

The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for IBM AS400 Migration to i5.

Please submit 6 copies of your proposal no later than 5 p.m. on August 3, 2007 to:

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

Attn: Jonathan Angle
Information Technology
415-538-2476
Jonathan.Angle@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, which means that 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 approximately four (4) business locations within the state, all located within the greater Los Angeles, or Sacramento or San Francisco areas. More information about the State Bar can be found in an article entitled “*The State Bar of California – What Does It Do, How Does It Work?*” available on the State Bar’s website at http://calbar.ca.gov/state/calbar/calbar_home_generic.

In accordance with statute and the State Bar's procurement policies, contracts of \$50,000 or more are subject to formal competitive bidding. As a governmental agency, the State Bar regularly is granted favorable governmental pricing and contract terms.

The State Bar is seeking proposals for a replacement IBM AS400 computer system complete with tape library backup system, system software, installation, existing

AS/400 application and data migration with data connections reestablished, verification, testing, and three-year maintenance agreement.

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.

II. 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.

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.
4. A description of similar projects completed by the bidder within the past three (3) years.
5. Qualifications, background and experience of the project director and other staff proposed to work on the project.
6. References with contact information from organizations that have used bidder's services for similar projects/installations within the last 12-18 months.
7. A general description of the techniques, approaches and methods to be used in completing the project.
8. A description of the chronology for completing the work, including a time line and deadlines for each task.

9. A detailed cost proposal, including any travel costs and other expenses. 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.

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 shall 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").

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.

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.

1. Responsiveness of the proposal to the submission requirements set forth in the RFP (10%).
2. Agreement with the State Bar's contracting requirements (10%).
3. 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. Verified "Certified IBM iSeries Partner", competency in previous migrations of AS/400 to i5 series systems, local direct support (35%).
4. The financial viability of the bidder as evidenced by standard financial reports (10%).
5. The total cost of the proposal solution. 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 (35%).

If a large number of proposals are received, the State Bar reserves the right to review the proposals using a tiered evaluation system. All proposals will be evaluated based on the Submission Requirements and Cost, with the top candidates advancing as a finalist 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 August 29, 2007 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 September 5, 2007. The evaluation team will select a winning proposal subject to approvals granted 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.

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 Jonathan Angle at Jonathan.Angle@calbar.ca.gov. All questions must be submitted no later than 10 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 10 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 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 bidder's consent will be requested before release of such 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.

III. STATEMENT OF WORK

A. Project Qualifications

The State Bar of California is soliciting proposals from qualified firms for an IBM i5 Series 9604-525 (Express with Unlimited Users) computer system, backup device, software along with the migration of all applications, data and data connection from two existing IBM AS400

(720-2B24D) systems. To be considered for this engagement, your firm must be a verifiable "Certified IBM iSeries Partner", meet the qualifications and satisfy the requirements set forth in this RFP. Please also include previous track record of failed migration attempts (and any mitigating factors involved) as well as a summary a list of successful migrations and any experience or lessons learned.

The information contained herein is believed to be accurate, but is not to be considered in any way as a warranty.

1. Equipment must meet the minimum specifications
2. All awarded work must be done by the entity submitting the proposal unless specified in the proposal.
3. Any proposal must specify the complete cost of the project. The State Bar will not recognize nor honor any additional charges beyond what the awarded bid contains.
4. Any additional equipment or work, above and beyond the scope of this RFP, may be subject to procurement rules within the State Bar of California and require an additional competitive bidding process.
5. Include any and all options regarding trade-in programs, allowances, equipment salvage value, and promotional upgrades with proposals, including optional reuse of existing AS/400s in disaster recovery systems.

NOTE: *The Migration will be from the two existing AS/400 (720-2B24D) systems, currently located in San Francisco and Los Angeles. Submittals to this RFP need to take into consideration that the applications and data currently being utilized by The State Bar of California are located in two separate locations with the San Francisco location being: 180 Howard Street, San Francisco CA 94105, and the Los Angeles Location being located at: 1149 South Hill Street, Los Angeles, CA 90015.*

B. Minimum Hardware Requirements

1. 1 EA System i5 Model 525 Express "Unlimited Users" (rack mount)
 - a. i5/OS Unlimited Users
 - b. 3 EA 4GB Main Storage - (total of 12 GB)
 - c. 24 EA 70.56GB 15k rpm Disk Units
 - d. 1 EA 10/100Mbps Ethernet Adapter for SNA Protocols
 - e. 3 EA LPAR Features
 - f. 2 EA Built-in Gigabit Ethernet Ports
 - g. 1 EA DVD-RAM Drive
 - h. Rack-mount Option

- i. 1 EA Redundant Power Supplies on System Unit
 - j. 1 EA IOP/IOA Cards for Ultrium-3 Tape Library
 - k. 1 EA Serial-UPS Conversion Cable
 - l. 1 EA 7310-C05 HMC with 2-Port 10/100/1000 Base-TX Ethernet PCI-X Adapter
 - m. Three-year maintenance agreement
- 2. 3573-L2U Ultrium-3 TS3100 Tape Library
 - a. 1 EA 4.5 Meter SCSI Cable for Attachment to System i5
 - b. 1 EA Rack-mount Kit
 - c. 10 EA Ultrium-3 Data Cartridges
 - d. 1 EA Cleaning Cartridge

C. Minimum Software Requirements

- 1. i5/OS V5R4 – Unlimited users (Or newer IBM-certified stable release of OS if released by end of project period)
- 2. V5R4 Backup & Recovery Guide
- 3. Three (3) Year 24x7 Software Maintenance, P20 Processor Group
- 4. High-availability solution utilizing the i5 remote journaling capabilities to provide near real-time backup of mission critical applications and data

D. Services and Installation Requirements for Hardware/Software listed above

Installation and configuration of all equipment will be conducted on-site at 180 Howard Street, San Francisco, CA 94105. Installation schedule to be determined, but all procurement of new hardware and software (excluding installation) must be completed no later than December 31, 2007.

- 1. i5 System Configuration
 - a. Establish and submit a detailed system migration/implementation plan, including development of detailed schedule for completion.
 - b. Establish and submit application migration/implementation plan
 - c. Establish and submit testing, verification and certification plan

- d. Establish and submit a review of current AS/400 systems for applications and data migration
 - e. Establish and submit a file listings of migration data for migration verification
 2. i5 System preparation for migration
 - a. Install new i5 system at approved location
 - b. Install, configure and test all i5 system software and 3 LPAR configuration
 - c. Install, configure and test Tape Library system
 - d. Install, configure and test near real-time backup solution
 3. Migrate applications and associated files to new system
 - a. Run systems assurance to verify i5 configuration is correct and ready for migration
 - b. Establish and submit verification report for verification of application and data file migration
 - c. Migrate all current State Bar AS/400 applications (approximately 3000 RPG current applications) and associated data including links to alternate data sources (SAN or other systems integration to match current data file configuration)
 - d. Provide results of successful verification testing
 - e. Provide access to department stakeholders and users for certification of migrated systems and functionality report
 - f. Upon completion of certification on all migrated systems, schedule live rollover to new system
 4. Rollover to new system
 - a. Report any anomalies or errors
 - b. Resolve all issues and provide verification and certification of successful migration and rollover
 5. User training and knowledge transfer

- a. Provide documentation and training on use of new i5 systems functionality and features (approximately 5-6 State Bar IT staff)
- b. Provide documentation and User training on configuration and use of new tape library and backup
- c. Provide complete set of successful configuration and system setup documentation
- d. Provide complete set of successful migration testing verification reports
- e. Provide complete set of successful application and data verification reports
- f. Provide 2 complete backup sets of verified configuration and migrated system (Steady-State)

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. System, Equipment and Software

1. **The System.** Customer will purchase from Reseller the peripheral equipment as specified in Schedule 1 (“the Equipment”) and the operating systems software and other software as specified in Schedule 2 (“the Software”). Reseller will install and configure a new IBM i5 Series 9604-525 (Express with Unlimited Users) computer system, backup device, and software and also migrate all applications, data and data connection from Customer’s two existing IBM AS400 (720-2B24D) systems according to Customer’s specifications, attached as Schedule 3 (“the Specifications”). Reseller will install and configure the Equipment and software and migrate Customer’s existing applications and data to integrate the Equipment into a turnkey system (“System”).

2. **The Equipment and Software; Assignment of Warranties.** Reseller shall cause the Equipment to be fully hardware configured in accordance with the Specifications prior to its delivery to the State Bar's Sites. The Equipment is being sold, and the software specified hereunder is being licensed, subject to and in accordance with the terms and conditions of the manufacturers under their standard purchase agreements and license agreements set forth in Exhibits A, B and C. To the extent that such third party manufacturers have made to Reseller any warranties or other commitments, Reseller hereby assigns to Customer all of such manufacturers' warranties and other commitments related to the Equipment and software specified by Exhibits A, B and C.
3. **Site Preparation.** Customer, with the advice and help of Reseller, shall prepare the space at the Sites in which the Equipment will be installed in accordance with manufacturer specifications as to environment, power, HVAC, and the like.
4. **Delivery, Insurance, Title and Transportation Costs**
 - a. **Delivery.** Items of Equipment and software will be delivered to the Sites in accordance with the implementation schedule attached as Schedule 4 hereof.
 - b. **Insurance.** Reseller shall assume full responsibility for insuring the Equipment in transit and dealing with transportation carriers to ensure delivery of shipments, to locate missing or late shipments, to resolve billing for transportation charges, and to submit and to resolve all insurance claims arising from damage to its shipments.
 - c. **Title.** Title to the Equipment purchased pursuant to this Agreement shall remain in Reseller until it is delivered to Customer's Sites, at which time title shall pass to Customer. Reseller shall furnish Customer a bill of sale and other documents requested by Customer to enable it to perfect unencumbered title to the Equipment.

B. Software

1. **Systems Software.** Reseller shall arrange with the manufacturers of the Equipment for a direct license or a sublicense through Reseller of the operating systems software and general utilities set forth in the Specifications.

2. **Applications Software.** Reseller shall arrange with authorized vendors for a direct license, or a sublicense through Reseller, of the applications computer programs set forth in Schedule 2.
3. **Software Licenses.** All software licenses shall grant Customer a perpetual, irrevocable, worldwide, nonexclusive license to: (a) install and use the licensed software for the conduct of Customer's business; and (b) make a reasonable number of copies of the licensed software for archival and/or backup purposes.

C. Implementation of System

1. **General Standards.** This Clause sets forth the detailed agreement under which the System acquired by Customer from Reseller will be implemented. Reseller acknowledges and agrees that time is of the essence with respect to its installation of the System, and therefore, it is expected that the implementation will proceed with all due diligence and that the milestone dates set forth in Schedule 4 will be met. Each party recognizes that the completion of this project within the time schedule set forth contemplates and requires that Reseller assign competent and responsive personnel to carry out its obligations.
2. **Project Director.** The parties recognize that the successful completion of this project will require continuous supervision, and each party therefore agrees to assign a Project Director and/or Project Manager upon whose written orders and decision the other party may, except as set forth in this Clause C.2., rely as binding. Reseller appoints _____ as its Project Director; _____ as a Project Manager for the L.A. Site, and _____ as a Project Manager for the S.F. Site. Customer appoints, for its L.A. Site, Manager of Operations _____, or his designee, and for its S.F. Site, _____, or her designee. Reseller agrees that it will not assign its Project Director or Project Managers to another major project until the System has been accepted by Customer in accordance with Clause C.8.. If the Project Director or Project Manager for a party is unable to continue to serve because of physical disability or termination of employment, that party shall designate a new Project Director or Project Manager in writing, provided however, that Customer shall have the right to approve Reseller's proposed new Project Director or Project Manager.

The decisions and written orders of a Project Director or Project Manager shall be binding upon their employer, except that the Project Directors and Project Managers shall have no authority to change any of the terms or conditions of this Agreement which may only be modified or amended pursuant to Clause V.

3. **Staffing.** The professional personnel provided by Reseller shall be appropriately trained in technical skills to perform their duties. Customer may require Reseller to replace any person (other than the Project Director or Project Manager as specified in Clause C.2.) who is working on the project at Customer's premises, if Customer in its reasonable but sole discretion determines that such individual is unfit or otherwise unsatisfactory. Reseller's personnel, when on the premises of Customer, shall comply with the security and other personnel regulations of Customer.

4. **Confidentiality**

a. **Customer's Information.** Reseller acknowledges that in the course of developing and installing the System, its employees will learn confidential information about the business and procedures of Customer. All information provided to Reseller by Customer or generated by Reseller for Customer is considered Confidential Information. Reseller agrees to hold all Confidential Information in the strictest confidence and not to make use of such Confidential Information other than as strictly necessary for the performance of Services. Reseller will safeguard such Confidential Information, and will take all necessary steps to protect such Confidential Information from loss or accidental disclosure. All Confidential Information obtained or maintained by Reseller, and all rights, title and interest therein, in whatever form, in perpetuity, is and will, at all times, remain the sole and exclusive property of Customer. Reseller will ensure that all employees performing the Services under this Agreement are aware of their duty of confidentiality. Reseller will deliver all Confidential Information to Customer within twenty-four (24) hours of demand. Reseller will not issue any public announcements concerning Customer without the prior written consent of Customer. Reseller recognizes that irreparable harm can be occasioned to Customer and to third parties by disclosure of Confidential Information; accordingly, Customer may enjoin such disclosure in an appropriate court of law.

b. **Survival.** The obligations of confidentiality under this Agreement shall survive the termination of this Agreement. However, Reseller shall not be required to treat as proprietary information which:

i. was in its possession or known to such party prior to receipt from Customer, or

- ii. is or becomes public knowledge without fault of Reseller, or
- iii. is or becomes lawfully available to Reseller from a source other than the Customer which is not under a confidentiality restriction.

In addition, Reseller shall not issue any public announcements concerning Customer without the prior written consent of Customer.

5. **Installation.** Reseller shall install the Equipment in a manner so as to cause minimal disruption to Customer's business operations. In accordance with Schedule 4, Reseller shall unpack, inventory, upgrade, set up, interconnect, and install each item of Equipment in accordance with manufacturers' specifications and Customer's Specifications, including without limitation, installing all other components necessary to make the Equipment ready for operational use. Reseller's installation of the System shall also include, but not be limited to, review of network design, integration and connectivity issues, connection of the Equipment to the network(s), configuration of the Equipment, network testing and optimization, and the clean-up and disposal of packing materials.
6. **Data Conversion.** Reseller, using its own personnel, shall identify, convert as necessary, and migrate Customer's applications data, as it exists on Customer's existing AS400 system, to the System that Reseller shall install at the Sites. Reseller is responsible for the accuracy and completeness of the data after conversion, and for the compatibility of such data with the new System. The conversion of data will not be considered complete until Customer can access all data on the System, using the software applications listed in the Specifications, with an accuracy level of 99.98%.
7. **System Installation Completion.** Installation of the System shall be deemed to be complete (i) when Reseller certifies in writing to Customer's Project Manager that the System has been properly installed in accordance with Customer's Specifications, that it is in turnkey condition and ready for use, that Reseller's diagnostic tests have been performed, and that the System has met these tests and its components are operating in accordance with the manufacturers' published specifications and Customer's Specifications, and (ii) when Customer's Project Manager at the applicable Site, based upon Reseller's representations and demonstrations, agrees with such certification as evidenced by Customer's Project Manager signing off on Reseller's Project Completion Form ("System Installation

Completion”). The date that System Installation Completion occurs shall be referred to as the “System Installation Completion Date.” System Installation Completion shall occur not later than the dates set forth in Schedule 4, and Reseller acknowledges and agrees that time is of the essence with respect thereto. In the event that System Installation Completion fails to occur on or before the date specified in Schedule 4, Customer shall be entitled to elect any of the remedies specified in Clause K.

8. **Acceptance.** The intent of this Clause is to establish a standard of performance that must be met before the System is accepted by Customer. This Clause applies to all components of the System, including, without limitation, replacement and substitute Equipment and software.
 - a. **System Acceptance Test.** In order for the System to be accepted by Customer (the “System Acceptance Test”), the System must operate in conformance with the manufacturers’ specifications and Customer’s Specifications at an operational level of ninety-nine percent, (99%) or more for a period of seven (7) consecutive calendar days. This percentage shall be determined by dividing the total productive operational use time by the total productive operational use time plus any System failure time. System failure time is the sum of each incident of failure which shall be all of those incidents during such seven (7) consecutive day period when any component or feature of the System fails to operate properly due to failure of any item of Equipment or software provided by Reseller, or due to any failure on the part of Reseller to properly install the System or any component thereof (collectively, such failures referred to as “Error”). The interval of time of each incident of failure shall be the hours and minutes between the time that Reseller was notified of such failure and the time Reseller corrects the Error. Customer shall maintain appropriate daily records to satisfy all requirements of this Clause.
 - b. **Commencement of the System Acceptance Test.** The System Acceptance Test shall commence upon the System Installation Completion Date and shall end when the System passes the System Acceptance Test.
 - i. **System Acceptance Date.** On the date that the System meets the standards of the System Acceptance Test (“the System Acceptance Date”), Customer’s Project Manager shall certify the same in writing indicating Customer’s acceptance of the System.

- ii. **Failure to Pass.** In the event that the System fails to pass the System Acceptance Test during the initial seven (7) consecutive calendar days, the System Acceptance Test shall continue on a day-to-day basis until the System meets the requirements of the System Acceptance Test for a total of seven (7) consecutive calendar days; provided, however, that in the event that the System fails to meet the standards of the System Acceptance Test within thirty (30) days from the System Installation Completion Date, the System shall be deemed to have failed the System Acceptance Test and Customer shall be entitled to elect any of the remedies specified in Clause K. Time shall be of the essence in the interpretation of this Clause.

9. Reseller's Charges for System Installation Services. Reseller's service charges for and all services pertaining to the installation of the System are included in the price schedule specified in Schedules 1 and 2. Customer shall not be liable for any cost of such services rendered by Reseller in excess of the amount specified in Schedules 1 and 2 without Customer's prior written consent.

10. Technical Assistance. Reseller will provide, at no additional charge, (i) such technical assistance and advice, if requested, as may be necessary to assist in the use of the System; (ii) training in maintenance, management, and trouble-shooting of the System for LAN administrator and technicians; and (iii) operating manuals for the software programs provided by Reseller.

D. Equipment and Software Warranties

1. Equipment. Reseller hereby assigns to the extent legally permissible all warranties provided by the manufacturers under its agreements. In addition to manufacturers' warranties, Reseller hereby warrants that the Equipment will be new, of merchantable quality, and free from defects in design and workmanship and when installed and used with the system software and utilities licensed by Customer in accordance with Clause B, and will conform to and perform in accordance with manufacturers' specifications and the Specifications.

2. Third Party Software. Reseller hereby assigns to the extent legally permissible all warranties provided by third party licensors as specified in Schedule 2 under their agreement and further warrants that when installed and used with the Equipment and the system software and utilities licensed by Customer from manufacturers in accordance with

Clause 3, will perform in accordance with such third party software licensors' specifications.

3. **Remedies for Warranty Defects.** Any breach of the warranties specified in Clauses D.1. and D.2.) above shall constitute a defect ("Defect"). After Customer delivers written notice to Reseller of any Defect, at no charge to Customer, Reseller shall promptly, but in no event later than forty-eight (48) hours after the delivery of such written notification, repair or replace the defective item of Equipment or software, and install the same into the System. Reseller warrants that any item or Equipment or software which has either been repaired or replaced by Reseller under this warranty shall carry the warranties as specified in Clauses D.1. and D.2. as applicable from the date of Reseller's installation of such repaired or replaced item of Equipment or software.

E. Warranties of Authority, Title Capability, Service Quality, Most Favored Customer, and Licenses

1. **Authority.** Reseller hereby warrants that it is duly organized as a corporation under the laws of the State of California and is authorized to make this contract. Reseller also further represents and warrants that it is a duly authorized valued added reseller of the manufacturers of the Equipment specified in Schedule 1, and of the third party software specified in Schedule 2 and that it has a value added reseller's agreement currently in force with each of those companies under which it is authorized to make the commitments that it has made in this Agreement.
2. **Title.** Reseller warrants that as to the Equipment that it acquires and re-sells to Customer, it will at the time of sale to Customer have clear and marketable title to each such item of such Equipment and will be able to and will convey a clear and marketable title by bill of sale.
3. **Capability.** Reseller represents and warrants that it has the expertise, resources and personnel, in accordance with the highest industry standards pertaining to value-added resellers and in conformity with the Specifications and other requirements of this Agreement, to competently advise Customer on the selection of the components for the System, to provide to Customer, or arrange for third parties to provide, all of the components for the System, and to timely install, configure, and troubleshoot the System, and accurately convert and transfer Customer's data such that the System's operations shall meet or exceed the Specifications.

4. **The Services.** Reseller hereby warrants that the services that it renders shall be performed in a first-class, workmanlike manner.
5. **Efficiency and Cost Effectiveness.** Reseller represents and warrants that it will: (a) use efficiently the resources or services necessary to provide the Services; and (b) perform the Services in the most cost efficient manner consistent with the required level of quality and performance.
6. **Most Favored Customer; Price Protection.** Reseller hereby covenants that it will treat Customer as its most favored customer and as such, represents and warrants that all of the prices, terms, warranties and services contemplated by this Agreement including desktop delivery, data transfer, and onsite service granted by Reseller hereunder are comparable to or better than the equivalent terms being offered by it to any present customer of Reseller ordering in volumes comparable to Customer. If during the term of this Agreement, Reseller shall enter into arrangements with any other customer ordering equipment and software in volumes comparable to Customer and provides such customer more favorable terms, this Agreement shall thereupon be deemed amended to provide the same terms to Customer. If Reseller's price for any item purchased hereunder, including comparable services as described above, on the date of installation is less than the price for such as specified in this Agreement, the lower price shall prevail. Reseller shall promptly notify Customer of the fact, amount and effective date of the reduction which shall be applied to this Agreement, from and after such effective date.
7. **License.** Reseller represents and warrants that it holds all necessary licenses, permits or other special licenses to perform its obligations pursuant to this Agreement, and shall maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while it is performing its obligations pursuant to this Agreement.

F. Payment, Security Interest

1. **Payment Schedule.** Subject to Clause K.3., Customer shall pay Reseller for the Equipment and Service Charges in accordance with the following schedule:
 - a. Upon execution of this Agreement, 10% of the price of the Equipment installed as listed on Schedule 1;
 - b. Upon the System Installation Completion Date, 70% of the price for the Equipment installed, as stated in Schedule 1;

- c. Upon the System Acceptance Date, 20% of the price for the Equipment installed as listed on Schedule 1, and for all the pre-configuration, configuration, over-the-shoulder-training and installation charges for the System as stated in Schedule 1.
2. **Security Interest.** Customer grants to Reseller a security interest in the Equipment until payment is made. Until Customer has fully paid for the Equipment, Customer shall cooperate in executing a reasonable financing statement required by the Uniform Commercial Code in order that Reseller may maintain a security interest in the Equipment.
3. **Payment Due Date.** Payment for all amounts due under this Agreement shall be made within thirty (30) days of the date payment is due.
4. **Taxes.** The total prices and license fees set forth in Schedules 1 and 2 are intended to include all sales, use, and like taxes levied on the sale or license of the Equipment and software, however designated and levied by any state, local, or federal government. To the extent that additional such sales or use taxes are due, Customer shall be responsible for the payment of any such taxes which shall, if appropriate, be paid to Reseller in addition to the installment payments otherwise required hereunder.

G. Indemnity Obligations of Reseller

1. **General.** To the fullest extent permitted by law, Reseller shall protect, indemnify, defend and hold Customer and Customer's Board of Governors, officers, committee members, employees, agents and representatives and each of their successors and assigns (the "Indemnitees") entirely harmless from and against any and all claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation, attorneys' fees and expenses, arising directly or indirectly from or in connection with (a) any breach of the Agreement, (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by Reseller, Reseller's employees, subcontractors, agents, representatives or assigns (collectively, "Reseller's Agents") in the performance or non-performance of the professional services required to be performed by Reseller under the Agreement; or (c) Customer's enforcement of its rights under this indemnity provision. Reseller's obligations under this indemnity shall survive the expiration and termination of this Agreement.

2. **Infringement.** Reseller shall defend, indemnify and hold harmless Customer, (its Board of Governors, officers, agents, and employees, as the same may be constituted now and from time to time hereafter) from and against any and all liability, losses or damages or any expenses or costs whatsoever to Customer, including reasonable attorneys' fees and costs, as a result of any claims, demands, damages, costs or judgments against Customer based on allegations that, as a consequence of the services rendered hereunder, any program or software designed, developed, amended, merged or restructured, or any part thereof, alone or in combination with other programs or software, infringes on any patent or copyright or misappropriates a trade secret. If any such program or software or any part thereof, is held to constitute an infringement or misappropriation, and use of the program or software is enjoined, Reseller shall, at its own expense, either: (1) procure for Customer the right to continue to use the program or software or part thereof; (2) replace the program or software with a non-infringing replacement, which may include removal of any non-licensed utility programs used by Reseller in performance of Clause C(5) and to which Customer is not entitled, provided that such replacement does not compromise performance and otherwise meets Customer's Specifications; or (3) modify the program or software to make it non-infringing, provided that such modification does not compromise performance and otherwise meets Customer's specifications.
3. **Conflict.** In the event both Customer and Reseller are named as defendants in the same civil action, and Customer determines that a conflict of interest exists between the parties, Reseller shall provide, at its own cost, independent counsel for Customer. Customer may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation wherein Customer is defended by Reseller.

H. Insurance Obligations of Reseller

Reseller shall provide and keep in full force and effect during the term of the Agreement, at Reseller's own cost and expense, the following insurance policies for the joint benefit of Reseller and Customer, under policy terms and with an insurer reasonably acceptable to Customer:

1. 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;
2. 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;
3. 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.
 4. Professional Liability insurance with general aggregate limit of Two Million Dollars (\$2,000,000.00); Two Million Dollars (\$2,000,000.00) each claim limit.

Reseller shall provide Customer with true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days following the execution of this Agreement. Each such policy of insurance shall name Customer as an additional insured and shall state that such policy or policies will be primary and that any insurance carried by Customer shall be noncontributing with respect thereto. Each such policy of insurance maintained pursuant to this Agreement shall provide for thirty (30) days' prior written notice to Customer in the event of cancellation or reduction in coverage or amount. If Reseller fails to secure and maintain insurance policies complying with the provisions of the Agreement, Customer may secure the appropriate insurance policies and Reseller shall pay upon demand the cost of same to Customer, or Customer may terminate this Agreement. In addition to the insurance required to be obtained and maintained by Reseller, if Reseller assigns any portion of the duties under the Agreement in accordance with the terms thereof, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

I. Ownership of Documents

All work product created by Reseller pursuant to this Agreement ("Work Product") and all rights thereto in the nature of copyright, trademark, patent and rights to ideas will be assigned to, and will become the property of Customer whether or not the work is completed. In the event of termination of the Agreement, or abandonment or suspension of work performed under the agreement, all Work Product and all such rights thereto existing as of the date of such termination, suspension or abandonment will be assigned to, and will become the property of Customer as of such date. The term "Work Product" will include, without limitation, any and all versions of any and all drawings, plans, graphs, photographs, slides, studies, schedules, budgets, estimates, layouts, and other work product and any services which have been or will be prepared by Reseller, or under Reseller's direction, pursuant to the Agreement. Reseller covenants, warrants and represents to Customer that Reseller has the right to assign the copyright and the Work Product. Reseller shall refrain from disclosing any and all versions of plans to any third party without first obtaining the written consent of Customer. Reseller shall not use or permit a third party to use any of the Work Product in connection with the project contemplated under this Agreement or any other project without the written consent of Customer. Reseller shall deliver to

Customer within five (5) days after written request made by Customer, all or any portion of the Work Product, as may be set forth in Customer's request. Reseller shall be permitted to retain copies for information and reference. Reseller shall provide Customer with updated copies of all Work Product on a monthly basis either in reproducible form or computer disk as requested by Customer.

Reseller agrees that all titles, patents, copyright, trademark and other statutory rights in the programs or software designed, developed, amended, merged or restructured by Reseller, its Employees or agents (hereinafter "Programs or Software"), in the course of performing services under this Agreement will be deemed "works made for hire" and will be the sole and exclusive property of Customer. Reseller shall cooperate with and assist Customer in applying for, and in executing all assignments, releases or other documents reasonably necessary to obtain and vest in the name of Customer alone (unless Customer otherwise directs) any title, patent, copyright, trademark or other statutory protection for such Programs and Software as Customer deems appropriate.

J. Nondiscrimination

During the performance of this Agreement, Reseller and any of its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, or request for family care leave. Reseller and any of its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Reseller and any of its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990 (a)-(f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). Reseller and any of its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

K. Default and Remedies

- 1. Termination Upon Delivery of Notice.** Customer shall have the right to terminate this Agreement effective upon delivery of written notice to Reseller in the event of the following:
 - a. Reseller is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects the affairs or property of Reseller;
 - b. Reseller is the subject of a petition for involuntary bankruptcy and such petition is not removed within 90 days;

- 2. Termination if Default Remains Uncured for 7 Days After Notice.** Customer shall have the right to terminate this Agreement in the event that Reseller has failed to materially perform or comply with the terms and conditions of this Agreement, (“Default”), and such Default remains uncured for seven (7) days after Customer’s delivery of written notice to Reseller specifically setting forth such Default. Termination shall be in addition to, and not in lieu of, any other rights and remedies that Customer may have under this Agreement, or at law or equity.

- 3. Customer’s Special Rights.** In addition to Customer's remedies set forth in Clause K.2. above, if Reseller fails (i) to achieve System Installation Completion at each Site by the dates specified in Schedule 4, as specified in Clause C.7., or (ii) if the System fails to timely pass the System Acceptance Test, as specified in Clause C.8., Customer, at its sole option, may elect one of the following options:

 - a. Customer may terminate this Agreement with no charges or penalties, reject all portions of the System, if any, previously accepted by Customer pursuant to Clause C.7. and shall thereupon be entitled to a return of all amounts paid to Reseller. Such payment shall be made within sixty (60) days of the date of the notice given under this Clause K.3.a., and upon receipt of such payment, title to all Equipment and software shall revert to Reseller, which shall promptly remove same from Customer's premises at Reseller’s sole expense. Termination shall be in addition to, and not in lieu of, any other rights and remedies that Customer may have under this Agreement, or at law or equity.
 - b. Customer may demand, and Reseller shall install at Reseller’s sole cost and expense, a direct replacement of Equipment or software that is the cause of the failure, or such additional Equipment to correct the failure.

- 4. Termination for Convenience of Customer.** This Agreement may be terminated by Customer, in its sole discretion, upon thirty (30) days' written notice to Reseller. In the event of such termination not due to the Default by Reseller under this Agreement, Reseller’s sole compensation will be for that portion of the services performed to the date of termination, together with reasonable expenses incurred by Reseller pursuant to this Agreement prior to termination; provided, however, that Reseller shall not be paid for any services or reimbursable expenses associated with any work or service which was not authorized by Customer pursuant to this Agreement.

- 5. Termination for Non-Appropriation of Funds.** If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of this Agreement is subject to the appropriation of funds for such purpose by the California State Legislature. If funds to effect such continued payment are not appropriated, Reseller agrees to take back any affected equipment, products, software, or hardware furnished under this agreement, terminate any services supplied to Customer, and relieve Customer of any further obligation therefore. Customer agrees that if this subdivision is invoked, equipment will be returned to Reseller in substantially the same condition in which it was delivered to Customer, subject to normal wear and tear. Customer further agrees to pay for packing, crating, transportation to Reseller's nearest facility and to reimburse Reseller for reasonable expenses incurred for its assistance in such packing and crating.

L. Governing Law

This Agreement shall be governed by the internal laws of the state of California without giving effect to its conflicts of laws.

M. Force Majeure

Neither party shall be deemed in default of the 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
10. unusually severe weather

N. Notices

Any notice required or permitted to be given hereunder shall be in writing to the persons listed below by personal delivery, next day receipted courier or by electronic facsimile transmission (to be promptly confirmed by personal delivery or next day

received courier), and the date of receipt at the designated address or number shall be deemed to be the date of receipt of such notice, irrespective of the date appearing therein.

Notice shall be delivered as follows:

If to Customer to:

180 Howard Street
San Francisco, CA 94105
Fax No: _____

With a copy to:

Office of General Counsel
State Bar of California
Attn: Ms. Marie Moffat
180 Howard Street
San Francisco, California 94105
Fax No.: (415) 538-2321

If to Reseller to:

O. Waiver

Failure of either party to enforce, at any time, any provisions of this Agreement shall not be construed as a waiver of such provision or of any other provisions, or of the right of such party thereafter to enforce such provision.

P. Relationship of Parties

The relationship between Reseller and Customer during the term of this Agreement shall be that of vendor and vendee. Reseller is not hereunder an agent of Customer for any purpose whatsoever and is not granted, by the terms or execution of this Agreement, any express right of authority to assume or create any responsibility on behalf of, or in the name of Customer, or to bind Customer in any manner or thing whatsoever.

Q. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

R. Survival

Clauses C.4., D., E., F., G., I., K., and L. through V. and all amounts due from one party to the other shall survive termination or expiration of this Agreement.

S. Titles

The titles used in this Agreement are for convenience only and are not to be considered in construing the terms of this agreement.

T. Assignment/Subcontracting

Reseller shall not assign or transfer any of its interest, rights, or obligations, in whole or in part, under the Agreement, without the written consent of Customer, which consent may be granted or withheld in the sole and absolute discretion of Customer. Reseller 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 Customer. Reseller will clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship between the Reseller and its subcontractor to be maintained during the term of this agreement. No subcontract will be approved unless the Reseller provides a written guarantee that the Reseller's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above.

U. Audit

Reseller agrees that Customer or its designee shall have the right to review and copy any financial records and supporting documentation pertaining to the performance of this Agreement. Reseller agrees to maintain such financial records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Reseller agrees to allow Customer 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, Reseller agrees to include a similar right of Customer or its designee to audit records and interview staff in any subcontract related to performance of this Agreement.

V. Agreement and Modifications

This Agreement (including the exhibits attached hereto) reflects the entire agreement of the parties regarding the subject matter hereof, and supersedes all prior and contemporaneous agreements between the parties, whether written or oral. This Agreement shall not be amended, altered or changed except by written agreement signed by both parties.