

# REQUEST FOR PROPOSALS

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO**

**REGARDING:  
RFP NUMBER: 10-2014-DRPA**

**PROPOSALS DUE:**  
***April 24, 2015*** NO LATER THAN 4:00 P.M. PACIFIC TIME

## 1.0 BACKGROUND INFORMATION

The Superior Court of California, County of Fresno (hereinafter "Court") is soliciting proposals from one or more qualified vendors to provide Dispute Resolution Services (hereinafter "DRPA") as defined in the Dispute Resolution Programs Act (California Business and Profession Code §§ 465, et seq., hereinafter "Act") and its implementing regulations (Title 16 California Code of Regulations §§3600 et seq., hereinafter "Regulations") whose services assist parties in resolving disputes without the necessity of formal judicial proceedings. The Act and Regulations may be found as follows:

Act: [http://www.dca.ca.gov/publications/drpa\\_statutes.shtml](http://www.dca.ca.gov/publications/drpa_statutes.shtml)

Regulations:

[https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I00F3AED0D49111DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I00F3AED0D49111DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

## 2.0 SERVICES DESCRIPTION - GOALS, OBJECTIVES AND PRIORITIES

2.1 The Court seeks the services of a person(s) or entity(s) with expertise in mediating court cases in the areas of civil law, family law, and related cases. The successful vendor(s) will provide a Dispute Resolution Program that meets the Court's specific Goals, Objectives and Priorities as described in this section. Mediators will be trained in mediation according to the DRPA regulations and in any legal guidelines or processes related to the delivery of dispute resolution services for the Court. Mediations will be conducted at the Sisk courthouse as well as offices of the awarded provider(s).

The vendor(s) will provide the following deliverables, as directed by the Act, Regulations, and the Court:

- Dispute resolution services,
- General survey information collected from disputants served by the program, and
- Monthly activity reports including statistical data regarding the operating budget; the number of contacts for services; the source of the referrals; the number of mediation cases opened and/or in progress; the time expended on each case; the nature of the issues presented in mediation; the number of disputants served by the program; the number of partial and/or complete agreements reached in mediation; and the number of neutral persons providing services along with the time each spent providing services.

2.2 **Goals, Objectives and Priorities.** The overall goals for Fresno County's DRPA program are: (a) to have a comprehensive array of options for resolving

conflicts and disputes, and, (b) to see that those options are as accessible to residents throughout the County as possible.

**DRPA funds will be used to emphasize the following GOALS:**

- A. To assist the Superior Court in providing coordination, promotion, and services of informal dispute resolution techniques to encourage early resolution of appropriate civil cases;
- B. To assist County agencies and cities therein handling a wide range of conflicts and disputes that arise within their jurisdictions through the use of informal dispute resolution approaches and techniques.
- C. To increase awareness and access to early dispute resolution services and methods for conflicts and disputes within neighborhoods, families, schools, workplaces, communities, and other arenas of conflict.
- D. To provide on-going education and outreach promoting the acquisition of skills, knowledge, and attitudes favoring informal dispute resolution and conflict management in neighborhoods, families, schools, workplaces, communities, local businesses, governmental, and other service agencies.
- E. To create opportunities for extended dispute resolution services and volunteerism as broadly as possible for Fresno County's diverse ethnic populations.

**The Court's OBJECTIVES in operating its dispute resolution program are:**

- A. To support existing programs where performance shows that continued support is warranted and where the need for supplemental funding continues;
- B. To encourage collaboration and creativity among organizations and agencies receiving funding in developing new projects to fill gaps in the County's dispute resolution program or to meet special needs;
- C. To encourage more extensive use and better coordination of dispute resolution services in the County and the integration of dispute resolution techniques into existing processes within courts, cities, county agencies, schools, and other institutions throughout the County;
- D. To encourage efficiency and cost-effectiveness in the application and reporting process; and
- E. To encourage improvements in the procedures for periodic reporting on such grants.

**Given the above goals and objectives, the Court intends to use the following PRIORITIES as guidelines in allocating available funds in response to the proposals submitted:**

- A. A portion of available funds will be allocated to supporting dispute resolution in community disputes which may include general civil cases, small claim cases, consumer disputes, landlord-tenant issues, neighbor-neighbor conflicts and other community related matters.**
- B. A portion of available funds will be allocated to supporting dispute resolution approaches in family law, divorce, and related property issues, other than those provided by Family Court Services.**
- C. A portion of the available funds may be available for probate and other suitable matters.**
- D. In allocating available funds within the categories listed above, priority will be given to proposals that:**
  - (1) Would have the potential for helping the maximum numbers of County residents;
  - (2) Would make maximum use of local resources, including in-kind support, volunteers, and public facilities;
  - (3) Would provide services to a demographically wide range of persons;
  - (4) Incorporate clear and specific education and out-reach service components;
  - (5) Have prospects for securing funding from other sources to supplement DRPA grants in the future;
  - (6) Offer the best potential for later expansion and/or provide diversified services for a range of case types and;
  - (7) Clearly incorporate the intent and service guidelines of the Act legislative authority and supporting code regulation sections.
- E. Collaboration among service providers is encouraged therefore joint or tiered proposals will be considered.**

### 3.0 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	<i>March 27, 2015</i>
Deadline for Vendor's Notice of Intent to Attend the Pre-proposal Conference	<i>April 1, 2015</i>
Pre-proposal Conference	<b>Monday, April 6, 2015 9:00 a.m.</b>
Deadline for questions	April 9, 2015 by 4:00 p.m.
Questions and answers posted	April 10, 2015 by 5:00 p.m.
Latest date and time proposal may be submitted	<b>Friday, April 24, 2015 4:00 p.m.</b>
Anticipated interview dates ( <i>estimate only</i> )	<i>Week of May 4, 2015</i>
Evaluation of proposals ( <i>estimate only</i> )	<i>Friday, May 1, 2015</i>
Notice of Intent to Award ( <i>estimate only</i> )	<i>May 12, 2015</i>
Negotiations and execution of contract ( <i>estimate only</i> )	<i>May 12-29, 2015</i>
Contract start date ( <i>estimate only</i> )	<i>July 1, 2015</i>
Contract end date ( <i>estimate only</i> )	<i>June 30, 2016</i>

#### 4.0 RFP ATTACHMENTS

The following attachments are included as part of this RFP:

ATTACHMENT	DESCRIPTION
<b>Attachment 1:</b> Administrative Rules Governing RFPs	These rules govern this solicitation.
<b>Attachment 2:</b> Court Standard Terms & Conditions	If selected, the person or entity submitting a proposal (the "Proposer") must sign this Court Standard Form agreement
<b>Attachment 3:</b> Proposer's Acceptance of Terms and Conditions	On this form, the Proposer must indicate acceptance of the Terms and Conditions or identify exceptions to the Terms and Conditions.  <b>Note: A material exception to a Minimum Term will render a proposal non-responsive.</b>
<b>Attachment 4:</b> General Certifications Form	The Proposer must complete the General Certifications Form and submit the completed form with its proposal.
<b>Attachment 5:</b> Darfur Contracting Act Certification	The Proposer must complete the Darfur Contracting Act Certification and submit the completed certification with its proposal.

#### 5.0 PAYMENT INFORMATION

See Appendix B, Payment Provisions, of the sample Agreement attached here as Attachment 2.

#### 6.0 PRE-PROPOSAL CONFERENCE

The Court will hold a pre-proposal conference on the date identified in the timeline above. The conference will be held at the Sisk Courthouse at: **1130 O Street, 3<sup>rd</sup> Floor**, in Fresno, CA.

Attendance at the pre-proposal conference is **MANDATORY**. Each Proposer must be certain to check in at the pre-proposal conference, as the attendance list will be used to ascertain compliance with this requirement. The Court will reject a proposal from any Proposer who did not attend the pre-proposal conference.

#### 7.0 SUBMISSIONS OF PROPOSALS

7.1 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.

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Emphasis should be placed on conformity to the RFP's instructions and requirements, and completeness and clarity of content.

7.2 The Proposer must submit its proposal in two parts, the technical proposal and the cost proposal.

- a. The Proposer must submit **one (1) original and five (5) copies** of the technical proposal. The original must be signed by an authorized representative of the Proposer. The original technical proposal (and the copies thereof) must be submitted to the Court in a single sealed envelope, separate from the cost proposal. The Proposer must write the RFP title and number on the outside of the sealed envelope.
- b. The Proposer must submit **one (1) original and five (5) copies** of the cost proposal. The original must be signed by an authorized representative of the Proposer. The original cost proposal (and the copies thereof) must be submitted to the Court in a single sealed envelope, separate from the technical proposal. The Proposer must write the RFP title and number on the outside of the sealed envelope.
- c. The Proposer must submit an electronic version of the entire proposal on CD-ROM or USB memory stick/flash drive. The files must be in PDF, Word, or Excel formats.

7.3 Proposals must be delivered by the date and time listed on the coversheet of this RFP to:

ATTN: Solicitations  
Fresno Superior Court  
1100 Van Ness Avenue  
Fresno CA 93724-0002

7.4 Late proposals will not be accepted.

7.5 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

8.1 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 Proposer's name, address, telephone and fax numbers, and federal tax identification number.
- b. Name, title, address, telephone number, and email address of the individual who will act as the Proposer's designated representative for purposes of this RFP.
- c. 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.
- d. Proposed method to complete the work. Vendor shall describe the organization's proposed program and how it will meet the Court's Goals, Objectives, and Priorities as described in section 2.2 above, specifically for each of the five goals.

*Vendor will list the objectives in quantifiable, measurable, and verifiable terms, indicating specifically what the proposed project will strive to accomplish and the methods contemplated for accomplishing the objectives.*

- e. Acceptance of the Terms and Conditions.
  - i. On Attachment 3, the Proposer must check the appropriate box and sign the form. If the Proposer 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 Proposer must also submit (i) a red-lined version of the Terms and Conditions that implements all proposed changes, and (ii) a written explanation or rationale for each exception and/or proposed change.
  - iii. **Note: A material exception to a Minimum Term will render a proposal non-responsive. Minimum Term Sections include 1,3,4, and 7.**
- f. Certifications, Attachments, and other requirements.
  - i. The Proposer must complete the General Certifications Form (Attachment 4) and submit the completed form with its proposal.

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- ii. The Proposer must complete the Darfur Contracting Act Certification (Attachment 5) and submit the completed certification with its proposal.
  - iii. If Contractor is a California corporation, limited liability company ("LLC"), limited partnership ("LP"), or limited liability partnership ("LLP"), proof that Contractor is in good standing in California.
  - iv. Copies of the Proposer's current business licenses, professional certifications, or other credentials.
- g. Meet the CCR §3608 Grant Application Requirements, as stated immediately below:

"(a) In addition to the requirements of Section 468.2 of the Act, all applicants shall also provide the following as part of their application for funding:

(1) A description of the applicant's organizational structure, including that of any sponsoring or parent organizations;

(2) A description of the proposed geographic area of service, the service population, and the number of persons the applicant will have the capacity to serve on an annual basis;

(3) A description of the types of disputes to be handled, the types of dispute resolution services to be offered, and any restrictions to be imposed by the program;

(4) A description of any fee schedule to be used;

(5) A list of civic groups, social services agencies, governmental entities, and justice system agencies available to accept and make referrals to the applicant;

(6) A description of the applicant's plans for publicizing its services to potential referral agencies, courts and justice system agencies, and the public;

(7) The applicant's organizational chart, personnel policies, duty statements, and resumes of all professional staff.

(8) A statement that in hiring staff, recruiting volunteers, or rendering services, the applicant will not discriminate with regard to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation or age.

(b) Pursuant to Section 470.2 of the Code, each applicant shall submit an estimated budget for the grant period. In-kind donations may be reported as anticipated revenue to be derived from sources other than the county revenues generated pursuant to the Act, so long as the requirements of Section 3640 of these Regulations are satisfied."

8.2 Cost Proposal. The following information must be included in the cost proposal.

- i. A detailed line item budget showing total cost of the proposed services.
- ii. A full explanation of all budget line items in a narrative entitled "Budget Justification."
- iii. A cost breakdown by case type with specific services listed.

## 9.0 OFFER PERIOD

A Proposer'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.

## 10.0 EVALUATION OF PROPOSALS

At the time proposals are opened, each proposal will be checked for the presence or absence of the required proposal contents.

The Court will evaluate the proposals on a **150 point** scale using the criteria set forth in the table below. Following initial scoring of the bids, the Court may clarify or negotiate contract terms and conditions with one or more of the bidders based on the bidder's preliminary rankings.

If awarded, an Intent to Award Notice, will be posted on the Court's website at [www.fresno.courts.ca.gov/procurement](http://www.fresno.courts.ca.gov/procurement).

CRITERION	MAXIMUM NUMBER OF POINTS
<i>General organizational ability and competence (including management effectiveness &amp; financial soundness)</i>	35
<i>Ability to meet Court Goals, Objectives, and Priorities (including feasibility, creativity and scope of plan)</i>	40

CRITERION	MAXIMUM NUMBER OF POINTS
Cost	50
<i>Ability to develop broad financial support (including likelihood of eventually lessening reliance on Court funding)</i>	25

### 11.0 INTERVIEWS

The Court may conduct interviews with Proposers to clarify aspects set forth in their proposals or to assist in finalizing the ranking of top-ranked proposals. 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 Proposers for any costs incurred in traveling to or from the interview location. The Court will notify eligible Proposers regarding interview arrangements.

### 12.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

**PROPOSALS ARE SUBJECT TO DISCLOSURE PURSUANT TO APPLICABLE PROVISIONS OF THE CALIFORNIA PUBLIC CONTRACT CODE AND RULE 10.500 OF THE CALIFORNIA RULES OF COURT.** The Court will not disclose (i) social security numbers, or (ii) balance sheets or income statements submitted by a Proposer that is not a publicly-traded corporation. All other information in proposals will be disclosed in response to applicable public records requests. Such disclosure will be made regardless of whether the proposal (or portions thereof) is marked "confidential," "proprietary," or otherwise, and regardless of any statement in the proposal (a) purporting to limit the Court's right to disclose information in the proposal, or (b) requiring the Court to inform or obtain the consent of the Proposer prior to the disclosure of the proposal (or portions thereof). Any proposal that is password protected, or contains portions that are password protected, may be rejected. Proposers are accordingly cautioned not to include confidential, proprietary, or privileged information in proposals.

### 13.0 DISABLED VETERAN BUSINESS ENTERPRISE INCENTIVE

The Court has waived the DVBE incentive in this solicitation.

### 14.0 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](http://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

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will result in rejection of the protest. The deadline for the JBE to receive a solicitation specifications protest is **April 17, 2015**. Protests must be sent to:

[solicitations@fresno.courts.ca.gov](mailto:solicitations@fresno.courts.ca.gov)

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

**1. COMMUNICATIONS WITH THE COURT REGARDING THE RFP**

Except as specifically addressed elsewhere in the RFP, Proposers must send any communications regarding the RFP to [solicitations@fresno.courts.ca.gov](mailto:solicitations@fresno.courts.ca.gov) (the "Solicitations Mailbox"). Proposers must include the RFP Number in subject line of any communication.

**2. QUESTIONS REGARDING THE RFP**

Proposers 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; Proposers are accordingly cautioned not to include any proprietary or confidential information in questions. If the Proposer is requesting a change, the request must set forth the recommended change and the Proposer'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. KNOWLEDGE OF REQUIREMENTS**

The vendor shall carefully review all documents referenced and made a part of the solicitation document to ensure that all information required to properly respond has been submitted or made available and all requirements are priced in the proposal. Failure to examine any document, drawing, specification, or instruction will be at the vendor's sole risk.

Vendors shall be responsible for knowledge of all items and conditions contained in their proposals and in this RFP, including any Court issued clarifications, modifications, amendments, or addenda. The Court will provide notice to perspective vendors by posting addenda and clarifications to the Court website; however, it is the vendor's responsibility to ascertain that the proposal includes all addenda issued prior to the Proposal Due Date.

**4. ERRORS IN THE RFP**

A. If, before the proposal due date and time listed in the timeline of the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Proposer 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 Proposer fails to notify the Court of an error in the RFP known to the Proposer, or an error that reasonably should have been known to the Proposer, before the proposal due date and time listed in the timeline of the RFP, the Proposer shall propose at its own risk. Furthermore, if the Proposer is awarded the agreement, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

## **5. ADDENDA**

- A. The Court may modify the RFP before the proposal due date and time listed in the timeline of the RFP by issuing an addendum which will be posted on the Court's website ([www.fresno.courts.ca.gov/procurement](http://www.fresno.courts.ca.gov/procurement)). It is each Proposer's responsibility to inform itself of any addendum.
- B. If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the Court via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

## **6. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS**

A Proposer 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 Proposer. The Proposer 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.

## **7. 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 Proposer (if selected for the award of the agreement), the Proposer 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.

## **8. 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 Proposer 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 Proposers 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 Proposer.
- 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. Proposers 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 Proposer's proposal.

## 9. 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 Proposer's representative to answer questions with regard to the Proposer's proposal. Failure of a Proposer 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 Proposers, who may attend the coin toss at their own expense.

## 10. 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 Proposer submitting the proposal.

## 11. 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 Proposer.

## 12. AWARD AND EXECUTION OF AGREEMENT

- A. Award of contract, if made, will be in accordance with the RFP to a responsible Proposer 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 Proposer 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 Proposer may delay execution of a contract.
- D. Upon award of the agreement, the agreement shall be signed by the Proposer 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 Proposer's own risk.

## 13. 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 Proposer refuses or fails to execute the agreement, the Court may award the agreement to the next qualified Proposer.

#### **14. NEWS RELEASES**

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of Court Public Services and Media Coordinator.

#### **15. ANTI-TRUST CLAIMS**

- A. In submitting a proposal to the Court, the Proposer offers and agrees that if the proposal is accepted, the Proposer 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 Proposer 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 Proposer. (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 Proposer 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 Proposer, the Court shall, within one year from such demand, reassign the cause of action assigned under this section if the Proposer 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.)

#### **16. AMERICANS WITH DISABILITIES ACT**

The Court complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Proposers should be directed to the solicitations mailbox ([solicitations@fresno.courts.ca.gov](mailto:solicitations@fresno.courts.ca.gov)) with "RFP Accommodation Request" in the subject line of the email.

**ATTACHMENT 2  
 STANDARD FORM AGREEMENT**

AGREEMENT NUMBER <b>10-2014-AAAA-O</b>
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- In this agreement ("Agreement"), the term "Contractor" refers to **[Contractor name]**, and the term "Court" refers to the **Superior Court of California, County of Fresno**.
  - This Agreement is effective as of **July 1, 2015** ("Effective Date") and expires on **June 30, 2016** ("Expiration Date").  
 This Agreement includes one or more options to extend through **June 30, 2018**.
  - The maximum amount the Court may pay Contractor is (i) **[\$Dollar amount]** during the Initial Term, (ii) **[\$Dollar amount]** during the first Option Term, and (iii) **[\$Dollar amount]** during the second Option Term, for a total Contract Amount of **[\$Dollar amount]**.
  - The purpose or title of this Agreement is: **Alternate Dispute Resolution Program**.
- The purpose or title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.*
- The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties' entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

Appendix A – Goods and Services  
 Appendix B – Payment Provisions

Appendix C – General Provisions  
 Appendix D – Defined Terms

COURT'S SIGNATURE	CONTRACTOR'S SIGNATURE
<b>Superior Court of California, County of Fresno</b>	CONTRACTOR'S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized)</i>  <b>[Contractor name]</b>
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING  <b>Jonathan B. Conklin, Presiding Judge</b>	PRINTED NAME AND TITLE OF PERSON SIGNING  <b>[Name and title]</b>
DATE EXECUTED	DATE EXECUTED
ADDRESS  <b>1100 Van Ness Avenue Fresno CA 93724-0002</b>	ADDRESS  <b>[Address]</b>

## APPENDIX A

### Services

#### 1. Background and Purpose.

- The Court has elected to continue an Alternate Dispute Resolution Program (hereinafter "ADR Program") under the California Dispute Resolution Act (Business and Professions Code Section 465 et seq.) and its Regulations (16 CCR 3600 et seq.) promulgated by the Dispute Resolution Council (hereinafter Act and Regulations respectively);
- Contractor is qualified to perform mediation of various types of disputes as part of the Court's ADR Program under the Act and Regulations; and,
- Contractor wishes to perform the mediation services in various case types and disputes on the terms and conditions in this Agreement.

#### 2. Services.

##### 2.1 Description of Services. Contractor shall perform the following services ("Services"):

- The Contractor will offer dispute resolution services to Fresno County residents who contact the Contractor directly, are referred from other agencies, or are referred directly from Court.
- The Contractor will provide mediation for [will list specific case types here] cases heard at the Court.
- The Contractor will provide ongoing, out of Court, community dispute resolution services to Fresno County residents. These services shall include dispute resolution services and processes conducted at the Contractor's offices as set out below and other alternate locations as deemed appropriate.
- The Contractor will additionally mediate cases, as assigned by the Court's ADR Administrator, in a specifically requested priority.

##### 2.2 Description of Deliverables. Contractor shall deliver to the Court the following work products ("Deliverables"):

- *The Contractor shall provide the Court with general survey information collected from disputants served by the program. Distribution of survey information and data collection shall be in accordance with the Act and Regulations.*
- *The Contractor shall maintain monthly activity reports including statistical data regarding its operating budget; the number of contacts for services; the source of the referrals; the number of mediation cases opened and/or in progress; the time expended on each case; the nature of the issues presented in mediation; the number of disputants served by the program; the number of partial and/or complete agreements reached in mediation; the number of neutral persons providing services under this Agreement along with the time each spent providing services. The format for this report shall be approved by the Court prior to its use.*

##### 2.3 Project Managers. The parties' Project Managers are listed in Section 9, Notices, of Appendix C, Terms and Conditions. All contact information is listed there. The Court may change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement. Subject to written approval by the Court, Contractor may change its project manager without need for an amendment to this Agreement.

- 2.4 Service Warranties.** Contractor warrants that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; (ii) Contractor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance; and (iii) staff will be appropriately trained to provide dispute resolution services under the DRPA regulations; (iv) staff shall be appropriately trained in any legal guidelines or processes that are related to the delivery of dispute resolution services. Contractor warrants that each Deliverable will conform to and perform in accordance with the requirements of this Agreement and all applicable specifications and documentation. For each such Deliverable, the foregoing warranty shall commence for such Deliverable upon the Court's acceptance of such Deliverable, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable does not conform to the foregoing warranty, Contractor shall promptly correct all non-conformities to the satisfaction of the Court.
- 2.5 Resources.** Contractor is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.
- 2.6 Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and all Court-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Contractor's own risk.
- 3. Acceptance or Rejection.** All Services and Deliverables are subject to acceptance by the Court. The Court may reject any Services or Deliverables that (i) fail to meet applicable acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the Court). If the Court rejects any Service or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Service or Deliverable at no expense to the Court to correct the relevant deficiencies and shall redeliver such Service or Deliverable to the Court within ten (10) business days after the Court's rejection, unless otherwise agreed in writing by the Court. Thereafter, the parties shall repeat the process set forth in this section until the Court accepts such corrected Service or Deliverable. The Court may terminate that portion of this Agreement which relates to a rejected Service or Deliverable at no expense to the Court if the Court rejects that Service or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

## APPENDIX B

### 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 **Amount.** Contractor will invoice the following amounts for Services or Deliverables that the Court has accepted:
    - Firm Fixed Price – \$ [REDACTED] on a monthly basis, payable in arrears.
    - There shall be no adjustment of the service fee to permit cost of living adjustments during the term of the Agreement. Prior to the end of this initial contract period, the parties may negotiate mutually acceptable fees for continued contract terms.
  - 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. Contractor's invoices must include information and supporting documentation acceptable to the Court. Contractor may send invoices to Court at 1100 Van Ness Avenue, Fresno, CA 93724, Attn: Accounts Payable or via email to [accounts\\_payable@fresno.courts.ca.gov](mailto:accounts_payable@fresno.courts.ca.gov), using "DRPA Contract" in the subject line. Contractor's invoices must include all information and supporting documentation, in compliance with Act and Regulations. Invoices will also include any other information or attachment as the Court may specify from time to time.
  - 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. 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.
  - 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.

## APPENDIX C

### General Provisions

#### 1. 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 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 are unacceptable to the Court.

#### 2. 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 Non-Infringement.** The Goods, 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 Non-discrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code 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 non-discrimination.
- 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. Insurance

- 3.1 Basic Coverage.** Contractor shall provide and maintain at the Court's discretion and Contractor's expense the following insurance during the Term:
- A. Workers Compensation and Employer's Liability.** The policy is required only if Contractor has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
- 3.2 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- 3.3 Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 3.4 Deductibles and Self-Insured Retentions.** Contractor shall declare to the Court all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the Court's approval. Deductibles and self-insured retentions do not limit Contractor's liability.

- 3.5 Additional Insured Endorsements.** Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Superior Court of California, County of Fresno, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.
- 3.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the Court certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days' prior written notice to the Court.
- 3.7 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and non-contributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Superior Court of California, County of Fresno, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the Court is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 4. 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) a latent or patent defect in any Goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the 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. 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 up to two consecutive one-year terms, at the end of which Option Terms 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 (or the then-current Option Term). The exercise of an Option Term will be effective without Contractor's signature.
- 6. 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. 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: (a) stop Services as specified in the Notice; and (b) stop the delivery or manufacture of Goods 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 non-binding 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. 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. 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. Notices.** Notices must be sent to the following address and recipient:

If to Contractor:	If to the Court:
<p>[name, title, address]</p> <p>Email:</p>	<p>Mari Henson  <u>ADR Administrator,</u>  1100 Van Ness Avenue  Fresno, CA 93724-0002</p> <p>Email: <a href="mailto:mhenson@fresno.courts.ca.gov">mhenson@fresno.courts.ca.gov</a></p>

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. 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 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.

**10.6 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.

## **11. 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 or the delivery of the Goods. 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. 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. Any controversy or claim arising out of or relating to this Agreement shall first be mediated using the services of a mutually agreeable third party. If mediation is not successful, the dispute will be settled utilizing the services of the American Arbitration Association or other mutually agreeable arbitration services. All costs shall be shared by the parties.
- 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.

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**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.

## APPENDIX D

### 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.

**“Contract Amount”** is defined on the Coversheet.

**“Court”** 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.

**“Judicial Branch Entity”** or **“Judicial Branch Entities”** means the Court and any other 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.

**“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.

**“Stop Work Order”** is defined in Appendix B.

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

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

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

1. Bidder accepts Attachment 2: Court Standard Terms and Conditions ("Attachment 2") without exception.

**OR**

2. Bidder proposes exceptions or modifications to Attachment 2. Bidder must also submit (i) a red-lined version of Attachment 2 that clearly tracks proposed modifications, and (ii) a written explanation or rationale for each exception or proposed modification.

BY <i>(Authorized Signature)</i>

PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING
DATE

### ATTACHMENT 4 GENERAL CERTIFICATIONS FORM

Check the box below, if agreed, and sign this attachment. Please note that the Court 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.

Check box to indicate acceptance of the clauses above.

BY <i>(Authorized Signature)</i>  
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

**ATTACHMENT 5  
 DARFUR CONTRACTING ACT CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 10478, if a proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must either (i) certify that it is not a "scrutinized company" as defined in PCC 10476, or (ii) receive written permission from the Court to submit a proposal.

To submit a proposal to the Court, you must complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.

**OR**

2. We are a "scrutinized company" as defined in PCC 10476, but we have received written permission from the Court to submit a proposal pursuant to PCC 10477(b). A copy of the written permission from the Court is included with our proposal.

**OR**

3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a "scrutinized company" as defined in PCC 10476.

**CERTIFICATION FOR PARAGRAPH 3:**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer to the clause in paragraph 3. This certification is made under the laws of the State of California.

Company Name (Printed)		Federal ID Number
By (Authorized Signature)		
Printed Name and Title of Person Signing		
Date Executed	Executed in the County of _____ in the State of _____	