.

1. The AOC may designate a percentage of the Contractor's project staff as Key Personnel. Key Personnel will be dedicated to providing the Services to the AOC on an essentially full-time basis. The AOC reserves the right to interview and approve proposed Key Personnel prior to their assignment to the AOC's account. The Contractor's Project Manager will be one of the Key Personnel. The Contractor will obtain the AOC's approval prior to changing or reassigning any Key Personnel and will not change the Project Manager without the AOC's consent.
2. The AOC will have the right at any time, without stating reasons and at no cost to the AOC, to require the Contractor to remove any of its personnel from the AOC account. If the AOC exercise this right and the Contractor cannot immediately replace the disapproved personnel, the Contractor agrees to proceed with any equitable adjustment in schedule or other terms that may be affected thereby.
3. The Contractor agrees to make every effort consistent with sound business practices to honor the specific request of the AOC with regard to assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor will make every reasonable effort to provide suitable substitute personnel.
4. The AOC shall have the right, but not the obligation, to conduct a background check, as permitted by law, on all persons granted access to State's premises or systems. The Contractor will cooperate with the AOC in performing such background check, and will promptly notify the AOC of any such person refusing to undergo such background check, and will reassign such person to another area reasonably satisfactory to the AOC. The Contractor shall obtain all releases, waivers, or permissions required for the release of such information to the AOC.

C. Contractor Use of Subcontractors.

1. The Contractor will not subcontract or delegate any of its obligations for which it is required to provide the Services directly pursuant to the Mandatory Functional Requirements of the RFP, and further shall not subcontract or delegate any of its material obligations under the Agreement except as approved by the AOC in writing in its sole discretion. The AOC may withdraw its approval of a subcontractor if the AOC determines in good faith that the subcontractor is, or will be, unable to effectively perform its responsibilities. If the AOC rejects any proposed subcontractor in writing, the Contractor will assume the proposed subcontractor's responsibilities. The Contractor may propose another subcontractor if it does not jeopardize the effectiveness or efficiency of the Agreement.
2. The Contractor will include in its subcontracts as flow-down provisions, provisions equivalent to those provisions of the Agreement relating to the AOC Facilities; AOC intellectual property rights; AOC audit rights; confidentiality; representations, warranties and covenants relating to work standards; and such other provisions as are expressly identified as applicable to subcontractors and suppliers. Nothing contained in the Agreement will create or be construed as creating any contractual relationship between any subcontractor and the AOC.

D. Change Control.

The AOC will have the right to approve in advance any change, action or decision of the Contractor with respect to the provision of Services to the AOC that may have a material or adverse effect on the Services, require the AOC to change the way it conducts its operations, or increase charges or costs to the AOC. The AOC will have the right to set priorities in scheduling work. Any dispute relating to the Contractor's inability or unwillingness to make a change shall be resolved in accordance with the Dispute Resolution procedures.

E. Reports and Meetings.

1. The Contractor will provide the AOC with such reports, documentation and other information as may be reasonably requested by the AOC from time to time, and the AOC will have open access to the data underlying such reports, in order to confirm the Contractor's compliance with the terms of the Agreement in all respects and to verify the accuracy of the reports specified above.
2. The AOC and the Contractor will establish a schedule of regular management meetings.

IX. PAYMENT TERMS

A. Required Payment Date

The AOC will not make any advance payment for Services. Payment will be made net sixty (60) days after the AOC's receipt of a correct, itemized invoice for tasks or Deliverables accepted pursuant to the acceptance process provided in the Agreement. The AOC may withhold ten percent of each invoice until receipt of the final product. The amount of the withholding may depend upon the length of the project and the payment schedule provided in the Agreement.

B. Taxes.

Unless otherwise required by law, the State is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Contractor or on any taxes levied on employee wages. The pricing to be set forth in the pricing exhibit attached to the Phase Two Contract includes any State or local sales or use taxes on the Services rendered or equipment, parts or software supplied to the AOC pursuant to the Agreement.

C. Most-Favored Customer. [DISCUSS]

The aggregate fees paid by the AOC to the Contractor will be competitive with those charges of the Contractor to its other customers in local and state government that are receiving comparable services at comparable volumes over a similar period of time to the Services provided to the AOC. At least once each year during the Term of the Agreement, or upon the AOC's request, an officer of the Contractor will notify the AOC that this obligation has not been contradicted by any transaction entered into by the Contractor since the later of the (1) Effective Date and (2) date of the most recent notice provided by the Contractor pursuant to this obligation. If the Contractor is unable to provide such notice because of a transaction entered into by the Contractor contradicting this obligation, the Contractor will offer to the AOC an adjustment to the terms of the Agreement, including, if appropriate, the lowest charges included in any such transaction.

X. AUDITING AND RECORD RETENTION

A. Audit Rights and Record Retention.

1. The Contractor agrees that the AOC, or its designated representative will have the right to audit and copy any records and supporting documentation pertaining to performance of the Agreement in accordance with Government Code Section 8546.7. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the AOC to audit records and interview staff in any subcontract related to performance of the Agreement.
2. The Contractor will make available promptly to the AOC the results of a review or audit conducted by the Contractor, its affiliates or their contractors, agents or representatives (including internal and external auditors), relating to the Contractor's operating practices and procedures to the extent relevant to the Services or the AOC.

XI. REPRESENTATIONS AND WARRANTIES

A. Compliance with Laws and Regulations.

The Contractor represents, warrants and covenants under the Agreement that it will perform its obligations in a manner that complies with all applicable statutes, rules regulations and orders of the United States and State of California.

B. Authorization

1. The Contractor represents, warrants and covenants under the Agreement that (i) it has full power and authority and authority to enter into the Agreement, to grants the rights herein and to carry out the transactions contemplated by the Agreement; (ii) the execution, delivery and performance of the Agreement, and the consummation of the transactions contemplated by the Agreement, have been duly authorized by all requisite corporate action on the part of the Contractor; and (iii) that it will not enter into any arrangement with any third party which might abridge any rights of the State under the Agreement.
2. The Contractor represents, warrants and covenants under the Agreement that the Contractor's execution, delivery and performance of the Agreement will not constitute (i) a violation of any judgment, order, or decree; (ii) a material default under any material contract by which it or any of its material assets are bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a default.

C. Inducements.

The Contractor represents and warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of the warranty, the AOC will have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by the AOC in procuring on the open market any items which the Contractor agreed to supply will be borne and paid for by the Contractor. The rights and remedies of the AOC provided in the clause will not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

D. Absence of Litigation.

The Contractor represents and warrants under the Agreement that there is no claim, or any litigation, proceeding, arbitration, investigation or material controversy pending to which the Contractor or any of the Contractor's affiliates, agents, or representatives is a party, relating to the provision of the Services offered by the Contractor, or which would have a material adverse effect on the Contractor's ability to enter into the Agreement and perform its obligations thereunder and, to the best of the Contractor's knowledge, no such claim, litigation, proceeding, arbitration, investigation or material controversy has been threatened or is contemplated.

E. Work Standards.

1. The Contractor represents, warrants and covenants under the Agreement that the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services and shall conform to the requirements of the Agreement (including all documentation, descriptions, specifications and drawings and any part thereof); . The AOC's approval of designs or specifications furnished by the Contractor will not relieve the Contractor of its obligations under this warranty.

During the term of the Agreement, the Contractor will, at its sole cost and not as part of the charges for the Base Services, correct any non-compliance in the Service and will use best efforts to do so as expeditiously as possible.

F. Maintenance.

The Contractor represents, warrants and covenants under the Agreement that it will maintain equipment and software to the extent that the Contractor has maintenance responsibility for such assets so that they operate in accordance with their specifications, including (i) maintaining equipment in good operating condition, subject to normal wear and tear; (ii) undertaking repairs and preventive maintenance on equipment in accordance with the applicable equipment manufacturer's recommendations; and (iii) performing software maintenance in accordance with the applicable Software Contractor's documentation and recommendations.

G. Efficiency and Cost Effectiveness.

The Contractor represents, warrants and covenants under the Agreement that it will (i) use its best efforts to use efficiently the resources or services necessary to provide the Services; and (ii) use its best efforts to perform the Services in the most cost efficient manner consistent with the required level of quality and performance.

H. Non-infringement.

The Contractor represents, warrants and covenants under the Agreement that it will perform its responsibilities under the Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other proprietary rights of any third-party.

I. Works.

The Contractor represents, warrants and covenants under the Agreement that it is and will be either the owner of, or authorized to use for its own and the AOC's benefit, all Contractor Works and Third Party Works used and to be used in connection with the Services.

J. Developed Works

1. The Contractor represents, warrants and covenants that the Developed Works furnished under the Agreement will (i) conform to the requirements of the Agreement (including all documentation, descriptions, specifications and drawings and any part thereof); (ii) be free from all defects in materials and workmanship; and (iii) provide the functions and features and operate in the manner agreed to by the parties for a period of [] ("Developed Works Warranty Period"). The AOC's approval of designs or specifications furnished by the Contractor will not relieve the Contractor of its obligations under this warranty.
2. During such Warranty Period for a particular Developed Work, the Contractor will, at its sole cost and not as part of the charges for the Base Services, correct any non-compliance in the Developed Work and will use best efforts to do so as expeditiously as possible.

K. Viruses.

The Contractor represents, warrants and covenants that it will employ the most current available anti-Virus programs to ensure that no forms of harmful surreptitious code, including without limitation worms, viruses, time bombs, or other disabling code ("Viruses") are introduced into the Technology Center or any systems used in providing the Services. Without limiting any other right or remedy of the AOC, if a Virus is found to have been introduced into any such systems, the Contractor promptly will notify the AOC in writing of the introduction and at no additional charge to the AOC, assist the AOC in reducing the effects of the Virus, and if the Virus causes an interruption of the Services, a loss of operational efficiency or loss of data, restore operational efficiency and to the maximum extent possible, restore data or, when not possible, mitigate losses to the maximum extent possible.

L. Disabling Code.

The Contractor represents, warrants and covenant under the Agreement that it will not insert into software any code that would have the effect of disabling or otherwise shutting down all or any portion of the Services. With respect to any disabling code that may be part of software, the Contractor will represent and covenant that it will not invoke such disabling code at any time without the AOC's prior written consent.

XII. INSURANCE AND RISK OF LOSS

A. Insurance.

When performing work on property in the care, custody or control of the State, the Contractor will maintain the following insurance [**Discuss what insurance caps the AOC requires**]:

1. Employer's liability with limits of [\$1,000,000] per person for bodily injury by accident, \$1,000,000 per person for bodily injury by disease, and [\$1,000,000] policy limit for bodily injury by disease
2. Commercial general liability ("CGL"), and if necessary, commercial umbrella insurance, with limits of not less than [\$3,000,000] per occurrence. If the CGL policy contains a general aggregate limit, the limit shall apply separately to the Deliverables described in the Agreement. The CGL insurance shall be written on an occurrence form, and shall cover liability arising from (a) premises; (b) products and completed operations extending two years after the final completion of the Deliverables described; (c) broad form property damage, including completed operations; (d) personal injury; (e) independent contractor's liability; (f) contractual liability covering the Agreement as an "insured contract."
3. Business auto liability, including coverage for all owned, hired and non-owned automobiles used in connection with delivery of the Services, with limits of not less than \$1,000,000 each accident
4. Errors and omissions and/or professional liability coverage with limits of not less than \$1,000,000 each occurrence

The Contractor shall include any subcontractors as insured under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contractor shall be subject to all of the requirements stated herein.

All insurance which the Contractor is obligated to carry pursuant to this Agreement, shall (i) be endorsed to name the AOC as an additional insured, and (ii) require the insurer to provide at least thirty (30) days prior written notice to the AOC of cancellation. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, then notwithstanding anything to the contrary stated herein, 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. The Contractor shall cause its insurers to issue to the AOC on or before the Effective Date certificates of insurance evidencing that the coverages and policy endorsements required under the Agreement are maintained in force. The insurers selected by the Contractor shall be reputable and financially responsible insurance carriers, with a Best's minimum rating of "A+" (or any future equivalent).

B. Risk of Loss.

Each party will be responsible for the risk of loss of, and damage to, any equipment, software, facilities and other materials in its possession or under its control.

XIII. INDEMNITIES

A. General Indemnity.

The Contractor will agree to indemnify, defend and save harmless the State of California, all state and local government governmental entities, the AOC, , and their respective officers, agents and employees from any and all claims for losses, costs, liabilities, damages or deficiencies, including interest penalties and attorneys' fees, which (i) arise out of or are due to a breach by the Contractor of any of its representations, warranties, covenants or other obligations contained in the Agreement; or (ii) are caused by or resulting from the Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of it duties under the Agreement; or (iii) are accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the Contractor in the performance of the Agreement; (iv) are arising out of or related to the Contractor's breach of its confidentiality obligations under the Agreement; or (v) are arising out of any violation by the Contractor or its employees, agents, or contractors of any applicable law, order, ordinance, regulation, code, or the reasonable policies and procedures adopted in writing and provided to the Contractor from time to time during the Term of the Agreement.

B. Patent, Copyright and Trade Secret Protection

1. The Contractor will indemnify, defend and save harmless the State of California, all state and local government governmental entities, the AOC and their respective officers, agents and employees from any and all liability of any nature or kind, including losses, costs, liabilities, damages or deficiencies, including interest penalties and attorneys' fees, which arise out of any claim of infringement or misappropriation of patent, trade secret, copyright or other proprietary rights, alleged to have occurred because of software, systems or other resources provided by the Contractor or its subcontractors to the AOC.
2. If any deliverable or item provided by the Contractor to the AOC or used by the Contractor to provide the Services becomes, or in the Contractor's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, in addition to the Contractor's indemnification obligations, the Contractor will promptly at the Contractor's expense take the following actions in the following priority order: (i) secure the right to continue using the item; (ii) replace or modify the item to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Services in any material way; or (iii) if neither (i) nor (ii) is available to the Contractor, or if the use of such item by the State will be prevented by injunction, the Contractor agrees to take back such item, and refund any sums the AOC has paid the Contractor and make every reasonable effort to assist the AOC in procuring substitute items. If, in the sole opinion of the AOC, the return of such infringing item makes the use of the Services or the retention of other goods or software acquired from the Contractor under the Agreement impractical, the AOC will then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge.
3. The Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.

C. Personal Injury and Property Damage.

The Contractor will indemnify, defend and save harmless the State of California, all state and local governmental entities, the AOC, and their respective officers, agents and employees from any and all liability of any nature or kind, including losses, costs, liabilities, damages or deficiencies, including interest penalties and attorneys' fees, , on account of personal injuries, death, or damage to tangible personal or real property in any way incident to, or in connection with, or arising out of; (i) the Agreement; (ii) performance of work under the Agreement; (iii) the presence of the Contractor or the presence of the Contractor or its subcontractors, suppliers or agents on the premises of the State; or (iv) the act or omission of the Contractors, its subcontractors, suppliers or agents, for which the Contractor is legally liable.

XIV. LIABILITY

A. General.

Subject to the liability limitations set forth below, it is the intent of the parties that each party will be liable to the other party for any damages incurred by the non-breaching party as a result of the breaching party's failure to perform its obligations under the Agreement.

B. Liability Limitations. [Confirm Liability Caps Acceptable.]

1. IN NO EVENT WILL THE STATE BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THE AGREEMENT. IN NO EVENT WILL THE STATE'S LIABILITY TO CONTRACTOR ARISING OUT OF OR RELATED TO THE AGREEMENT FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, EXCEED THE AMOUNTS PAYABLE BY THE AOC TO THE CONTRACTOR UNDER THE AGREEMENT.
2. IN NO EVENT WILL CONTRACTOR'S LIABILITY TO THE STATE ARISING OUT OF OR RELATE TO THE AGREEMENT FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, EXCEED THE AMOUNTS PAYABLE BY THE AOC TO CONTRACTOR UNDER THE AGREEMENT.
3. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE XIV ABOVE WILL NOT APPLY WITH RESPECT TO: (A) DAMAGES OCCASIONED BY THE FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF THE CONTRACTOR; (B) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION UNDER THIS AGREEMENT; (C) DAMAGES TO THE AOC OCCASIONED BY VIOLATION OF LAW BY THE CONTRACTOR; (D) DAMAGES OCCASIONED BY THE BREACH OF THE CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT; AND (E) LIABILITY COVERED BY THE CONTRACTOR'S INSURANCE.

XV. TERMINATION

A. Termination for Cause.

1. The AOC may, by written notice of default to the Contractor, terminate the Agreement in whole or in part if the Contractor materially breaches any of its obligations under the Agreement, and does not cure such breach within thirty (30) days of receipt of a notice of breach stating the AOC's intent to terminate:
2. If the AOC terminates the Agreement in whole or in part, it may acquire, under the terms and in the manner the AOC considers appropriate, goods or services similar to those terminated, and the

Contractor will be liable to the AOC for any excess costs for those goods or services. However, the Contractor will continue the work not terminated.

3. If the Agreement is terminated for breach, the AOC may require the Contractor to transfer title and deliver to the AOC, as directed by the AOC, any:
 - (i) Completed goods, and
 - (ii) Partially completed goods and Works (“Materials”) that the Contractor has specifically produced or acquired for the terminated protection of the Agreement. Upon direction of the AOC, the Contractor will also protect and preserve property in its possession in which the State has an interest.
 - (iii) The AOC will pay contract price for completed goods delivered and accepted. The Contractor and the AOC will agree on the amount of payment for the Materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Dispute Resolution Section. The State may withhold from these amounts any sum the AOC determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
 - (iv) If, after termination, it is determined that the Contractor was not in breach, or that the breach was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the AOC.
 - (v) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under the Agreement.
4. AOC’s failure to perform any of its responsibilities set forth in the Agreement will not constitute a material breach of the Agreement or be deemed to be grounds for termination by Contractor; provided, however, that Contractor’s nonperformance of its obligations under the Agreement will be excused if and to the extent: (i) such Contractor nonperformance results from AOC’s failure to perform its responsibilities; and (ii) Contractor provides AOC with reasonable notice of such nonperformance and uses commercially reasonable efforts to perform notwithstanding AOC’s failure to perform.

B. Rights and Remedies of the State for Default

1. In the event any goods furnished or Services provided by the Contractor in the performance of the Agreement should fail to conform to the requirements in the Agreement, the State may reject the same, and it will become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of the Services, without expense to the State, and immediately replace all such rejected items with others conforming to the Agreement
2. In addition to any other rights and remedies the State may have, the State may require the Contractor, at the Contractor’s expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
3. In the event of termination of the Agreement, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply will be borne and paid for by the Contractor.
4. The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefore.

C. Termination of Non-Appropriation of Funds

The Contractor acknowledges that funding for this Agreement beyond the current appropriation year is conditioned upon appropriation by the California Legislature of sufficient funds to support

the activities described in this Agreement. Without limiting the foregoing, the AOC may terminate this Agreement without prejudice to any right or remedy of the AOC for lack of legislative appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration or other termination of this Agreement, the AOC may terminate this Agreement in whole or in part by written notice to Contractor. Such termination shall be in addition to the AOC's rights to terminate for convenience or Cause. If this Agreement is terminated for non-appropriation: (i) the AOC will be liable only for payment in accordance with the terms of this Agreement for Services rendered and expenses incurred prior to the effective date of termination whether or not there has been a Deliverable; and (ii) the Contractor shall be released from any obligation to provide further Services pursuant to this Agreement as are affected by such termination.

D. Termination for Convenience.

1. The AOC may terminate the Agreement for convenience in whole or part, from time to time, in part, if the AOC, determines that a termination is in the State's interest. The AOC will terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The Contractor agrees that, as to the terminated portion of the Agreement, the Agreement will be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the Agreement will not be void.
2. After receipt of a Notice of Termination, and except as directed by the AOC, the Contractor will immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this section. The Contractor will: (i) stop work as specified in the Notice of Termination; (ii) place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the Agreement; (iii) terminate all subcontracts to the extent they related to the work terminated; and (iv) settle all outstanding liabilities and termination settlement proposals arising from the termination of the subcontracts, the approval or ratification of which will be final for purposes of this Section.
3. If this Agreement is terminated for convenience, the AOC shall pay the Contractor for (i) all accepted Deliverables, and (ii) the reasonable and necessary costs incurred by Contractor in performing services prior to the effective date of termination other than on the accepted Deliverables. Except as expressly provided in this Section 15.D, the AOC shall incur no liability by virtue of terminating for convenience.

E. Termination/Expiration Assistance.

1. Commencing (i) six months prior to the expiration of the Agreement or on an earlier date as the AOC may request; (ii) upon any notice of termination or non-renewal of the Agreement (including notice based on default by the AOC); or (iii) six months prior to any other ceasing of Services under the Agreement, and continuing through the effective date of expiration, termination or cessation, but for no less than six (6) months, the Contractor will provide to the AOC or to its designee (collectively, "Successor"), termination/expiration assistance to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to the Successor. Such termination/expiration assistance will be provided to the AOC by the Contractor regardless of the reason for termination or expiration and will be included in the pricing set forth in the pricing exhibit accompanying the definitive Phase Two Contract. At the AOC's option and election, the AOC may extend the period of time the Contractor provides termination/expiration assistance for an additional six (6) months.
2. Termination/expiration assistance will include but not be limited to consulting services, data center planning, telecommunications planning, communication all information about configuration of software, networks, data center operations and other systems or services to the Successor, compiling listings and documentation, transition databases, testing and provision of hardware and other equipment to the extent practicable.

3. As part of termination/expiration assistance, the Contractor will: (a) provide such information and assistance as the AOC may reasonably request relating to the number and function of each of the Contractor's personnel who are employed or contracted by the Contractor to perform the Services under the Agreement, and the Contractor will make such information available to potential Successors as designated by the AOC; (b) not make any material changes to the level of Service or number of employees assigned to perform functions for the AOC under the Agreement; and (c) not change the level of Service or reassign the Contractor's employees or contractors away from performance of functions under the Agreement.
4. At the AOC's request, the Contractor will obtain any Required Consents from third parties and (i) assign to the successor leases for some or all of the equipment used primarily to provide the Services as of the date of termination or expiration of the Agreement; (ii) assign any contracts for services provided by third parties to the Contractor and used by the Contractor to provide the Services; and (iii) sell to successor, at the lower of the Contractor's then-current book value, unrecovered capital payments or fair market value, some or all (as requested by the AOC) of the equipment owned by the Contractor and used primarily to provide the Services.
5. Successor will have the right to extend offers of employment to all the Contractor personnel assigned to or working on the AOC account. The Contractor will provide reasonable access to these employees and will not interfere with Successor's efforts to hire them.
6. If the Contractor breaches (or attempts or threatens to breach) its obligations to provide the AOC with termination/expiration assistance, the AOC will be irreparably harmed and may proceed directly to court. If a court should find that the Contractor has breached (or attempted or threatened to breach) any such obligations, the Contractor agrees that without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an order compelling performance by the Contractor and restraining it from any further breaches (or attempted or threatened breaches).

XVI. FORCE MAJEURE.

A. General.

1. If, and to the extent that, a party's performance of any of its obligations pursuant to the Agreement is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or any other similar cause beyond the reasonable control of such party (each, a "Force Majeure Event"), and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the non-performing, hindered or delayed party will be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such party continues to use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. The party whose performance is prevented, hindered or delayed by a Force Majeure Event will immediately notify the other party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event.
2. If any Force Majeure Event prevents, hinders or delays performance of the Services for more than twenty-four (24) hours, the AOC may procure such Services from an alternate source and the Contractor will reimburse the AOC for the costs and expenses incurred by the AOC in procuring such Services to the extent that those costs and expenses exceed Contractor's charges under the Agreement for such Services. Once the Contractor is no longer prevented, hindered, or delayed from performing such Services as a result of such Force Majeure Event, the Contractor will notify the AOC that it is prepared to resume providing such Services. If the Agreement has not expired or been terminated and the AOC decides (in its sole discretion) to resume receiving such Services from the Contractor, the Contractor will resume providing such Services; provided, however, that

the Contractor will pay any costs and expenses incurred by the AOC in terminating their relationship with such alternate source (including any termination fees) and transitioning such Services back to the Contractor. If the Force Majeure Event continues to prevent, hinder or delay performance of any of the Services for more than 24 hours, the AOC may, within fifteen (15) business days following such 24-hour period, terminate the Agreement, in whole or in part, as of a date specified by the AOC in a termination notice to the Contractor. The Contractor will not have the right to any additional payments from the AOC as a result of any force majeure occurrence.

B. Continuation of Services.

A non-performing party will be obligated to use commercially reasonable efforts to continue to perform or to mitigate the impact of its non-performance notwithstanding the force majeure event.

XVII. DISPUTE RESOLUTION

A. Dispute Resolution

1. The parties will deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor will submit to the AOC a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving the Agreement, unless the State, on its own initiative, has already rendered such a final decision. The Contractor's written demand will be fully supported by factual information, and if such demand involves a cost adjustment to the Agreement, the Contractor will include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Agreement adjustment for which the Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the AOC, the Contractor may appeal the decision to the AOC.
2. Any final decision of the State will be expressly identified as such, will be in writing, and will be signed by the AOC if an appeal was made. If the State fails to render a final decision within ninety (90) days after receipt of the Contractor's demand, it will be deemed a final decision adverse to the Contractor's contentions. The State's final decision will be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
3. Pending the final resolution of any dispute arising under, related to or involving the Agreement, the Contractor agrees to diligently proceed with the performance of the Agreement, including the delivery of Deliverables or providing of Services in accordance with the AOC's instructions. The Contractor's failure to diligently proceed in accordance with the AOC's instructions will be considered a material breach of the Agreement.

XVIII. GENERAL

A. Governing Law.

The Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions and the state or federal district courts located in Sacramento County, Sacramento, California will have exclusive jurisdiction over any legal action concerning or relating to the Agreement.

B. Assignment.

The Agreement will not be assignable by the Contractor in whole or in part without the written consent of the State, which may be withheld in its sole discretion. The State will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder. Any assignment made in contravention of the foregoing shall be void and of no effect. The Agreement will be binding on the parties and their permitted successors and assigns.

C. Consents and Approvals.

Consents and approvals to be given by either party under the Agreement will not be unreasonably withheld or delayed, and such consents and approvals will not be construed as relieving a party of its obligations or as a waiver of its rights under the Agreement.

D. Waiver of Rights

Any action or inaction by the AOC or the failure of the AOC on any occasion, to enforce any right or provision of the Agreement, will not be construed to be a waiver by the AOC of its rights under the Agreement and will not prevent the AOC from enforcing such provision or right on any future occasion. The rights and remedies of the AOC under the Agreement will be cumulative and in addition to any other rights or remedies that the AOC may have at law or in equity.

E. Publicity.

Unless otherwise exempted, news releases and other public disclosures pertaining to the Agreement will not be made without prior written approval of the Director of the AOC's Business Services Manager

F. Independent Contractors.

The Contractor and the agents and employees of the Contractor in the performance of the Agreement, will act in an independent capacity and not as officers or employees or agents of the State. Neither the making of the Agreement nor the performance of its provisions shall be construed to constitute either of the parties hereto as an agent, employee, partner, joint venturer, or legal representative of the other, and the relationship of the parties under the Agreement is that of independent contractors.

G. Recycling.

The Contractor will certify under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of the Agreement meet or exceed the minimum percentage of recycled material as defined in California Public Contract Code (PCC) Sections 12161 and 12200.

H. Newly Manufactured Goods.

All goods furnished under the Agreement will be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.

I. Assignment of Antitrust Actions

1. The following provision of Government Code Section 4552, 4553, and 4554 (Statutes of 1978, Ch. 414) will be applicable to the Contractor.

- (i) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State 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. 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, material or services by the supplier for sale to the State pursuant to the solicitation. Such assignment will be made and become effective at the time the State tenders final payment to the supplier.

- (ii) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor will be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- (iii) Upon demand in writing by the assignor, the assignee will, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

J. National Labor Relations Board Certification

The Contractor will swear under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and will be construed in accordance with Public Contract Code (PCC) Section 10296.

K. Statement of Compliance

The Contractor's signature affixed to the Agreement will constitute a certification under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

L. Drug-Free Workplace Certification

- 1. By signing the Agreement, the Contractor will certify under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
 - (i) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - (ii) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - (iii) Provide, as required by Government Code Section 8355(c), that every employee who works on the Agreement:

- i. will receive a copy of the company's drug-free policy statement; and,
- ii. will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and the Contractor may be ineligible for award of any future State contracts if the AOC determines that any of the following has occurred: 1) the Contractor has made false certification, or 2) the Contractor violates the certification by failing to carry out the requirements as noted above.

M. Forced, Convict and Indentured Labor

1. By signing the Agreement, the Contractor will certify that no foreign-made equipment, materials, or supplies furnished to the State pursuant to the Agreement will be produced in whole or in part by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. By signing the Agreement the Contractor will agree to comply with the requirements of California Public Contract Code (PCC) Section 6108.
2. If the Contractor knew or should have known that the foreign-made equipment, materials or supplies furnished to the State were produced in whole or part by forced labor, convict labor, or indentured labor under penal sanction, when entering into the Agreement, subject to California Public Contract Code (PCC) Section 6108, subdivision (c), may have any or all of the following sanctions therein imposed:
 - (i) The contract under which the prohibited equipment, materials or supplies were provided may be voided at the option of the State agency to which the equipment, materials or supplies were provided.
 - (ii) The Contractor may be assessed a penalty which will be the greater of one thousand dollars (\$1,000) or an amount equaling 20 percent of the value of the equipment, materials or supplies that the State agency demonstrates were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction and were supplied to the State agency under the Agreement.

N. Child Support Compliance Act

1. For any contract in excess of \$100,000, the Contractor acknowledges in accordance with California Public Contract Code section 7110, that:
 - (i) The Contractor recognizes the importance of child and family support obligations and will fully comply with all applicable state and federal laws relation to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code; and
 - (ii) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

O. Nondiscrimination Clause

1. During the performance of the Agreement, the Contractor and its subcontractors, will not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, or denial of family care leave. The Contractor and its subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and its subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et. Seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f) set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations will be incorporated into the Agreement by reference and made a part thereof as if set forth in full. The Contractor and its subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other contract.
2. The Contractor will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
3. The Contractor is required to give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200. (See Public Contract Code Section 10353).

P. Americans with Disabilities Act

The Contractor will assure the State that it complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) (ADA) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Q. Union Organizing

1. The Contractor will acknowledge the applicability of Government Code Section 16645 through Section 16649 to the Agreement:
 - (i) The Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
 - (ii) No state funds received under this agreement will be used to assist, promote or deter union organizing.
 - (iii) The Contractor will not, for any business conducted under the Agreement, use any state property to hold meeting with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
 - (iv) If the Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that the Contractor will provide those records to the State of California Attorney General upon request.

- R.** Disabled Veteran Business Participation Review. The Contractor agrees that the AOC or its designee shall have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Contractor agrees to provide the AOC or its designee with any relevant information requested and shall permit the AOC 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 books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Public Contract Code section 10115 et seq. The Contractor further agrees to maintain such records for a period of three (3) years after final payment under the Agreement.
- S.** Public Contract Code References. References to the Public Contract Code herein are provided for the Contractor's convenience only and shall not imply that the Public Contract Code applies to the AOC, but rather shall be used when referenced to define the Contractor's obligations under the particular provision in which such code section is referenced.