

The State Bar of California

# REQUEST FOR PROPOSAL



The State Bar is seeking proposals for a broker and carrier to offer a State Bar sponsored Mediators and Arbitrators Professional Liability Insurance Program to our members. The State Bar seeks an initial contract term of 3 years, with an option to renew for an additional 1 year term.

Please submit 5 copies of your proposal no later than 5 p.m. on March 4, 2009 to:

The State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639

Attn: Kathleen Eichler  
Insurance Programs  
415-538-2235  
kathleen.eichler@calbar.ca.gov

## I. INTRODUCTION

The State Bar of California (“the State Bar”), created in 1927 by the Legislature and adopted into the California Constitution in 1960, is a public corporation within the judicial branch of state government. The State Bar is a unified, or integrated bar, and membership is mandatory for all attorneys who are licensed to practice law in the state. In addition to its mandated licensing and disciplinary and certification functions, the State Bar offers a number of other programs designed to assist, educate and protect its members and the public. The State Bar has offices located in Los Angeles, Sacramento and San Francisco. More information about the State Bar can be found at [http://calbar.ca.gov/state/calbar/calbar\\_home\\_generic.jsp?cid=10102](http://calbar.ca.gov/state/calbar/calbar_home_generic.jsp?cid=10102)

## II. STATEMENT OF WORK

The State Bar is seeking proposals from agents and brokers for a State Bar Sponsored Mediator and Arbitrator Professional Liability Insurance program. The State Bar’s primary goals for this program are to make available to State Bar active members a high quality, stable insurance program at better terms than they could generally otherwise obtain on their own and to generate royalty revenue to the State Bar to fund

member services including the Lawyer Assistance Program and the member service center. The State Bar will insist on complete transparency in terms of transactions between the agent, broker and insurance carrier and the State Bar and its members. Following is a description of specific services required. The program would be offered to members who are on active status and may be retired judges or attorney members who provide only mediation and arbitration services and who do not engage in the practice of law.

**A. Marketing**

1. Administer the marketing and sale of Mediator and Arbitrator Liability Insurance to active State Bar members and retired judges on active status who do not practice law.
2. Provide significant Internet functionality, enabling members to obtain complete information and make applications (subject to final underwriting) for Mediator and Arbitrator Liability Insurance policies and, if practicable, to compare such policies with competitive policies online.
3. Meet quarterly or at other designated times throughout the year with the State Bar standing Insurance Programs committee. Report to them on all aspects of the program including, but not limited to program experience and response to consumer complaints. Provide an annual actuarial review of program.
4. Employ multiple marketing approaches, perhaps in cooperation with other broker / administrators for other State Bar insurance programs, including the use of direct mail, appearances at and participation in the State Bar Annual Meeting, print advertisement, advertisement in Internet resources typically used by State Bar members, and e-mail. (The State Bar does not allow unauthorized e-mail solicitation). Submit all marketing material to Insurance Program standing committee for review and approval prior to distribution.
5. Cooperate with the State Bar, its consulting actuaries, consultants and the Sponsored Insurer(s) to promote the strength and growth of the program.

**B.** The selected broker will be required to provide quarterly and annual management reports, including:

1. Quarterly Reports of applications received and policies issued by:
  - a. category
  - b. gross premium
  - c. policy lapses
  - d. claims paid/claims resisted
  - e. complaints and any litigation

2. Annual Reports should include the information listed above, and should also include:

- a. financial reports
- b. recommendations for improvements to the program
- c. policies in-force
- d. premium distribution
- e. marketing activities (including statistics on response rates and yield rates of marketing campaigns)
- f. plans and targets
- g. reinsurance and premium credit or dividend management

### **III. GENERAL INFORMATION**

The submission requirements for this RFP are set forth below. A proposal shall constitute an irrevocable offer for 60 business days following the deadline for its submission. Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

Contact with State Bar personnel in connection with this RFP may not be made other than as specified in this RFP. Unauthorized contact of any State Bar personnel may be cause for rejection of a bid.

#### **A. Submission Requirements**

To be considered responsive, a proposal must contain the following, referenced by number and in the order below:

- 1. A brief description of the history and organization of the bidder's firm, and of any proposed subcontractor.
- 2. Copies of business licenses, professional certifications or other credentials, together with evidence that bidder, if a corporation, is in good standing and qualified to conduct business in California.
- 3. The most recent year's annual reports, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data. Insurance Carriers must be admitted in California and provide current A.M. Best rating. A.M. Best ratings lower than A- will not be considered.
- 4. Information about your experience in marketing insurance products specifically in an association setting (including, if available, sample penetration rates achieved by these programs), and your experience in using target marketing to increase penetration rates and any special

advantages or opportunities in Mediators and Arbitrators Professional Liability programs that your firm offers over the competition.

5. For association business only, a schedule of the Mediators and Arbitrators Professional Liability insurance carriers with whom you currently work, length of relationship and rating, indicating those carriers who represent at least 5% or more of your total book of business (not applicable if you are a carrier responding to this RFP).
6. Your experience in marketing a significant volume of other insurance and financial services products to members of Bar Associations and other Professional Associations, such as AD&D Policies, Automobile, Annuities and Retirement Plans, Business Owners Policies (e.g. Fire, Theft, Premises Liability), Disability Policies, Home Owner's Policies, Long Term Care Policies, Health Insurance and/or HMO Plans, Professional Liability (Malpractice) Coverage, and Umbrella Policies.
7. A brief description of your Customer Relationship Management system (CRM), its specific capabilities and where resources are located, including a description of staffing, location of principal services office, systems platform, and staff experience level for all internal resources; general administration, claims administration, customer service, underwriting and applications.
8. A description of the Internet functionality you currently use to market other insurance programs, including the URLs of principal Web sites that you currently utilize to handle similar target markets or accounts.
9. Names of organizations that have used your services for similar programs that have been customers for a minimum of 12 months.
10. Qualifications, professional license numbers, background and experience of the proposed program director and other senior staff proposed to work on the project.
11. A projection, indicating a high-low range, of annual non-dues fee revenue to the State Bar expected to be generated by the Program under your administration. The proposal might be based on any or all of the following fee arrangements listed below, or such other arrangements that you believe would maximize non-dues revenue to the State Bar while continuing to provide State Bar members and their eligible family members with pricing advantages and/or other unique benefits they could not generally obtain on their own.
  - a. Revenue based solely on a percentage of the brokers/administrator's total compensation resulting from the program. If

so, what is the minimum first year and annual renewal level of revenue that the State Bar can expect to receive?

- b. Compensation based on a percentage of first year and/or renewal premium for marketing services and/or an annual fee-for-service compensation for administrative services based on an appropriate measure of the work performed.
- c. Fee-for-service compensation for both marketing services and administrative services based on appropriate measures of the work performed.
- d. An initial Sponsorship fee, and
- e. Other negotiated arrangements. Please describe proposed arrangement.

For each fee arrangement, you should indicate your willingness to separately allocate charges for marketing and other services, to facilitate measurement of the success of marketing efforts based on cost per new and in force policy.

In addition to the above compensation from the broker, the State Bar expects to receive, from the sponsored carrier, a significant annual sponsorship fee that will not be chargeable against the program reserves.

- 12. A detailed proposal including sponsorship fees and other compensation to the State Bar of California. As the State Bar may award a contract based on the initial offer, a bidder should make its initial offer on the most favorable terms available. The State Bar reserves the right, however, to have discussions with those bidders falling within a competitive range, and to request revised proposals from them and to make an award or conduct negotiations thereafter.
- 13. A written acknowledgement of the acceptance of the Contracting Requirements set forth in section IV of this RFP. Specific terms may be reserved for future negotiation, but must be clearly identified and reasons given for the reservation.

Proposals which fail to address each of the submission requirements above may be deemed non-responsive and will not be further considered. Note that responses to questions must be specifically answered within the context of the submitted proposal. The State Bar's evaluation team will not refer to a designated web site, brochure, or

other location for the requested information. Responses that utilize references to external materials as an answer will be considered non-responsive.

## **B. Rejection of Proposals**

**The State Bar reserves the right in its sole discretion to reject any or all proposals in whole or in part, without incurring any cost or liability whatsoever.** All proposals will be reviewed for completeness of the submission requirements. If a proposal fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

Immaterial deviations may cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect will in no way modify the RFP or excuse a bidder from full compliance with the RFP requirements.

Any proposal may be rejected where it is determined to be not really competitive, or where the cost is not reasonable.

Proposals that contain false or misleading statements may be rejected if in the State Bar's opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

## **C. Evaluation Process and Highest Score Bidder**

An evaluation team will review, in detail, all proposals that are received to determine the Highest Score Bidder ("HSB").

Following the initial review and screening of the written Proposals, using the selection criteria described below, several bidders may be invited to participate in the final selection process, which may include participation in an oral interview and/or submission of any additional information as requested by the State Bar.

The State Bar reserves the right to determine the suitability of proposals on the basis of a proposal's meeting administrative requirements, technical requirements, the review team's assessment of the quality and performance of the equipment and services proposed, and cost.

During the evaluation process, the State Bar may require a bidder's representative to answer questions with regard to the proposal and/or require certain bidders to make a formal presentation to the evaluation team and/or the State Bar Senior Executive Team. The State Bar may also have discussions with those bidders falling within a competitive range, and request revised pricing offers from such bidders and make an award and/or conduct negotiations thereafter.

This Request for Proposal does not commit the State Bar to awarding a Contract. Bidders shall bear all costs incurred in the preparation of the Proposal and participating in the Proposal evaluation process. The State Bar reserves the right to reject any and all Proposals, to accept the Proposal it considers most favorable to the its interest in its sole discretion, and to waive minor irregularities. The State Bar further reserves the right to seek new Proposals when such procedure is considered by it to be in the best interest of the State Bar.

1. The following criteria will be used in reviewing and comparing the proposals and in determining the HSB. The weight to be assigned to each criterion appears following each item.
  - a. Responsiveness and creativity of the bidder, including its record of working with carriers to produce innovative products (20%).
  - b. Experience in successfully marketing a broad range of insurance products to members of professional associations (30%).
  - c. Technical Ability, including capability to use the Internet to market, sell and service insurance products (15%).
  - d. Pricing structure for the member and compensation flowing to the State Bar for its support and oversight of the program (35%).
2. If a large number of proposals are received, the State Bar reserves the right to review the proposals using a tiered evaluation system. All qualified proposals will be evaluated based on the Submission Requirements and Compensation, with the top candidates advancing as finalists and receiving a full evaluation as outlined above.

#### **D. Award and Execution of Contract**

Subject to the State Bar's right to reject any or all proposals, the HSB will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice sent to bidders on or about May 15, 2009 of the Bar's intention to award the contract to the HSB. It is anticipated that final selection of the HSB will be made by May 22, 2009. The evaluation team will select a winning proposal subject to approval by the Board of Governors. Upon selection, the State Bar and the selected Vendor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work and Contracting Requirements sections below.

No contract or agreement, express or implied, shall exist or be binding on the State Bar before the execution of a written contract by both parties. If agreement on the

terms of such a contract cannot be reached after a period deemed reasonable by the State Bar in its sole discretion, the State Bar may enter into negotiations and sign a contract with any other bidder who submitted timely, responsive and responsible proposals to this RFP.

If, after the State Bar and the HSB agree to terms and execute a contract, that contract is terminated for any reason, the State Bar may, in its sole discretion, either enter into negotiations with the next highest scored bidder, or issue a new RFP and begin the proposal process anew.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any other matter in connection with the selection process, should be addressed in writing to Andrew Conover, Finance Manager, at [andrew.conover@calbar.ca.gov](mailto:andrew.conover@calbar.ca.gov).

Where written notice is required in this RFP, the notice must be sent by U.S. mail and either facsimile or e-mail.

**E. Errors in the RFP**

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the bidder should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals by issuing an addendum to all potential bidders to whom the RFP was sent.

If prior to the date fixed for submissions, a bidder knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the bidder shall bid at its own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

**F. Questions Regarding the RFP**

Questions regarding the RFP may be addressed in writing to Kathleen Eichler at [kathleen.eichler@calbar.ca.gov](mailto:kathleen.eichler@calbar.ca.gov). All questions must be submitted no later than 5 days prior to the date for submission of proposals. Questions and answers regarding the RFP may be shared with all bidders known to be interested in submitting a proposal.

If a question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the bidder may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the bidder must submit a statement explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the State Bar does not concur regarding the



proprietary nature of the question, the question will not be answered in this manner and the bidder will be notified.

A bidder who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. The State Bar must receive any such request no later than 5 days before the deadline for submitting proposals.

#### **G. Addenda**

The State Bar may modify the RFP prior to the date fixed for submission by posting, mailing, emailing or faxing an addendum to the bidders known to be interested in submitting a proposal. If any bidder determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than 5 days before the deadline for submitting proposals.

#### **H. Withdrawal and Resubmission/Modification of Proposals**

A proposal may be withdrawn at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The notice must be signed by the bidder. The bidder may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline.

Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed after the evaluation process begins.

#### **I. Protest Procedure**

A bidder may protest the award if it meets all the following conditions:

1. The bidder has submitted a proposal that it believes is or should have been the HSB, under the criteria set forth above;
2. The bidder believes that its proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
3. The bidder believes that the State Bar has incorrectly selected another bidder.

A bidder qualified to protest should contact Andrew Conover, Finance Manager, (415) 538-2207, to attempt an informal resolution. If this contact is unable to resolve the protest to the bidder's satisfaction, the bidder must file a written protest within 5 days

of the notice of intention to award the contract. The written protest must state the facts surrounding the issue and the reasons the bidder believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

The State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639

Attention: Peggy Van Horn, Chief Financial Officer

Protests will be reviewed and decided by the State Bar's Award Protest Team within 30 days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.

**J. News Releases**

News releases pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

**K. Disposition of Materials**

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at the expense of the bidder. One copy of each proposal will be retained for the State Bar's official files and become a public record. Specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. The entire proposal cannot be deemed confidential. The bidder's consent will be requested before release of such confidential pages to non-State Bar personnel. By submitting a proposal, a bidder agrees to these terms and waives any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

**IV. CONTRACTING REQUIREMENTS**

Upon selection of a broker/administrator or carrier, the terms set forth in this RFP are to be embodied in a definitive agreement containing such additional covenants and other provisions as may be mutually acceptable.

The State Bar contemplates that, in addition to the terms described above in this RFP, final agreement between the State Bar and the selected broker/administrator or carrier will include, without limitation, the following terms. Submission of a proposal shall constitute agreement to contract on these terms, except for any term specifically reserved in the proposal for future negotiation.

**A. Time of Essence**

Time is of the essence with respect to Vendor's performance of the services and equipment to be provided in the final agreement.

**B. Marketing Materials**

So long as this agreement remains in effect and no notice of termination has been given, the State Bar will allow Broker/Administrator to state in sales literature and other printed and written material that the State Bar sponsors the insurance policies that are included in the Program; provided, however, that no such material will be published or distributed except with the advance approval of the State Bar. Subject to the limitations contained in the State Bar's Membership List Policy then in effect and the State Bar Act, Broker/Administrator will be authorized to contact members of the State Bar by mail, using member mailing lists that the State Bar will provide to Broker/Administrator on a periodic basis, for a fee as set forth in the State Bar's Membership List Policy then in effect, to solicit their participation in this Program.

**C. Ownership**

The State Bar retains the sole and exclusive ownership of all documents, membership lists, statistical records, computer tapes, and other computer storage media, books, records, data in any form, and any other information pertaining to the Mediator and Arbitrator Liability Insurance program generated or created during the term of this Agreement by either the State Bar or Broker/Administrator, or held by Broker/Administrator during the term of this Agreement. Nothing in this paragraph will restrict the ability of Broker/Administrator to retain records related to the Mediator and Arbitrator Liability Insurance program as required to satisfy record retention requirements imposed by law or regulation and as required for its business records. Materials retained as part of Broker/Administrator's business records may be used only in connection with business developed during the term of the agreement.

All program documents, information, and data in any form created or generated by Broker/Administrator or furnished by the State Bar to Broker/Administrator, will be made available for inspection by the State Bar and its representatives at Broker/Administrator's principal place of business within the State of California, upon reasonable notice by the State Bar.

**D. Transparency**

Broker/Administrator will provide to the State Bar a complete and unredacted copy of all agency contract(s) with the Sponsored Insurer(s) and any other insurers hereafter sponsored, under which the Mediator and Arbitrator Liability Insurance program is produced, and complete information on all forms of compensation or other financial incentives or consideration that will directly or indirectly flow to broker/administrator and any of its affiliates or agents. Broker/Administrator will also promptly provide to the State Bar copies of any and all side agreements, contract modifications and

information relating to changes in compensation and other consideration during the term of this agreement. Broker/Administrator will not enter into any new agreements or modify any existing agreements with any sponsored insurer after the effective date of this agreement without first notifying the State Bar and obtaining the State Bar's written approval.

#### **E. Warranties and Representations**

Vendor warrants and represents that it possesses such expertise, experience and resources to perform the scope of services required in a diligent, timely and professional manner consistent with the standards of the industry. Vendor represents and warrants that none of its work performed under this Agreement will infringe on the rights of third parties. Vendor will supply at all times an adequate number of well-qualified personnel to perform the work. Vendor will provide a contact person available and authorized to remedy any non-conformity with this warranty. If any of Vendor's work is found to be infringing, Vendor will correct the work to be non-infringing at no charge to the State Bar.

#### **F. Equipment, Tools, Supplies**

The Vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. The Vendor is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

#### **G. Indemnity Obligations of Vendor**

Vendor will indemnify and defend the State Bar (including its Board of Governors, officers, director, agents, employees and volunteers, as the same may be constituted from time to time) from all claims, demands, damages, debt, liability, obligations, cost, expense, lien, action or cause of action (including but not limited to actual damages, fines and attorneys' fees, whether or not litigation is actually commenced) arising out of: (i) the material breach by Vendor of any warranty, representation, term or condition made or agreed to by Vendor; (ii) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by Broker/Administrator, its employees, subcontractors, agents, representatives, or assigns (collectively, "Broker's Agents") in the performance or non-performance of the professional services required to be performed by Broker/Administrator or Broker's Agents under the Agreement; or (iii) the State Bar's enforcement of its rights under this indemnity provision. Broker/Administrator will agree that its obligations under this indemnity will survive the expiration and termination of this agreement.

#### **H. Insurance Obligations of Vendor**

The Vendor will provide and keep in full force and effect during the term of this agreement, at the Vendor's own cost and expense, the following insurance policies for the joint benefit of the Vendor and the State Bar, with an insurer reasonably acceptable to the State Bar:

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.
3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.
4. Errors and Omissions Insurance with limits of ten million dollars (\$10,000,000), naming the State Bar, its Board of Governors, officers, committee members, advisors to its committees, and employees as named insureds. The errors and omissions policy will insure the named insureds for "sponsorship, including approval or termination of approval of any activities pursuant thereto," of the insurance program. Broker/Administrator will pay the entire amount of premium and reimburse the State Bar for any sums the State Bar is required to expend to satisfy the deductible in the policy. Nothing in this section prevents the broker from obtaining reimbursement from the insurance carrier underwriting the program for any expenses broker assumes under this section.

The Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Andrew Conover, Finance Manager, true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days of the execution of this agreement. Each such policy will name the State Bar as an additional insured and will state that the Vendor's policy shall be primary and that any insurance carried by the State Bar shall be noncontributing with respect thereto. Each such policy will provide for thirty (30) days prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If the Vendor fails to secure and maintain insurance policies complying with the provisions of this agreement, the State Bar may purchase the appropriate insurance policies and the Vendor will pay upon demand the cost of it to the State Bar or the State Bar may terminate this agreement. Additionally, if the Vendor assigns any portion of the duties

under this agreement, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

The Vendor will immediately notify the State Bar if the Vendor's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If the Vendor's commercial general liability insurance contains such restrictive endorsements, the Vendor shall have five (5) business days to remove said restrictions. If the Vendor is unable to do so, the State Bar may terminate this agreement, and will be required to give the Vendor no more than two (2) days' notice of such termination, anything in this agreement to the contrary notwithstanding.

**I. Expense of the Insurance Program**

Broker or the underwriting insurance company will assume the expense and cost of soliciting, promotion, and administering the insurance program, including but not limited to, printing and mailing costs, advertising and promotional expenses. No such costs will be paid by the State Bar.

**J. Compensation**

Broker will receive no compensation from the State Bar for any services performed under the agreement, but shall be entitled to receive compensation from the underwriting insurance companies in consideration of the State Bar's sponsorship of the Program and its selection of Broker. Broker will disclose to the State Bar the compensation arrangements between Broker and underwriters.

**K. Termination**

1. **State Bar's Option to Terminate.** The State Bar may immediately terminate this Agreement upon the occurrence of any of the following events: (a) bankruptcy or insolvency of Broker; (b) sale, acquisition or other change of ownership or control of all or a substantial portion of the business of Broker to a person or organization that within the reasonable discretion of the State Bar lacks the experience, commitment, operational capability, financial strength, or, integrity to continue the Program; or (c) Broker's material failure to comply with federal, state or local laws, regulations or requirements or the terms of the Broker/Administrator Agreement. The State Bar may also terminate the Agreement on not less than ninety (90) days written notice in the event that the Broker shall fail to achieve the marketing and revenue targets set forth in the Agreement, or determined pursuant to the Agreement.

2. **Authorization of Funds.** If the term of this agreement extends into fiscal year(s) subsequent to that in which it is signed, it is understood that the continuation of this contract is subject to the authorization of sufficient funding for such purpose by the California State Legislature. If sufficient funds are not so authorized, the parties mutually agree that the contract may be terminated or amended as appropriate in response to the reduction in funding. If the agreement is terminated, Contractor agrees to take back any affected equipment, products, software, or hardware furnished under this contract, and relieve the State Bar of any further obligation, except for the State Bar's obligation to pay for services already performed pursuant to this agreement.
3. **Default by Vendor.** This agreement may be terminated by the State Bar upon fifteen (15) days written notice to the Vendor in the event the Vendor is in default under any of its provisions. In the event this agreement is terminated due to the default by the Vendor, the Vendor will not be entitled to receive any compensation for services performed or for any reimbursable expenses incurred, and the State Bar will have the right to have the services completed by other parties and the Vendor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable expenses, if any, provided for in this agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential damages caused directly or indirectly by the Vendor's default.
4. **Automatic Termination.** This agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) sale of the business of either party; (c) failure to comply with federal, state or local laws, regulations or requirements, or (d) expiration of the agreement.

#### **L. Confidentiality and Publicity**

The Vendor will retain all information provided by the State Bar in the strictest confidence and will neither use it nor disclose it to anyone other than employees requiring the information to perform services under this agreement without the prior written consent of the State Bar. The State Bar retains the right to enjoin any unauthorized disclosure in an appropriate court of law. The Vendor will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.

#### **M. Compliance with Laws**

The Vendor agrees to comply with all applicable federal, state, and local laws and regulations, including but not limited to the provisions of the Fair Employment and

Housing Act (Govt. Code, § 12900 et seq.) and any applicable regulations promulgated there under (Cal. Code of Regs., tit. 2, § 72850.0 et seq.). Vendor agrees to include the non-discrimination and compliance provisions of this clause in any and all subcontracts to perform work under the agreement.

**N. Assignment/Subcontracting**

1. **Assignment.** The Vendor will not assign or transfer its interest, in whole or in part, under this agreement, without the written consent of the State Bar, which consent may be granted or withheld in the sole and absolute discretion of the State Bar.
2. **Subcontracting.** The Vendor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the delivery of equipment and services, with the prior written approval of the State Bar.

The Vendor will clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship between the Vendor and its subcontractor to be maintained during the term of this agreement. No subcontract will be approved unless the Vendor provides a written guarantee that the Vendor's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above.

**O. General Provisions**

1. **Force Majeure.** Neither party will be deemed in default of this agreement or any provision hereunder to the extent that any delay or failure in the performance of the obligations of such party (other than the payment of money) results from any significant and material causes beyond its reasonable control and without fault or negligence by such party. Examples of such causes include, but are not limited to, (1) acts of God or public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) embargoes, (9) earthquakes, and (10) unusually severe weather.
2. **Governing Law.** The agreement will be governed by the laws of the State of California without giving effect to its principles of conflict of laws.
3. **Attorneys' Fees.** In the event either party institutes any action or proceeding against the other party relating to this agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred in connection therewith.



and for its reasonable attorneys' fees as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit shall be entitled to collect or enforce the judgment. This provision is separate and several and shall survive the merger of the agreement into any judgment.

4. **Audit.** Vendor agrees that the State Bar or its designee shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Vendor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Vendor agrees to allow the State Bar or its designee access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Vendor agrees to include a similar right of the State Bar or its designee to audit records and interview staff in any subcontract related to performance of this Agreement.
5. **License.** In those instances where required, the Vendor represents and warrants that the Vendor holds a license, permit or special license to perform the services pursuant to this agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and shall keep and maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while the Vendor is performing the services pursuant to the agreement.