

The State Bar of California

# REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for Case Management System.

The State Bar is seeking proposals for a case management system and associated implementation services for the Office of the Chief Trial Counsel to provide improved automation capabilities, including access to information, accuracy of data, and reporting, supporting their mission of public protection.

Solutions considered will include either hosted or in-house/premised-based installations. Please note the Mandatory Minimum Requirements itemized in Section II.D. below. Vendors/system proposals not meeting these requirements will be deemed non-responsive and will not be considered.

The contract term desired is for the initial implementation and system maintenance and support for a period of three (3) years, with an option to renew for an additional two (2) year maintenance and support period. Proposals for hosted solutions may require differing fixed terms.

Please submit 11 copies of your proposal (and the associated direct electronic submissions as noted) no later than 5 p.m. on March 5, 2012 to:

The State Bar of California  
1149 South Hill Street  
Los Angeles, CA 90015-2299

Attn: Bill Walker  
Information Technology  
213-765-1143  
[bill.walker@calbar.ca.gov](mailto:bill.walker@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 primary purpose of the State Bar is to serve as

an administrative adjunct to the California Supreme Court in all matters pertaining to the admission, discipline, and regulation of California lawyers. The State Bar Act and California court rules vest in the State Bar the duty to regulate the legal profession, formulate and elevate educational and professional standards, raise the quality of legal services, advance the science of jurisprudence, and aid in the improvement of the administration of justice.

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's programs are financed primarily by fees paid by attorneys and applicants to practice law. The State Bar has over 230,000 members, making it the largest unified state bar in the country. The State Bar has offices located in Los Angeles, Sacramento and San Francisco. More information about the organization can be found at <http://www.calbar.ca.gov/AboutUs.aspx>.

## **II. STATEMENT OF WORK**

The Office of the Chief Trial Counsel ("OCTC") has primary responsibility for carrying out the disciplinary functions of the State Bar. This includes receiving, resolving and investigating complaints from members of the public, and, where necessary, acting as the prosecution in the proceedings leading to suspension and/or disbarment of attorneys in California.

### **A. Description of Existing Technology**

Currently, the Office of the Chief Trial Counsel uses a case management system which was custom-written in the late 1980s in IBM Report Program Generator (RPG) language to access DB2 databases that run on the IBM iSeries. The system tracks problems with attorney conduct from inception (intake) through investigation and prosecution. OCTC opens approximately 15,000 to 18,000 new cases annually. OCTC initiates cases in several ways, such as:

1. Any consumer may report a problem.
2. Certain organizations are obligated by law to report specific problems when an attorney's conduct triggers a "reportable action".
3. The "Intake" unit of OCTC may itself open a case upon the conviction of an attorney of criminal charges or upon the receipt of any information that suggests an attorney may have committed misconduct.

In 2010 OCTC received over 86,000 telephone calls concerning attorney conduct and over 19,000 new written complaints about attorney conduct of which over 6,000 warranted a full or partial investigation which may involve full prosecution activities.

The existing OCTC CMS system integrates with the State Bar Court's case tracking system and the State Bar's membership records system.

For further detailed description of the operations of OCTC please refer to Attachment C: *2009 Report on the State Bar of California Discipline System*, specifically pages 2 -14.

## **B. Project Objectives**

Solutions proposed by the vendor must support the following objectives and measurable outcomes:

1. Improve capture of and access to information about case investigations and prosecutions – Provide OCTC with more timely, accurate and complete case information to perform investigations and prosecutions, as measured by:
  - a. Improved access to management information – Decrease time to access management information after introduction of case management system
  - b. Improved information accuracy and consistency – Reduce reliance on hand counts and separate systems required to support functions not currently available
2. Improve quality of information provided to stakeholders – Respond more accurately and timely to ad hoc requests for information required by stakeholders, e.g., Supreme Court, Legislature, Board of Governors, as measured by:
  - a. Improved access to management information – Decrease time to access management information after introduction of case management system
  - b. Improved information accuracy and consistency – Reduce reliance on hand counts and separate systems required to support functions not currently available
  - c. Improved reporting – Provide reports that identify hidden trends, patterns and relationships among cases and parties to these cases
  - d. Reduced time to perform functions – Identify time to perform functions before and after introduction of case management system
  - e. Reduced duplicate data entry – Perform functions once, eliminating duplication of effort

### **C. Project Scope**

1. The project includes a system that supports:
  - a. Initiate case
  - b. Evaluate case
  - c. Investigate case
  - d. Prepare for trial
  - e. Try State Bar Court (SBC) case
  - f. Appeal case
  - g. Try Superior Court case
  - h. Conduct special proceedings
  - i. Perform administrative functions
  
2. The project does not require a system that supports:
  - a. Financial management
  - b. Human resource management
  - c. File retention and archiving
  - d. Client trust account management
  - e. Client Security Fund (CSF) management
  - f. Membership admission and association management
  - g. Court case management
  - h. Document management

The State Bar will consider either hosted or in-house/premised-based solutions meeting these objectives that support the technical and other specifications in this RFP.

### **D. Mandatory Minimum Requirements**

Vendors are required to respond to these requirements as part of the electronic response portion described in Section III.A. (Submission Requirements). Any proposal not meeting these minimum qualifications, will be deemed non-qualified and will not be considered. All proposed solutions meeting these minimum mandatory requirements must complete a response as described in Section III.A. below.

1. Length of software use – The proposed application software is currently in use and has been for a minimum of two years in public sector organizations similar in size and complexity when compared to the State Bar.
  
2. Scope of software use – The current release of the application software is operational and is in production as a standalone, Commercial Off-The-Shelf (COTS) system delivered in at least two organizations (not including the vendor’s organization).

3. Multiple case types – The proposed application software can support different processes, information and work flow for each case type, i.e., the system can support over 20 different case types as dictated by statute.
4. Distribution authorization certification – Provide an uploaded PDF document named 'Reseller Certification' indicating the vendor is the developer of the proposed system, or if not, a current, dated, and signed authorization from the developer, including any certification to license the product and offer in-house service, maintenance, technical training assistance and warranty services.
5. Third party security assessment – Provide an uploaded PDF document named 'Results of a Third Party Security Audit' (e.g., Veracode) conducted on the proposed system using the Open Source Web Application Security Project (OSWASP) standard for common application security problems. These results must be provided on the letterhead of the third party testing entity, and state that the proposed application is free of severe/critical security defects. If not currently available, the vendor must arrange for such an audit to be conducted, at its expense, and provide the above prior to executing an agreement with the State Bar. If no portion of the application is web-based, indicate in the uploaded document that this standard is not applicable.

All proposals not meeting these minimum qualifications, will be deemed non-qualified and will not be evaluated. All proposed solutions meeting these minimum mandatory requirements must proceed to the link provided in the submission requirements below and complete the itemized requirements and Scripted User Specifications, developed with OCTC by COPLAN AND COMPANY during its recent business case analysis development project. The results of the completed scripts will be reflected in the final scoring sections as indicted below.

### **III. GENERAL INFORMATION**

The submission requirements for this RFP are set forth below. A proposal shall constitute an irrevocable offer for 120 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 direct or indirect contact with any State Bar personnel may be cause for rejection of a bid.

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

To be considered responsive, proposals meeting the minimum mandatory requirements above must contain the following (prefaced by a table of contents and referenced by

number and in the order below). Proposals may include parts of the original RFP if answering questions asked or used in tailoring a specific response, but should not be included in full unaltered form for filler. If specific submission requirements are particularly large and self-contained (i.e., annual reports, 10-k, users' guide, etc.) they may be included in a separate appendix. Proposals should not direct the evaluation team to visit online sources to obtain information, or include *to be provided after award*, or *provided upon request* clauses.

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. Bidders must submit Attachment B: Vendor History Questionnaire electronically in native .xls format to [andrew.conover@calbar.ca.gov](mailto:andrew.conover@calbar.ca.gov) by the due date specified on page one.
4. The organization name, contact name, physical street address, email address and telephone number of three project references where you have completed implementation of the proposed system for a public sector client of similar size and complexity when compared to the State Bar, including the number of system users, date of installation and whether or not the reference is available for a site visit.
5. The organization name, contact name, physical street address, email address and telephone number for one reference located in close proximity to the State Bar where you completed implementation of the proposed system for a public sector client of similar size and complexity when compared to the State Bar, including the number of system users, and of date of installation.
6. Qualifications, background and experience of the project director and other staff proposed to work on the project.
7. A general description of the techniques approaches and methods to be used in completing the project, including an electronic response to the itemized requirements and Scripted User Specifications and other technical system requirements developed by OCTC with COPLAN AND COMPANY. This response must be prepared and submitted using FOUR®, an Internet-based RFP response tool hosted by COPLAN AND COMPANY (*see important submission directions below*).

8. A description of the chronology for completing the work, including a time line and deadlines for each task. See Attachment D: CMS Implementation Work Plan Tasks for a sample of an itemized task list indicating the expected Vendors' and Clients' primary/secondary responsibilities.
9. A detailed cost proposal, including any travel costs and other expenses. Bidders must submit Attachment A: Itemized Cost Proposal electronically in native .xls format to [andrew.conover@calbar.ca.gov](mailto:andrew.conover@calbar.ca.gov) by the due date specified on page one. Contractors' travel expenses will be reimbursed in accordance with the public [Travel and Business-Related Expense Policy](#). 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 pricing offers from them and to make an award or conduct negotiations thereafter.
10. 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. Submission Method Summary:**

1. Requirements #3 & #9 above--in native XL format:  
[andrew.conover@calbar.ca.gov](mailto:andrew.conover@calbar.ca.gov)
2. Requirement #7 above--completion of online COPLAN scripts:
  - a. vendors must first register to use FOUR at:  
<http://www.fourproject.com/four/rfx.asp?id=71&d=guyuhn46>
  - b. Once registered, vendors will complete the electronic portion of their proposal by logging in at: <http://www.fourproject.com/>
3. All other portions of written proposals to be submitted to:  
Bill Walker, Information Technology (address, page one)

### **C. 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.

### **D. 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/demonstrations 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 products 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, 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 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 of the proposal to the submission requirements set forth in the RFP (10%).
  - b. Agreement with the State Bar's contracting requirements (10%).
  - c. The technical ability, capacity, and flexibility of the bidder to perform the contract in a timely manner and on budget, as verified by, e.g., the quality of any demonstration, client references, demonstrated success in projects with similar requirements and any other contracts with the State Bar (40%) including the following:
    - i. Scripted User Requirements--results.
    - ii. Application Software—features and functions of application software.
    - iii. Interfaces—specifications regarding integration and data sharing between proposed case management system and State Bar's other external systems.
    - iv. System Architecture—setup and system configuration.
    - v. Security—system tools, methods and policies.
    - vi. Management—bidders' experience, qualifications, approach, methods and references.
  - d. The financial viability of the bidder/author (10%).
  - e. The total cost of the proposal solution. If the proposal contains itemized rates, per piece pricing, or commission-based pricing, the State Bar reserves the right to calculate total contracted cost by calculating rates using either previous known usage activity or future projected volume. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by type to allow the State Bar to implement the solution over the term of the contract (30%).

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 Cost, with the top candidates advancing as finalists and receiving a full evaluation as outlined above.
3. Bidders offering both premise-based and hosted solutions should submit separate complete proposals for each. Each proposal will be evaluated and scored independently.

#### **E. 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 April 20, 2012 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 April 27, 2012. 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 above 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@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.

#### **F. 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.

#### **G. Questions Regarding the RFP**

Questions regarding the RFP may be addressed in writing to Bill Walker at [bill.walker@calbar.ca.gov](mailto:bill.walker@calbar.ca.gov). All questions must be submitted no later than 8 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.

#### **H. 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.

#### **I. 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.

**J. 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.

**K. News Releases**

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

**L. 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 vendor, 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 vendor 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. Warranties and Representations**

1. 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.
2. Vendor warrants and represents that has the right to grant the licensed rights to the technology, the services, and the system through the agreement without violating any rights of any third party.
3. Vendor will represent and warrant that (a) vendor is not aware of any claim, investigation, litigation, action, suit, or administrative or judicial proceeding pending or threatened based on claims that vendor's technology, services or system infringe or misappropriate any patents, copyrights, or trade secrets of any third party, and (b) vendor's technology, services, and system do not infringe upon or misappropriate any patents, copyrights, trade secrets, or any other intellectual property rights of any third party.
4. Vendor will supply at all times an adequate number of well-qualified personnel to perform the work

5. Vendor will provide a contact person available and authorized to remedy any non-conformity with this warranty.
6. 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.

### **C. Acceptance Process for Deliverables**

Deliverables will be subject to agreed upon acceptance testing criteria to determine whether the deliverable meets its specification. The State Bar will accept a deliverable only if it conforms to its acceptance criteria. If a deficiency is found, the State Bar will notify vendor the basis for its decision not to accept the deliverable. Vendor must correct any deficiency and resubmit a corrected deliverable. The State Bar will review or perform acceptance tests on the corrected deliverable to verify whether the identified deficiency has been corrected. Vendor's times for correcting any deficiency and the State Bar's review of any deliverable will be in accordance with the project schedule.

If Vendor is unable to correct all deficiencies within the number of days indicated in the project schedule, within 60 days from its scheduled acceptance, the State Bar may, at its option: (1) continue reviewing or performing acceptance tests on the deliverable and require vendor to continue until any deficiencies are corrected or eliminated; (2) request vendor to provide, at its expense, a replacement deliverable for further review or acceptance tests; (3) set-off from the purchase price to the extent the State Bar determines the deficiencies for the deliverables have not been corrected; or (4) after completion of the process set forth in this section, and providing notice of default in accordance with this agreement, terminate this agreement in whole or in part.

### **D. Enhancements**

Vendor will provide the State Bar with all updates, upgrades, additions, and changes to, and future releases for the application software in whole or in part, including without limitation:

1. Updated versions of the application software to operate on upgraded versions of firmware or upgraded versions of equipment ("Enhancement")
2. Updated versions of application software that encompass improvements, extensions, updates, deficiency and other error corrections, or other changes that are logical improvements or extensions of the application software supplied to the State Bar.

Vendor will also provide the State Bar with associated documentation that are provided as general releases to the software, in whole or in part, as part of the Services provided under the agreement. This documentation must be adequate to inform the State Bar of the problems resolved, including any significant differences resulting from the release which are known by vendor. Vendor warrants that each Enhancement general release

must be tested and perform according to the specifications. Vendor agrees to correct corrupted data that may result from any system deficiency introduced by any Enhancement at no cost to the State Bar. In addition, vendor shall produce any Enhancement which the State Bar requests or which vendor request and the State Bar approves in a commercially reasonable time and form at an additional charge in accordance with the change order provisions set forth in the agreement. Enhancements to correct any deficiency must be provided to the State Bar at no additional cost and without the need for a change order.

**E. Liquidated Damages**

The parties agree that any delay or failure by vendor to timely perform its obligations by the dates in the project management plan and in accordance with the performance standards will interfere with the proper and timely implementation of the system and result in loss and damage to the State Bar. The parties agree that the exact amount of such damages may be difficult to determine. Therefore, a liquidated damages provision in the agreement is a reasonable effort by the parties to agree in advance on the damages the State Bar may suffer due to vendor's delay or failure.

**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:

1. The material breach by Vendor of any warranty, representation, term or condition made or agreed to by Vendor
2. All products and services prepared by or for Vendor hereunder and provided to State Bar
3. Any claim or action for personal injury, death or otherwise involving alleged defects in Vendor's business or any of its products or services provided to State Bar

4. Any breach by Vendor of any statutory or regulatory obligation
5. The actual or alleged infringement by Vendor of any patent, copyright, utility model, industrial design, mask work, trademark or other proprietary right or misappropriates a trade secret of any person or entity
6. Any act or omission of Vendor, its employees, agents or subcontractors.

#### **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. Professional liability insurance with a general aggregate limit of Two Million Dollars (\$2,000,000) and an occurrence limit of two Million Dollars (\$2,000,000).

The Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Operations, 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. Termination**

1. **At Will.** The agreement may be terminated by the State Bar, in its sole and complete discretion, upon thirty (30) days written notice to Vendor. In the event of termination pursuant to this section, the vendor's sole compensation will be for that portion of services performed or goods delivered up to the date of termination, together with reimbursable expenses, if any then due. Vendor will not be paid for any services, goods or reimbursable expenses associated with any work or service not specifically authorized by the State Bar.
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.
5. **Termination Procedure.**
  - a. After a receipt of a notice of termination, and except as otherwise directed by the State Bar, vendor must (i) stop work on the date specified in the Notice; (ii) place no further orders or subcontracts for materials, services, or facilities; (iii) as soon as practicable, but in no event longer than 30 days after termination, terminate its orders and subcontracts related to the work and settle all outstanding liabilities and claims arising out of the termination of these orders and subcontracts; (iv) take such action as may be necessary to protect and preserve any State Bar property which may be in vendor's possession; (v) transfer title to the State Bar and deliver in a timely manner any State Bar property; (vi) provide written certification to the State Bar that vendor has surrendered all such property.
  - b. Upon termination of the agreement, the State Bar, in addition to any other rights provided in the agreement, may require vendor to deliver to the State Bar any work product, including but not limited to deliverables and data, performed up to the date of termination.
  - c. Unless otherwise agreed to between the parties as part of a turnover plan, vendor will provide the State Bar a license to use and reproduce for the State Bar's internal purposes, vendor's technology and provide technical and professional support and maintenance at rates negotiated between the parties. Such rates will not exceed the lesser of (i) reasonable and customary rates for vendor's services; or (ii) vendor's rates for comparable services for other customers.
6. **Transition Support.** At the expiration or termination of the agreement, Vendor must provide reasonable transition assistance requested by the State Bar, to allow for the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of the services to the State Bar or its designee. The State Bar will pay vendor for technical and professional support in connection with the transition services at mutually agreed rates.

**J. 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.

**K. 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.

**L. 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.

**M. 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, or (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.