

REQUEST FOR PROPOSALS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE

REGARDING:

Electronic Payment Processing Services
RFP NO. 54-1025

Proposal Due Date: Tuesday February 14, 2017
Time: 3:00 P.M., Pacific Time

Superior Court of California, County of Tulare
Finance Division
Attn: Angie Burrow, Finance Specialist
221 S Mooney Blvd, Room 303
Visalia, CA 93291

1.0 BACKGROUND INFORMATION

The Superior Court of California, County of Tulare (Court) is requesting proposals from highly qualified electronic payment processing vendors. The vendor must offer a service fee solution for the acceptance of all types of electronic payments. The Court prefers vendors whom can demonstrate customization in their implementation approach and provide integrated solutions while providing the highest degree of security. The Court desires to receive e-check, credit and debit cards, over the counter, payments by telephone, and payments securely over the internet. The ideal system would integrate all payment options and payment channels into a single central system having a single integrated reporting and reconciliation platform. In addition the Court is interested in expanding the number of payment channels in the future, and is interested in vendors whom offer multiple payment options. The vendor must be Payment Card Industry (PCI) Level 1 compliant and demonstrate the ability to protect sensitive card holder data. The Court utilizes an automated case management system and IVR system for case look-up.

The Courts case management system is called eCourt and was developed by Journal Technologies, INC. It is a browser-based case management, document management, and eFiling solutions used by trial and appellate courts, prosecutor and public defender offices, and other governmental agencies. Users only need a web browser (Internet Explorer 10+, Chrome, Firefox, etc.) to access eCourt and eCourt Public from desktops, laptops, smartphones (iPhone, Android) and tablet devices (iPad, Galaxy, etc.) The system's graphical user interface, including all screens and dashboards, is natively touch screen enabled. eCourt is database agnostic therefore it works with Microsoft SQL, Oracle, etc. 3rd party integration is made possible by use of the eCourt REST API. It's a low-level, HTTP-based API which can be used to query, insert, update and delete data.

2.0 DESCRIPTION OF GOODS AND/OR SERVICES

The Court seeks goods and services meeting the following specifications:

- A. Vendor must be able to manage and mitigate all complexities regarding PCI on behalf of the Court and assume liability and/or financial responsibility in the event of any Data Breach experienced by the Court.
- B. Vendor must guarantee payment on all authorized credit and debit card transactions which are made to the Court, and assume financial responsibility in the event of a chargeback.
- C. Will the Vendor handle customer disputes directly with card holders or will the Court do that?
- D. Each payment transaction must have a unique confirmation number to be displayed on the customer receipt, and in agency reports.
- E. Please describe your company payment types for each of the payment channels offered by your company.

- F. Describe any different means in which a payer can receive receipt (email, paper, SMS, etc.), per payment channel used?
- G. Vendor must provide an e-check service or a guarantee e-check service, designed to significantly reduce or eliminate e-check returns. Please describe your services with regards to accepting e-checks.
- H. The Court is seeking a highly secure virtual terminal allowing staff personnel to accept credit and debit card not present phone transactions; with the ability to e-mail real-time receipts to the payer. The Court preference would be that the virtual terminal to be part of the same vendor platform and not provided by a third party.
- I. At no time would the vendor have access to the Court's bank accounts for direct debit. Any administrative adjustments must be invoiced to the Court.
- J. The vendor must have the capability to electronically transfer Court business data to/from the vendors system (i.e. for the purpose of data validation prior to the payment authorization process. Describe how data will be transmitted (e.g. Web API interface, flat files via secure FTP) and stored for use to support this function.

3.0 DESCRIPTION OF ADMINISTRATION AND REPORTING TOOLS;

- A. The Court prefers a web hosted centralized-type administration portal system; where payments from Court collection points can be viewed in a secure manner in real-time as to when they have occurred. Please describe your company's payment system architecture and list its general features and benefits.
- B. The online administration portal tools must allow for court staff to search for any specific transaction which may have occurred during a time period, preferably twelve (12) months or longer. Provide search criteria such as case number, date, date ranges, payment channels, reference number, product type, and other advanced criteria. Please provide a list of search parameters of your company's online system.
- C. The administration tools must include a mechanism to execute Voids and conduct full and partial refunds. In addition, the Refund and Void tools must have a hierarchical security mechanism for a Court Administrator to assign user access for specific staff.
- D. Please describe how refunds and voids are handled by your company.
- E. Administration tools must allow for manual closing, allow the reprint of receipts and offer the ability to search previous close reports going back more than three years.
- F. The manual closing options should provide the ability for the court to close by payment channel, or product category, or close by other categories including closing by transaction. Please describe manual closing options available from the administration portal.
- G. Please describe what preventative measures are in place to reduce or eliminate duplicate payments.
- H. Online Administration System must provide the means to create an ad-hoc report from a number of advanced criteria. Please describe this capability and report criteria available.
- I. Please describe your reporting tools and the options which the Court has, in retrieving or downloading reports and which specific formats are available.

- J. Company must work with the Court to provide custom reporting if desired by Court administration. Please provide any costs associated with creating custom reporting solutions.
- K. Please provide a detailed description of reports and the categories they are broken down in further detail. Please provide sample reports.
 - i. Are reports separated by payment channel?
 - ii. Are e-checks transactions and credit card transactions separated?
 - iii. Please describe how American Express Card payments are reported in relation to other major card brands and if card brands are listed together.
 - iv. Please explain the lag time in the reports associated with how payment channels or payment types are settled.
- L. The Vendor must be able to settle and report transactions by location.
- M. Please describe the system's ability to provide reports on credits and refunds.
- N. Please describe and include screen shots of online payment forms.
- O. Describe the systems help button functionality or online training.
- P. The Court currently uses eight (8) different Merchant Accounts to be able to identify to which location transactions and settlements belong to. Please explain how this would be accomplished with your firm.
- Q. Please describe ability to provide an email notification to a Court administrator to approve a refund, and if system can provide notification when a refund transaction is waiting for approval.
- R. Please describe the ability to provide an email confirmation upon approval, to all parties involved in the refund process.

4.0 PAYMENT CHANNELS

4.1 Point of Sale (POS)

The Court currently offers in-person payments in all Departments and Locations with 11 POS terminals. The terminals support Visa, MasterCard, Discover and American Express. Please respond to the following requirements below:

- A. The credit card terminal for miscellaneous credit card transactions will have at a minimum:
 - i. Magnetic-Stripe card reader;
 - ii. EMV capable;
 - iii. Data entry key pad;
 - iv. Optical display;
 - v. Integrated receipt printer;
 - vi. Optical or internal PIN pad;
 - vii. Capability for voice-over-IP communications; and
 - viii. Most recent security features, including end-to-end SSL encryption.
- B. Please describe your payment terminal make and model.

- C. Please provide an example of a customer receipt from your POS solution; it must be compliant with Card association rules.
- D. Any equipment installed should have the highest reasonable standard of security encryption in accordance with industry standards.
 - i. Describe how the payment terminal will protect sensitive card holder information;
 - ii. Explain to what extent the payment terminals will de-scope the Court from PCI, if at all; and
 - iii. Describe the PCI responsibilities the Court will have with your POS solution.
- E. The Court prefers payment terminals which do not store transaction data. Please describe the functionality of POS as it relates to connectivity, Court network, PCI scope, and security.
- F. What is the process for when a payment terminal goes down and is no longer operating?
- G. The Court may require that POS terminals be integrated with the Court's automated case management system. If applicable, please provide cost information for such integration with the cost portion of this RFP.

4.2 Web Payments

The Court is seeking the means of accepting validated payments online. The Court currently has a web payment portal for online payments. The Vendor's system must be able to integrate with the Court's Online Payment Center, so that a court user can click "pay this amount" and be redirected to a secure payment page. Please describe your web payment offerings:

- A. Court requires the ability to provide a real-time electronic acknowledgment of successful transactions back to the Court application (for example an automatic 'real time posting' of the completed payment transaction to a redirect URL with the unique identifier for the transaction). It needs to include date/time stamp, dollar amount, and transaction ID or confirmation number.
- B. The Court is considering an embedded/iframe style, secure payment page as an option for one or more of our payment categories. Is this supported?
- C. System should (not mandatory) allow Payers an option to setup a recurring payment schedule for them to pay with either a credit card or a check.
 - i. If you offer a recurring payment system, please describe if payments must be fixed or if payments may be variable or validated.
- D. Payment page must allow for payments from military, domestic, and international address types.
- E. Ability to provide an acknowledgement or confirmation of payment acceptance to the payer that could serve as a printable receipt.
- F. Online web payment options must include major credit cards as well as business and personal e-checks.
- G. Please describe your company's ability to support major bank credit cards, E-checks, American Express, and Discover.

H. Describe your ability to provide PayPal as a payment option for payers:

4.3 Mobile and Kiosk Payments

The Court is seeking a product that will integrate with a payment kiosk. The system must be able to integrate with the Court case management system, so that a court user can click “pay this amount” from the Court Online Payment Center, and be redirected to a secure payment page.

- A. Does your company provide Kiosk support for electronic payments? If so, please describe.
- B. Please describe your solutions for accepting Mobile Payments.

4.4 In-Bound Phone Payments

- A. Please describe your system’s ability to accept inbound phone payments.
- B. Ability for Court Staff to utilize a virtual terminal to accept payments over the phone.
- C. Can Court staff categorize the payment category being paid with a drop down menu, or other means?
- D. Can the system send an automatic email receipt to the payer in real time?
- E. Please provide a screen shot of the page staff would utilize to enter card information.
- F. Please describe which reference fields Court staff would need to fill out on their virtual terminal screen to complete a credit card payment.

4.5 Interactive Voice Response (IVR)

The Court has an IVR for various departments. Please respond to whether your IVR solution can support the requirements below:

- A. Ability to integrate with an existing court IVR system and be redirected to a secure payment portal for electronic payments.
- B. Ability to provide statistics related to IVR usage sorted by card type.
- C. Ability to allow user to verify if information is correct and to continue.

4.6 Settlement Proceeds Requirements

Settlement for Visa, MasterCard, Discover, and American Express will be by ACH credit directly into a bank account specified by the Court. In no event shall any of the settlement proceeds be made into the Provider’s bank accounts.

- A. Please specify and discuss the timing of the availability of funds, especially as it relates to pricing.
- B. Currently the Court receives sufficient detail in the ACH credit records to tie receipts down to Merchant ID, Merchant Name and location within the Court. Will this detail or its equivalent be maintained?
- C. Explain the options for paying the Provider for Visa, MasterCard, Discover, and American Express discounts and processing fees.
- D. Explain the vendor’s process for handling Non-Sufficient Fund (NSF) transactions.

4.7 Security:

- A. The contract will require adherence to Payment Card Industry Data Security Standard (PCI DSS). The vendor must include acknowledgement of responsibility for the security of cardholder data and provide validations of PCI compliance. A link to the certification and/or a hard copy of the compliance certification must be provided.
- B. The agreement will require “Red Flag” mandate compliance. The successful vendor must develop and implement an Identity Theft Prevention Program to include reasonable policies and procedures for detecting, preventing, and mitigating identity theft.
- C. What would be the vendor’s response to security breaches or loss of information? Please provide a comprehensive review of the vendor’s internal and external security procedures. Please describe Internet sign-on and multi-factor identification procedures.
- D. What would be the Court’s liability in the event of a security breach, loss of data, or default by the payment card service provider or third-party portal?

4.8 Disaster Continuity

- A. Please describe your company’s back-up system protocol in the event the solution cannot communicate with its host to obtain an authorization.
- B. What is your system’s availability percentage?
- C. Vendor shall produce a comprehensive backup and disaster recovery plan for all data and include a description of retention of data parameters.

4.9 Pricing:

Provide a price schedule for the services described in the RFP, which would include the pricing for any convenience fees to be assessed, should the Court request that these fees be assessed. Please discuss any special rules pertaining to convenience fees or credit/debit card fees. Include any one-time fees, research fees and all other fees that will or could be charged (e.g., interchange rates by location, regular and ad hoc reporting costs). Please include a hybrid pricing model where a small convenience fee could be paid by customer and balance paid by court.

- A. Outline all fees associated with each method of transaction set up (i.e. web, face to face, etc.) Include reporting, voice authorizations, charge backs, monthly minimums, and charge for PCI and Non-PCI compliance fees. Please include pricing differentials, if any, for differences in settlement dates.
- B. Define and list transaction fees for authorization, settlement, network, communications (gateway and/or acquirer), and any other fees. Please submit a per transaction fee structure and total cost. Please include pricing differentials, if any, for differences in settlement dates.
- C. Pricing variation for each transaction type (ACH, credit cards, etc.) per transaction. Please include pricing differentials, if any, for differences in settlement dates.
- D. Include both purchase and lease prices for stand-alone credit card processing units.

- E. Are discount fees calculated on gross or net sales?
- F. Please disclose if you have any of the following and, if so, please identify:
 - i. Any third party gateway;
 - ii. Any third party acquirer;
 - iii. Any third party processor.
- G. Does your organization charge for project management and technical consulting? If so, please provide pricing for these services.
- H. Submission of a proposal shall be conclusive evidence that the vendor has investigated and is satisfied as to the conditions to be encountered in performing the work. The proposed pricing structure will apply to any and all Court operational areas.
- I. Failure to submit all required pricing information will result in the proposal being considered non-responsive. Vendors are required to hold prices firm for a minimum of 120 days in order that an award be made.

5.0 TIMELINE FOR THIS RFP

The court has developed the following list of key events related to this RFP. All dates are subject to change at the discretion of the court.

EVENT	DATE
RFP issued	December 15, 2016
Requests for Clarifications and/or Modifications	January 24, 2017
Questions and answers posted as Addendum 1	January 25, 2017
Proposal Due Date and Time	February 14, 2017 at 3:00 PM
Evaluation of Technical proposals (<i>estimate only</i>)	February 15, 2017 – February 21, 2017
Evaluation of Cost Proposals	February 22, 2017
Potential Interview Dates (<i>estimate only</i>)	January 10 – January 17, 2017, if required
Notice of Intent to Award (<i>estimate only</i>)	February 23, 2017
Negotiations and execution of contract (<i>estimate only</i>)	March 1 – March 31, 2017
Contract start date (<i>estimate only</i>)	April 1, 2017
Contract end date (<i>estimate only</i>)	March 31, 2022 with 2 one-year Options to Renew

6.0 RFP ATTACHMENTS

The following attachments are included as part of this RFP:

ATTACHMENT	DESCRIPTION
<u>Attachment 1:</u> Administrative Rules Governing RFPs	These rules govern this solicitation.
<u>Attachment 2:</u> Court Standard Terms and Conditions	If selected, the person or entity submitting a proposal (the “Vendor”) must sign a Court Standard Form agreement containing these terms and conditions (the “Terms and Conditions”).
<u>Attachment 3:</u> Acceptance of Court Standard Terms and Conditions	Bidder’s acceptance of contract terms and conditions.
<u>Attachment 4:</u> Darfur Contracting Act Certification	Vendor must complete the Darfur Contracting Act Certification and submit the completed certification with its proposal.
<u>Attachment 5:</u> Volume of Credit Card Transactions	Description of the volume of credit card transactions the court currently processes averaged from May 1, 2016 to November 30, 2016

7.0 SUBMISSIONS OF PROPOSALS

- A. Proposals should provide straightforward, concise information that satisfies the requirements of the “Proposal Contents” section below. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the RFP’s instructions and requirements, and completeness and clarity of content.
- B. The Vendor must submit its proposal in two parts, the non-cost portion and the cost portion.
 - i. The vendor must submit **one (1) original and three (3) copies** of the technical portion of the proposal. The original must be signed by an authorized representative of the vendor. The original technical portion of the proposal (and the copies thereof) must be submitted to the court in a single sealed envelope, separate from the cost portion. The vendor must write the RFP title and number on the outside of the sealed envelope and indicate that it is the technical portion of the proposal.
 - ii. The vendor must submit **one (1) original and three (3) copies** of the cost portion of the proposal. The original must be signed by an authorized representative of the vendor. The original cost portion of the proposal (and the copies thereof) must be submitted to the court in a single sealed

envelope, separate from the technical portion. The Vendor must write the RFP title and number on the outside of the sealed envelope and indicate that it is the cost portion of the proposal.

- C. Proposals must be delivered by the date and time listed on the coversheet of this RFP to:
- Superior Court of California, County of Tulare
Attn: Angie Burrow
Finance Specialist
221 S Mooney Drive, Room 303
Visalia, CA 93291
- D. Late proposals will not be accepted.
- E. Only written proposals will be accepted. Proposals must be sent by registered or certified mail, courier service (e.g. FedEx), or delivered by hand. Proposals may not be transmitted by fax or email.

8.0 PROPOSAL CONTENTS

Technical Proposal - The following information must be included in the technical proposal. A proposal lacking any of the following information may be deemed non-responsive.

- A. The Vendor's name, address, telephone and fax numbers, and federal tax identification number. Note that if the Vendor is a sole proprietor using his or her social security number, the social security number will be required before finalizing a contract.
- B. Name, title, address, telephone number, and email address of the individual who will act as the Vendor's designated representative for purposes of this RFP.
- C. Names, addresses, and telephone numbers of a minimum of five (5) clients for whom the Vendor has provided similar goods. The court may check references listed by the Vendor.
- D. For each key staff member: a resume describing the individual's background and experience, as well as the individual's ability and experience in conducting the proposed activities.
- E. Names, addresses, and telephone numbers of a minimum of five (5) clients for whom the Vendor has conducted similar services. The Court may check references listed by the Vendor.
- F. Proposed method to complete the work.
- G. Working/Project Plan (including staffing)
- i. Transition to new terminals.
 - ii. Transition of Web payments to new processor.
 - iii. Transition of IVR payments to new processor.
 - iv. Integration with Case Management system if applicable.

- H. Customer Service – Describe the organizational structure of the customer service department and the level of service that will be provided, including such issues as the identification and resolution of problems.
- I. Reports to verify payments received against the case management system
- J. This RFP seeks assurance of the following. Briefly discuss your firm’s ability to provide:
 - i. Timely implementation.
 - ii. System Stability.
 - iii. Software reliability and performance.
 - iv. Equipment quality and performance.
 - v. Operator- and user- friendliness.
 - vi. Maintainability.
 - vii. Quality training for users and IT technicians.
 - viii. Quality service for maintenance.
- K. Acceptance of the Terms and Conditions.
 - i. On Attachment 3, the Vendor must check the appropriate box and sign the form. If the Vendor marks the second box, it must provide the required additional materials. An “exception” includes any addition, deletion, or other modification.
 - ii. If exceptions are identified, the Vendor must also submit (a) a red-lined version of the Terms and Conditions that implements all proposed changes, and (b) a written explanation or rationale for each exception and/or proposed change.
- L. Certifications, Attachments, and other requirements.
 - i. Vendor must include the following certification in its proposal:

Vendor has no interest that would constitute a conflict of interest under California Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or rule 10.103 or rule 10.104 of the California Rules of Court, which restrict employees and former employees from contracting with judicial branch entities.
 - ii. Vendor must complete the Darfur Contracting Act Certification (Attachment 4) and submit the completed certification with its proposal
 - iii. If Vendor is a corporation, limited liability Company, or limited partnership, proof that Vendor is in good standing and qualified to conduct business in California.
 - iv. Copies of current business licenses, professional certifications, or other credentials.
 - v. Proof of financial solvency or stability (e.g., balance sheets and income statements)

9.0 COST PORTION

The following information must be included in the cost portion of the proposal.

- i. The costs associated with creating custom reporting (Section 3.0.J).
- ii. The costs for integrating with court's case management system (Section 4.1.G).
- iii. The costs of point of sale terminals (section 4.1).
- iv. All pricing schedules and responses requested in section 4.9 Pricing.

NOTE: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

10.0 OFFER PERIOD

A Vendor's proposal is an irrevocable offer for ninety (90) days following the proposal due date. In the event a final contract has not been awarded within this period, the Court reserves the right to negotiate extensions to this period.

11.0 EVALUATION OF TECHNICAL PROPOSALS

The Evaluation Committee, which will include representatives from Finance, Information Technology and Procurement Departments, will review and evaluate proposals, as described below. In evaluating the proposals, the evaluation committee will first consider the completeness and responsiveness of the Vendor's Proposal. Proposals that are incomplete and missing key components will be considered non-responsive.

The Court will evaluate the proposals on a 120 point scale using the criteria set forth in the table below. Award, if made, will be to the highest-scored proposal.

If a contract will be awarded, the Court will post intent to award notice on the court's website.

CRITERION	MAXIMUM NUMBER OF POINTS
Quality of work plan submitted	15
Ability to provide the services described in the RFP	15
Ability to Manage and Mitigate PCI Compliance	15
Pricing/Cost Proposal	30

CRITERION	MAXIMUM NUMBER OF POINTS
Ability to integrate all current credit card processing functions.	15
Acceptance of the Terms and Conditions	10
Quality, Comprehensiveness and Adequacy of the proposed implementation including the ability to meet service levels, capacity to support the project based on staffing plan.	10
Acceptance of the Terms and Conditions	10

The cost portion of proposals will be publicly opened at the date and time noted in Section 3.0 at 221 S Mooney Blvd, Visalia, CA 93291 in room 109.

12.0 INTERVIEWS

The Court may conduct interviews with Vendors to clarify aspects set forth in their proposals or to assist in finalizing the ranking of top-ranked proposals. The interview process may require a demonstration. The interview may also require a demonstration of equivalence if a brand name is included in the specifications. The interviews may be conducted in person or by phone. If conducted in person, interviews will likely be held at the Court’s offices. The Court will not reimburse vendors for any costs incurred in traveling to or from the interview location. The Court will notify eligible Vendors regarding interview arrangements.

13.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

One copy of each proposal will be retained by the Court for official files and will become a public record. California judicial branch entities are subject to rule 10.500 of the California Rule of Court, which governs public access to judicial administrative records (see www.courtinfo.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_500).

If information submitted in a proposal contains material noted or marked as confidential and/or proprietary that, in the Court’s sole opinion, meets the disclosure exemption requirements of Rule 10.500, then that information will not be disclosed upon a request for access to such records. If the Court finds or reasonably believes that the material so marked is **not** exempt from disclosure, the Court will disclose the information regardless of the marking or notation seeking confidential treatment.

Notwithstanding the above, the California Public Contract Code requires the public inspection of certain proposals. If required to do so by the Public Contract Code, a Court may disclose all information contained in a proposal, including information marked as confidential or proprietary.

14.0 DISABLED VETERAN BUSINESS ENTERPRISE INCENTIVE

The Court has waived the inclusion of DVBE participation in this solicitation.

15.0 PROTESTS

Any protests will be handled in accordance with Chapter 7 of the Judicial Branch Contracting Manual (see www.courts.ca.gov/documents/jbcl-manual.pdf). Failure of a Proposer to comply with the protest procedures set forth in that chapter will render a protest inadequate and non-responsive, and will result in rejection of the protest. The deadline for the Court to receive a solicitation specifications protest is the proposal due date. Protests must be sent to:

Superior Court of California, County of Tulare
Attn: Michelle Martinez
Assistant Court Executive Officer
221 S Mooney Drive, Room 303
Visalia, CA 93291

**ATTACHMENT 1
ADMINISTRATIVE RULES GOVERNING RFPs
(NON-IT SERVICES)**

**1. COMMUNICATIONS WITH THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF TULARE (COURT) REGARDING THE RFP**

Except as specifically addressed elsewhere in the RFP, Vendors must send any communications regarding the RFP to TCSCRFP@tulare.Courts.ca.gov (the “Solicitations Mailbox”). Vendors must include the RFP Number in subject line of any communication.

2. QUESTIONS REGARDING THE RFP

Vendors interested in responding to the RFP may submit questions via email to the Solicitations Mailbox on procedural matters related to the RFP or requests for clarification or modification of the RFP no later than the deadline for questions listed in the timeline of the RFP. Once submitted, questions become part of the procurement file and are subject to disclosure; Vendors are accordingly cautioned not to include any proprietary or confidential information in questions. If the Vendor is requesting a change, the request must set forth the recommended change and the Vendor’s reasons for proposing the change. Questions or requests submitted after the deadline for questions will not be answered. Without disclosing the source of the question or request, a copy of the questions and the Court’s responses will be made available prior to the proposal due date and time.

3. ERRORS IN THE RFP

- A. If, before the proposal due date and time listed in the timeline of the RFP, a Vendor discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Vendor must immediately notify the Court via email to the Solicitations Mailbox and request modification or clarification of the RFP. Without disclosing the source of the request, the Court may modify the RFP before the proposal due date and time by releasing an addendum to the solicitation.
- B. If a Vendor fails to notify the Court of an error in the RFP known to the Vendor, or an error that reasonably should have been known to the Vendor, before the proposal due date and time listed in the timeline of the RFP, the Vendor shall propose at its own risk. Furthermore, if the Vendor is awarded the agreement, the Vendor shall not be entitled to additional compensation or time by reason of the error or its later correction.

4. ADDENDA

- A. The Court may modify the RFP before the proposal due date and time listed in the timeline of the RFP by posting in an addendum in the procurement section of the

courts website at www.tularesuperiorcourt.ca.gov . It is each Vendor's responsibility to inform itself of any addendum prior to its submission of a proposal.

- B. If any Vendor determines that an addendum unnecessarily restricts its ability to propose, the Vendor shall immediately notify the Court via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

5. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS

A Vendor may withdraw its proposal at any time before the deadline for submitting proposals by notifying the Court in writing of its withdrawal. The notice must be signed by the Vendor. The Vendor may thereafter submit a new or modified proposal, provided that it is received at the Court no later than the proposal due date and time listed in the timeline of the RFP. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the proposal due date and time listed in the timeline of the RFP.

6. ERRORS IN THE PROPOSAL

If errors are found in a proposal, the Court may reject the proposal; however, the Court may, at its sole option, correct arithmetic or transposition errors or both on the basis that the lowest level of detail will prevail in any discrepancy. If these corrections result in significant changes in the amount of money to be paid to the Vendor (if selected for the award of the agreement), the Vendor will be informed of the errors and corrections thereof and will be given the option to abide by the corrected amount or withdraw the proposal.

7. RIGHT TO REJECT PROPOSALS

- A. Before the proposal due date and time listed in the timeline of the RFP, the Court may cancel the RFP for any or no reason. After the proposal due date and time listed in the timeline of the RFP, the Court may reject all proposals and cancel the RFP if the Court determines that: (i) the proposals received do not reflect effective competition; (ii) the cost is not reasonable; (iii) the cost exceeds the amount expected; or (iv) awarding the contract is not in the best interest of the Court.
- B. The Court may or may not waive an immaterial deviation or defect in a proposal. The Court's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a Vendor from full compliance with RFP specifications. Until a contract resulting from this RFP is signed, the Court reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual Vendors if it is deemed in the Court's best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any Vendor.

- C. The Court reserves the right to issue similar RFPs in the future. The RFP is in no way an agreement, obligation, or contract and in no way is the Court or the State of California responsible for the cost of preparing the proposal.
- D. Vendors are specifically directed **NOT** to contact any Court personnel or consultants for meetings, conferences, or discussions that are related to the RFP at any time between release of the RFP and any award and execution of a contract. Unauthorized contact with any Court personnel or consultants may be cause for rejection of the Vendor's proposal.

8. EVALUATION PROCESS

- A. An evaluation team will review all proposals that are received by the appropriate deadline to determine the extent to which they comply with RFP requirements.
- B. Proposals that contain false or misleading statements may be rejected if in the Court's opinion the information was intended to mislead the evaluation team regarding a requirement of the RFP.
- C. During the evaluation process, the Court may require a Vendor's representative to answer questions with regard to the Vendor's proposal. Failure of a Vendor to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.
- D. In the event of a tie, the contract will be awarded to the winner of a single coin toss. The coin toss will be witnessed by two Court employees. The Court will provide notice of the date and time of the coin toss to the affected Vendors, who may attend the coin toss at their own expense.

9. DISPOSITION OF MATERIALS

All materials submitted in response to the RFP will become the property of the Court and will be returned only at the Court's option and at the expense of the Vendor submitting the proposal.

10. PAYMENT

- A. Payment terms will be specified in any agreement that may ensue as a result of the RFP.
- B. **THE COURT DOES NOT MAKE ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon completion of tasks as provided in the agreement between the Court and the selected Vendor.

11. AWARD AND EXECUTION OF AGREEMENT

- A. Award of contract, if made, will be in accordance with the RFP to a responsible Vendor submitting a proposal compliant with all the requirements of the RFP and any addenda thereto (including any administrative or technical requirements), except for such immaterial defects as may be waived by the Court.

- B. A Vendor submitting a proposal must be prepared to use a standard Court contract form rather than its own contract form.
- C. The Court will make a reasonable effort to execute any contract based on the RFP within forty-five (45) days of selecting a proposal that best meets its requirements. However, exceptions taken by a Vendor may delay execution of a contract.
- D. Upon award of the agreement, the agreement shall be signed by the Vendor in two original contract counterparts and returned, along with the required attachments, to the Court no later than ten (10) business days of receipt of agreement form or prior to the end of June if award is at fiscal year-end. Agreements are not effective until executed by both parties. Any work performed before receipt of a fully-executed agreement shall be at the Vendor's own risk.

12. FAILURE TO EXECUTE THE AGREEMENT

The period for execution set forth in Section 11 (“Award and Execution of Agreement”) may only be changed by mutual agreement of the parties. Failure to execute the agreement within the time frame identified above constitutes sufficient cause for voiding the award. Failure to comply with other requirements within the set time constitutes failure to execute the agreement. If the successful Vendor refuses or fails to execute the agreement, the Court may award the agreement to the next qualified Vendor.

13. NEWS RELEASES

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of LaRayne Cleek, Interim Court Executive Officer.

14. ANTI-TRUST CLAIMS

- A. In submitting a proposal to the COURT, the Vendor offers and agrees that if the proposal is accepted, the Vendor will assign to the COURT all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Vendor for sale to the COURT pursuant to the proposal. Such assignment shall be made and become effective at the time the COURT tenders final payment to the Vendor. (See Government Code section 4552.)
- B. If the COURT receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Vendor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the COURT any portion of the recovery, including treble damages, attributable to overcharges that were paid.
- C. Upon demand in writing by the Vendor, the COURT shall, within one year from such demand, reassign the cause of action assigned under this section if the Vendor has been or may have been injured by the violation of law for which the cause of action arose and (a) the COURT has not been injured thereby, or (b) the COURT declines to file a Court action for the cause of action. (See Government Code section 4554.)

15. AMERICANS WITH DISABILITIES ACT

The COURT complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Vendors should be directed to Danette Borba.

ATTACHMENT 2
COURT STANDARD TERMS AND CONDITIONS

PAYMENT PROVISIONS

- 1. General.** Subject to the terms of this Agreement, Contractor shall invoice the Court, and the Court shall compensate Contractor, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the Court shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature which Contractor incurs.
- 2. Compensation for Services.**
 - 2.1 Withholding.** When making a payment tied to the acceptance of Deliverables, the Court shall have the right to withhold fifteen percent (15%) of each such payment until the Court accepts the final Deliverable.
 - 2.2 No Advance Payment.** The Court will not make any advance payment for Services.
- 3. Invoicing and Payment**
 - 3.1 Invoicing.** Contractor shall submit invoices to the Court in arrears no more frequently than monthly. All invoices will be sent to the address listed below. Each invoice must be printed on Contractor's standard printed bill form, and must include at a minimum (i) the Agreement number, (ii) Vendor's name and address, (iii) the nature of the invoiced charge, (iv) the total invoiced amount, and (v) such detail as is reasonably necessary to permit the Court to evaluate the Services performed, if any, including without limitation the number of hours worked and the applicable hourly rate. Contractor shall adhere to reasonable billing guidelines issued by the Court from time to time.

Superior Court of Tulare County
Attention: Accounts Payable
221 S. Mooney Blvd., Rm 303
Visalia, CA 93291
 - 3.2 Payment.** The Court will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Services or Deliverables, in accordance with the terms of this Agreement. Payment is due thirty (30) days from receipt of a correct, itemized invoice.
 - (A)** Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement.
 - (B)** Amounts owed to the Court due to rejections of Services or Deliverables or discrepancies in an invoice will be, at the Court's option, fully credited against future invoices payable by the Court, or paid by Contractor within thirty (30) days from Contractor's receipt of a debit memo or other written request for payment by the Court. The Court has the right at any time to set off any amount owing from Contractor to the Court against any amount payable by the Court pursuant to this Agreement or any other transaction or occurrence.
 - 3.3 No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice, Services, or Deliverables. Contractor shall immediately refund any payment made in error. The Court shall have the right at any time to set off any amount owing from Contractor to the Court against any amount payable by the Court to Contractor under this Agreement.
- 4. Taxes.** Unless otherwise required by law, the Court is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The Court shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the Court pursuant to this Agreement.

GENERAL PROVISIONS

1.0 Provisions Applicable to Services

- 1.1 **Qualifications.** Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the Court is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.
- 1.2 **Turnover.** Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.
- 1.3 **Background Checks.** Contractor shall cooperate with the Court if the Court wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Court may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Court of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Court and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the Court: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the Court, the Court advises Contractor that the person is unacceptable to the Court.

2.0 Contractor Certification Clauses. Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the Court if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

- 2.1 **Authority.** Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement.
- 2.2 **Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Court.
- 2.3 **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.
- 2.4 **No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- 2.5 **No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- 2.6 **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 the Services.
- 2.7 **Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.
- 2.8 **Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
- 2.9 **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, and Contractor takes all reasonable steps to prevent harassment from occurring.

- 2.10 Noninfringement.** The Services, Deliverables, and Contractor's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
- 2.11 Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3.0 Insurance

3.1 General Requirements for Contractor's insurance that is required during the term of the Agreement:

- A.** Contractor shall maintain the required insurance for its operations with an insurance company or companies that are rated "A- VII" or higher by A.M. Best's key rating guide and authorized to do business in the State of California. If Contractor is a public agency, the insurance may be provided through a joint power authority formed for the purpose of jointly self-insuring the cost of claims and insurance costs.
- B.** For all insurance policies required by this section 3.0, Contractor shall declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance.
- C.** If self-insured, Contractor agrees to administer its self-insurance program in a commercially reasonable manner to ensure the availability of funds to cover losses required to be insured under the terms of this section 3.0.
- D.** Contractor, prior to commencement of the Services, shall provide the Court with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the Court, as evidence that the required insurance is in effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that the State of California, the Judicial Council of California, and the Superior Court of California, County of Tulare, and their respective elected and appointed officials, judges, officers, and employees have been added as additional insureds on the insurance policy being referenced.
- E.** The Certificates of Insurance shall be addressed as follows:
- Superior Court of Tulare County
Attention: Accounts Payable
221 S. Mooney Blvd., Rm 303
Visalia, CA 93291**
- F.** All insurance policies required under this section 3.0 shall be in force until the end of the term of this Agreement or completion of the Services, whichever comes later.
- G.** If the insurance expires during the term of the Agreement, Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsements, or Contractor may be declared in breach of this Agreement. The Court reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the Court. Contractor must provide renewal insurance certificates and signed

policy endorsements to the Court at least ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements.

- H.** In the event Contractor fails to keep in effect the specified insurance coverage, the Court may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- I.** The Commercial General Liability and Automobile Liability insurance required by the “Insurance Requirements” herein below, as well as any Excess/Umbrella Liability insurance that Contractor maintains in compliance with the terms of this section 3.0 shall be endorsed to include the State of California, the Judicial Council of California, and the Superior Court of California, County of Tulare, and their respective elected and appointed officials, judges, officers, and employees as additional insureds, but only with respect to liability assumed by Contractor under the terms of this Agreement or liability arising out of performance of the Services.
- J.** Contractor, and any insurer (by policy endorsement) providing insurance required under the terms of this section 3.0, shall waive any right of recovery or subrogation it may have against the State of California, the Judicial Council of California, and the Superior Court of California, County of Tulare, and their respective elected and appointed officials, judges, officers, and employees for direct physical loss or damage to the work, or for any liability arising out of the Services performed by Contractor under this Agreement.
- K.** All insurance policies required under this section 3.0 shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days’ prior written notice to the Court. Notice to the Court of cancellation or material change is the responsibility of the Contractor.
- L.** Contractor shall be responsible for and may not recover from the State of California, the Judicial Council of California, or the Superior Court of California, County of Tulare any deductible or self-insured retention that is connected to the insurance required under this section 3.0.
- M.** The insurance required under this section 3.0 shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California, the Judicial Council of California, or the Superior Court of California, County of Tulare.
- N.** The cost of all insurance required by this section 3.0 is the sole responsibility of Contractor, and is a component part of Contractor’s agreed compensation.
- O.** Contractor shall require insurance from subcontractors and their sub-subcontractors with substantially the same terms and conditions as required of Contractor under “Insurance Requirements” herein below and with limits of liability, which in the opinion of Contractor are sufficient to protect the interests of Contractor, State of California, the Judicial Council of California, and the Superior Court of California County of Tulare.

3.2 Insurance Requirements: From the beginning of the performance of the Services, the Contractor shall maintain, at a minimum and in full force and effect, the following insurance:

- A. Commercial General Liability:** Commercial General Liability insurance (and if required Excess/Umbrella Liability insurance) for all of its operations written on an occurrence form with limits of not less than \$1 million per occurrence and a \$1 million annual aggregate limit of liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall not include exclusion for loss resulting from explosion, collapse, or underground perils. This insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought subject to the insurance policy limit of liability.
- B. Commercial Automobile Liability:** If one or more automobiles is used in the performance of the Services, Commercial Automobile Liability insurance covering liability arising out of the operation, use, loading, or unloading of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the Services, with limits of not less than \$1 million combined single limit per accident.
- C. Workers’ Compensation and Employers Liability:** Statutory Workers’ Compensation insurance for all of the employees who are engaged in the Services, including special coverage extensions

where applicable and Employers Liability insurance with limits not less than \$500,000 for each accident, \$500,000 as the aggregate disease policy limit, and \$500,000 as the disease limit for each employee.

- D. Commercial Crime Insurance:** Commercial Crime insurance endorsed to cover loss of money, securities, or other property, with intrinsic value, belonging to the Court, if the loss is the result of the dishonest acts of Contractor or its employees, whether acting alone or in collusion with others. The policy shall provide limits of not less than \$100,000 per occurrence.

- 4.0 Indemnity.** Contractor will defend (with counsel satisfactory to the Court or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (ii) a breach of a representation, warranty, or other provision of this Agreement, and (iii) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Services or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Court's prior written consent, which consent shall not be unreasonably withheld; and the Court shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.
- 5.0 Option Term.** Unless section 2 of the Coversheet indicates that an Option Term is not applicable, the Court may, at its sole option, extend this Agreement for a single one-year term, at the end of which Option Term this Agreement shall expire. In order to exercise this Option Term, the Court must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Contractor's signature.
- 6.0 Tax Delinquency.** Contractor must provide notice to the Court immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Court may terminate this Agreement immediately "for cause" pursuant to section 7.2 below if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.
- 7.0 Termination**
- 7.1 Termination for Convenience.** The Court may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Court, Contractor shall immediately stop Services as specified in the Notice.
- 7.2 Termination for Cause.** The Court may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the Court, is not capable of being cured within this cure period); (ii) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
- 7.3 Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
- 7.4 Termination for Changes in Budget or Law.** The Court's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The Court may terminate this Agreement or limit Contractor's

Services (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the Court if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the Court determines that Contractor's performance under this Agreement has become infeasible due to changes in applicable laws.

7.5 Rights and Remedies of the Court.

- A. *Nonexclusive Remedies.*** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Court immediately if Contractor is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Contractor is in default, the Court may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following Notice, the Court's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.
- B. *Replacement.*** If the Court terminates this Agreement in whole or in part for cause, the Court may acquire from third parties, under the terms and in the manner the Court considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the Court for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Court for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Court. Contractor shall continue any Services not terminated hereunder.
- C. *Delivery of Materials.*** In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the Court with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any Court-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the Court shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the Court's termination is not for cause, the Court shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the Court's termination Notice.

7.6 Survival. Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

8.0 Assignment and Subcontracting. Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Court. Consent may be withheld for any reason or no reason. The Court may withdraw its approval of a subcontractor if the Court determines in good faith that the subcontractor is, or will be, unable to effectively perform its responsibilities. If the Court rejects any proposed subcontractor in writing, Contractor will assume the proposed subcontractor's responsibilities. No subcontracting shall release Contractor from its responsibility for performance of its obligations under this Agreement. Contractor shall remain fully responsible for the performance of subcontractors hereunder, including, without limitation, all work and activities of subcontractors providing Services to Contractor in connection with performance of this Agreement. Contractor shall be the sole point of contact with subcontractors under this Agreement, and Contractor shall be solely responsible for subcontractors, including, without limitation, payment of any and all charges resulting from any subcontract. The Court's consent to any subcontracting or delegation of Contractor's obligations will take effect only if there is a written agreement with between Contractor and the subcontractor, stating that the Contractor and subcontractor: (i) are jointly and severally liable to the Court for performing the duties in this Agreement; (ii) affirm the rights granted in this Agreement to the Court; (iii) make the representations and warranties made by the Contractor in this Agreement; (iv) appoint the Court an intended third party beneficiary; and (v) shall comply with and be subject to the terms of this Agreement. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

9.0 Notices. Notices must be sent to the following address and recipient:

If to Contractor:	If to the Court:
<u>[name, title, address]</u>	<u>[name, title, address]</u>
<u>With a copy to:</u>	<u>With a copy to:</u>

Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

10.0 Provisions Applicable to Certain Agreements. The provisions in this section are *applicable only to the types of orders specified in the first sentence of each subsection*. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.

- 10.1 Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no Court funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no Court funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.
- 10.2 Domestic Partners, Spouses, and Gender Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with, PCC 10295.3 which places limitations on contracts with contractors who discriminate in the provision of benefits regarding marital or domestic partner status.
- 10.3 Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 10.4 Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
- 10.5 Iran Contracting Act.** *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to Court an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran (“Iran List”) created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Court to enter into this Agreement pursuant to PCC 2203(c).
- 10.6 Loss Leader Prohibition.** *If this Agreement involves the purchase of goods, this section is applicable.* Contractor shall not sell or use any article or product as a “loss leader” as defined in section 17030 of the Business and Professions Code.
- 10.7 Recycling.** *If this Agreement provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable.* Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing

under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

- 10.8 Sweatshop Labor.** *If this Agreement provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable.* Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Court under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the Court.
- 10.9 Federal Funding Requirements.** *If this Agreement is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to the Court by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The Court may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.
- 10.10 DVBE Commitment.** *This section is applicable if Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement.* Contractor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the Court approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the Court: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
- 10.11 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Court. Such assignment shall be made and become effective at the time the Court tenders final payment to Contractor. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble

damages, attributable to overcharges that were paid by Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the Court shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the Court has not been injured thereby, or (b) the Court declines to file a court action for the cause of action.

- 10.12 Legal Services.** *If this Agreement is for legal services, this section is applicable.* Contractor shall: (i) adhere to legal cost and billing guidelines designated by the Court; (ii) adhere to litigation plans designated by the Court, if applicable; (iii) adhere to case phasing of activities designated by the Court, if applicable; (iv) submit and adhere to legal budgets as designated by the Court; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the Court; and (vi) submit to legal bill audits and law firm audits if so requested by the Court, whether conducted by employees or designees of the Court or by any legal cost-control provider retained by the Court for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the Court. If (a) the Contract Amount is greater than \$50,000, (b) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in section 6213 of the Business and Professions Code, during each year of the Agreement equal to the lesser of either (A) thirty (30) multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any period of less than a full year or (B) the number of hours equal to ten percent (10%) of the Contract Amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for nonrenewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with a Judicial Branch Entity for legal services.
- 10.13 Good Standing.** *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.
- 10.14 Equipment Purchases.** *If this Agreement includes the purchase of equipment, this section is applicable.* The Court may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the Court, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Court at no expense to the Court. If a theft occurs, Contractor must file a police report immediately.
- 10.15 Four-Digit Date Compliance.** *If this Agreement includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the Court. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.
- 10.16 Janitorial Services or Building Maintenance Services.** *If this Agreement is for janitorial or building maintenance services, this section is applicable.* If this Agreement requires Contractor to perform Services at a new site, Contractor shall retain for sixty (60) days all employees currently employed at that site by any previous contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.
- 10.17 Small Business Preference Commitment.** *This section is applicable if Contractor received a small business preference in connection with this Agreement.* Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the Court the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not

less than 75 percent (75%) of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

11.0 Miscellaneous Provisions.

- 11.1 Independent Contractor.** Contractor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Court. Contractor has no authority to bind or incur any obligation on behalf of the Court. If any governmental entity concludes that Contractor is not an independent contractor, the Court may terminate this Agreement immediately upon Notice.
- 11.2 GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 11.3 Audit.** Contractor must allow the Court or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the Court five percent (5%) or more during the time period subject to audit, Contractor must reimburse the Court in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.
- 11.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.
- 11.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Court's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The Court owns all right, title and interest in the Confidential Information. Contractor will notify the Court promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Court to protect such Confidential Information. Upon the Court's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the Court or, if so directed by the Court, destroy all Confidential Information (in every form and medium), and (b) certify to the Court in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Court shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Contractor hereby assigns to the Court ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the Court.
- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the Court.

- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 11.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Court. A waiver of enforcement of any of this Agreement's terms or conditions by the Court is effective only if expressly agreed in writing by a duly authorized officer of the Court. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.11 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 11.12 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 11.13 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.14 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 11.15 Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.
- 11.16 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

DEFINED TERMS

As used in this Agreement, the following terms have the indicated meanings:

“Agreement” is defined on the Coversheet.

“Contractor” is defined on the Coversheet.

“Confidential Information” means: (i) any information related to the business or operations of the Court, including information relating to the Court’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Court (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the Court’s satisfaction that: (a) Contractor lawfully knew prior to the Court’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.

“Consulting Services” refers to the services performed under “Consulting Services Agreements,” which are defined in PCC 10335.5, substantially, as contracts that: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (iv) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

“Contract Amount” is defined on the Coversheet.

“Coversheet” refers to the first page of this Agreement.

“Deliverables” is defined in Appendix A.

“Effective Date” is defined on the Coversheet.

“Expiration Date” is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.

“Initial Term” is the period commencing on the Effective Date and ending on the Expiration Date designated on the Coversheet.

“Court” is defined on the Coversheet.

“Judicial Branch Entity” or **“Judicial Branch Entities”** means any California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

“Judicial Branch Personnel” means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.

“Key Personnel” means the Contractor’s project staff members identified as “Key Personnel” in Appendix A.

“Notice” means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Appendix C.

“Option Term” means a period, if any, through which this Agreement may be or has been extended by the Court.

“PCC” refers to the California Public Contract Code.

“Services” is defined in Appendix A of Contract.

“Stop Work Order” is defined in Appendix B.

“Term” comprises the Initial Term and any Option Terms.


**ATTACHMENT 3
PROPOSER'S ACCEPTANCE OF TERMS AND CONDITIONS**

Instructions: Mark the appropriate choice below and sign this attachment.

1. Vendor accepts Attachment 2: JBE Standard Terms and Conditions (“Attachment 2”) without exception.

OR

2. Vendor proposes exceptions or changes to Attachment 2. Vendor must also submit (i) a red-lined version of Attachment 2 that implements all proposed changes, and (ii) a written explanation or rationale for each exception or proposed change.

BY (Authorized Signature) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

**ATTACHMENT 4
GENERAL CERTIFICATIONS FORM**

Check the box below, if agreed, and sign this attachment. Please note that the JBE will reject a proposal from a Proposer that does not indicate acceptance of these clauses.


Conflict of Interest. Proposer has no interest that would constitute a conflict of interest under California Public Contract Code (PCC) sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with judicial branch entities.

Suspension or Debarment. Proposer certifies that neither Proposer nor any of Proposer’s intended subcontractors is on the California Department of General Services’ list of firms and persons that have been suspended or debarred from contracting with the state because of a violation of PCC 10115.10, regarding disabled veteran business enterprises.

Tax Delinquency. Proposer certifies that it is not on either (i) the California Franchise Tax Board’s list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization’s list of 500 largest delinquent sales and use tax accounts.

Conflict Minerals. Proposer certifies that either (i) it is not a scrutinized company as defined in PCC 10490(b), or (ii) the goods or services the Proposer would provide to the JBE are not related to products or services that are the reason the Proposer must comply with Section 13(p) of the Securities Exchange Act of 1934. (Note: PCC 10490(b) defines a “scrutinized company” as “a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement.”)

Check box to indicate acceptance of the clauses above.

BY (Authorized Signature) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

ATTACHMENT 5
VOLUME OF CREDIT CARD TRANSACTIONS

Point of Sale (POS) Transactions			Credit Card Type							
2016 Total Transactions	Avg. Transaction \$ Amount	2016	MC	DISC	VISA	AMEX	DEBIT	2016 Total Transactions	Total Paid	Avg. Transaction \$ Amount
9935	\$ 288.86	May	315	12	981	49	850	2207	416,341.16	188.65
		June	347	14	947	28	913	1336	403,367.72	301.92
		July	360	15	850	32	776	1257	393,111.82	312.74
		August	388	9	1086	22	652	1505	421,304.09	279.94
		September	346	10	1036	36	832	1428	430,115.00	301.20
		October	312	9	918	21	913	1260	424,938.81	337.25
		November	238	5	671	28	1042	942	380,640.85	404.08
		6 Month Total	2306	74	6489	216	5978	9935	\$ 2,869,819.45	\$ 288.86

Online Web Payment			Credit Card Type							
2016 Total Transactions	Avg. Transaction \$ Amount	2016	MC	DISC	VISA	AMEX	DEBIT	2016 Total Transactions	Total Paid	Avg. Transaction \$ Amount
6506	\$ 189.50	May	191	7	618	0	0	816	155,218.40	190.22
		June	253	12	665	0	0	930	181,924.55	195.62
		July	210	10	697	0	0	917	174,550.04	190.35
		August	229	7	763	0	0	999	201,423.17	201.62
		September	228	5	636	0	0	869	175,367.20	201.80
		October	248	16	721	0	0	985	183,970.75	186.77
		November	251	8	731	0	0	990	160,428.03	162.05
		6 Month Total	1610	65	4831	0	0	6506	\$ 1,232,882.14	\$ 189.50

Interactive Voice Response (IVR)*			Credit Card Type							
2016 Total Transactions	Avg. Transaction \$ Amount	2016	MC	DISC	VISA	AMEX	DEBIT	2016 Total Transactions	Total Paid	Avg. Transaction \$ Amount
173	\$ 135.85	May						0		
		June						0		
		July						0		
		August						0		
		September						0		
		October	3	0	10	0	0	13	1,107.75	85.21
		November	34	3	123	0	0	160	22,393.75	139.96
		6 Month Total	37	3	133	0	0	173	\$ 23,501.50	\$ 135.85

* Fully operational 11/01/16