1. **PERFORMANCE AND DELIVERY.** Contractor will perform the Services and deliver all Services as specified on the coversheet of this Agreement. Time is of the essence in Contractor’s performance of the Services and delivery of Services. The Maximum Amount listed on the coversheet of this Agreement includes all amounts allowed for expenses, including those related to shipping, handling, traveling, bonding, licensing, maintaining insurance, and obtaining permits.
2. **ACCEPTANCE.** All Services and Services are subject to written acceptance by the Court. The Court may reject any Service or Services that (i) fails to meet applicable acceptance criteria, (ii) is not as warranted, or (iii) is performed or delivered late. Payment by the Court does not signify acceptance of the Services or Services.
3. **CONFIDENTIALITY.** General Obligations: While performing Services under this Agreement, Contractor may gain access to Confidential Information that, if disclosed to Third Parties, may be damaging to the Court, its personnel, court users, or other government entity. The Court owns all right, title and interest in the Confidential Information. Contractor does not acquire any right or title to the 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 unless permitted by Applicable Law. Contractor will disclose Confidential Information only to Contractor Personnel or Subcontractors with a need to know in order to provide the Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this Section 3. 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 reasonable care and industry-standard care. 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. The provisions of this Section 3 shall survive beyond the expiration or termination of this Agreement. Breach of Confidentiality: Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor’s obligations hereunder, that any such breach will likely result in irreparable harm, and therefore, 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.
4. **INVOICES, PAYMENT AND SETOFF.** After the Court has accepted Services and Services, Contractor will send one original and two copies of a correct, itemized invoice for the accepted Services and Services to “Accounts Payable” to AP@sb-court.org. Contractor will print each invoice on Contractor’s standard printed bill form, and each invoice will include at least (i) the Agreement number, (ii) a unique invoice number, (iii) Contractor’s name and address, (iv) the nature of the invoiced charge, (v) the total invoiced amount, and (vi) all other details the Court considers reasonably necessary to permit the Court to evaluate the Services performed and the Services delivered, including the number of hours worked and the applicable hourly rate. If requested, Contractor will promptly correct any inaccuracy and resubmit the invoice. If the Court rejects any Services or Services after payment to Contractor, the Court may exercise all contractual and other legal remedies, including (a) setting off the overpayment against future invoices payable by the Court, (b) setting off the overpayment against any other amount payable for the benefit of Contractor pursuant to this Agreement or otherwise, and (c) requiring Contractor to refund the overpayment within thirty (30) days of the Court’s request. Unless Contractor is a governmental entity, the Court will take no action on invoices submitted before Contractor has completed the Court’s standard payee data record form, which Contractor may obtain from the Court. Contractor must include with any request for reimbursement from the Court a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the Court was sought for these costs, and Contractor will provide those records to the Attorney General upon request.
5. **WARRANTIES.** Contractor will perform all Services using skilled personnel only, in a good and workmanlike manner, in accordance with industry standards, and in compliance with all applicable laws, rules, and regulations. Contractor warrants that, upon delivery, all Services will (i) not infringe any third party’s rights, including intellectual property rights, (ii) comply with the requirements of this Agreement, and (iii) be in compliance with all applicable laws, rules, and regulations.
6. **CHANGES.** Contractor may not alter, add to, or otherwise modify this Agreement. Contractor’s additional or different terms and conditions are expressly excluded from this Agreement. This Agreement may be amended, supplemented, or otherwise modified only in writing and signed by the Court’s authorized representative.
7. **AUDIT RIGHTS.** Contractor agrees to maintain records relating to performance and billing by Contractor under this Agreement for a period of four years after final payment. During the time that Contractor is required to retain these records, Contractor will make them available to the Court, the State Auditor, or their representatives during normal business hours for inspection and copying.
8. **INDEMNITY.** CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS THE COURT, OTHER CALIFORNIA JUDICIAL BRANCH ENTITIES, AND THEIR OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, AND EXPENSES, INCLUDING ATTORNEYS’ FEES AND COSTS, THAT ARISE OUT OF (I) A DEFECT, WHETHER LATENT OR PATENT, IN THE SERVICES, (II) AN ACT OR OMISSION OF CONTRACTOR, ITS AGENTS, EMPLOYEES, INDEPENDENT CONTRACTORS, OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT, AND (III) A BREACH OF A REPRESENTATION, WARRANTY, OR OTHER PROVISION OF THIS AGREEMENT. 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, ACCEPTANCE OF SERVICES, AND DELIVERY AND ACCEPTANCE OF SERVICES. THIS INDEMNITY DOES NOT COVER CLAIMS, LOSSES OR EXPENSES TO THE EXTENT THEY ARISE OUT OF THE GROSS NEGLIGENCE OF THE COURT.
9. **TERMINATION.** The Court may terminate all or part of this Agreement for convenience at any time by giving notice to Contractor. If the Court terminates this Agreement for convenience, the Court’s liability will be the reasonable price for the Services rendered prior to termination, not to exceed the Maximum Amount. If an hourly or other time-based rate for Services is specified on the coversheet of this Agreement, that rate will be used in determining the reasonable price. Upon receipt of a termination notice, Contractor will, unless otherwise directed, cease work. Contractor will follow the Court’s directions as to work in progress and the delivery of completed or partially-completed Services.
10. **INSURANCE**. Contractor will maintain insurance that is sufficient in scope and amount to permit Contractor to pay in the ordinary course of business insurable claims, losses and expenses, including insurable claims, losses and expenses that arise out of Contractor’s performance of this Agreement. Contractor will maintain employer’s liability and workers’ compensation coverage at statutory levels covering all employees performing work under this Agreement.
11. **REPRESENTATIONS.** Contractor represents and warrants the following during the term of this Agreement: (i) Contractor complies with all federal, state, city, and local laws, rules, and regulations, including the federal Americans with Disabilities Act of 1990, California’s Fair Employment and Housing Act, and Government Code16645-49; (ii) Contractor does not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, disability (mental or physical, including HIV or AIDS), medical condition (including cancer or genetic characteristics), request for family and medical care leave, marital or domestic partner status, age (over 40), sex (including gender identity) or sexual orientation; (iii) 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; (iv) Contractor will take all reasonable steps to prevent unlawful harassment from occurring; (v) 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 (this representation is made under penalty of perjury); (vi) Contractor has authority to enter into and perform its obligations under this Agreement; (vii) if Contractor is a corporation, limited liability company, or limited partnership and this Agreement will be performed in California, Contractor is qualified to do business and in good standing in California; and (viii) Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code (“PCC”) section 10286.1, and is eligible to contract with the Court. Contractor will take all action necessary to ensure that the representations in this section remain true during the performance of this Agreement through final payment by the Court. Contractor must give written notice of its nondiscrimination obligations under this section to labor organizations with which it has a collective bargaining or other agreement.
12. **ANTITRUST.** 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 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.
13. **MISCELLANEOUS.** Contractor will maintain a system of accounting and internal controls that is sufficient to adhere to Generally Accepted Accounting Principles. Contractor is an independent contractor and Contractor will take all action available to Contractor to prevent Contractor, and its agents and employees, from being treated under the law as agents or employees of the Court. Contractor will not assign, subcontract or delegate its obligations under this Agreement without the prior written consent of the Court, and any attempted assignment, subcontract, or delegation is void; however, no consent is required for an assignment that occurs (a) to an assignee in which the assignor owns more than 50% of the assets, or (b) as part of a sale or merger of all or substantially all of the assets of the assignor to an assignee if the Court approves the assignee. Subject to the foregoing, the terms and conditions of this Agreement apply to any assignee, subcontractor, trustee, successor, delegate or heir. Contractor shall cooperate with the Court if the Court wishes to perform a background check or drug test on any of Contractor’s employees or Subcontractors by (1) obtaining, at no additional cost, all releases, waivers, and permissions the Court may require, and (2) reimbursing the Court for the cost of each background check and drug test. California law, without regard to its choice-of-law provisions, governs this Agreement. In this Agreement, “including” means “including but not limited to.” The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Contractor irrevocably consents to personal jurisdiction in the courts of the State of California, and any legal action filed by Contractor in connection with a dispute under this Agreement must be filed in San Bernardino County, California, which will be the sole venue for any such action; and further, the parties agree that California law, without regard to its choice-of-law provisions, governs this Agreement. If any part of this Agreement is held unenforceable, all other parts remain enforceable. All headings are for reference purposes only and do not affect the interpretation of this Agreement. A party’s waiver of enforcement of any of this Agreement’s terms or conditions will be effective only if it is in writing. A party’s specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default. Contractor may not make a public announcement, or issue any press release or other writing, related to this Agreement, the Services, or Services without first obtaining the Court’s prior written approval, which may be denied for any or no reason.