

## **ATTACHMENT 2**

### **APPENDIX A**

#### **STATEMENT OF WORK**

#### **1. Contractor's Services**

##### **1.1. Scope of Work**

The service provider will be asked to provide:

- a. regular monthly maintenance to ensure that the copiers and fax machines are in sufficient mechanical condition and continuing operation;
- b. new and original manufacturer's parts and supplies or parts and supplies with quality and performance equal to those of the original manufacturer (including toner, developer, fuser oil, drums, rollers, circuit boards, and other necessary or optional parts and supplies, e.g. staples, for repair and operations) and labor necessary to maintain the copiers and fax machines in satisfactory operational order;
- c. prompt preventative and remedial maintenance during Court business hours, Monday through Friday, 8:30 AM - 5:00 PM;
- d. certified service technicians as may be required;
- e. service to the copying and fax machines at the current location of the Court at 621 Capitol Mall, Sacramento, California, and after its return to the Stanley Mosk Library and Courts Building, service at 914 Capitol Mall, Sacramento, California, and the location of the Mediation Center, 2890 Gateway Oaks, Suite 210, Sacramento, California;
- f. a service response time within 24 hours of placing an order for services;
- g. a method to exchange information about the number of copies generated by each machine and a regular and timely invoicing procedure providing sufficient detail regarding the location, level of use, applicable price, and invoiced cost for any particular machine; and
- h. resolution of any quality control or customer satisfaction issues.

## 1.2. Machines Included in Service Agreement

Ct	Make/Model*	Serial #	Approximate Average Monthly Usage
1	Xerox WorkCentre BookMark 40	LBD002095	3,000
2	Xerox CopyCentre 232	URT151108	3,300
3	Xerox WorkCentre 5655PTC	WTD726230	10,500
4	Xerox CopyCentre 232	URT104324	225
5	Xerox WorkCentre 5655PTC	WTD725509	8,900
6	Xerox WorkCentre 55HC	NWL108906	3,000
7	Xerox WorkCentre 255HC	UTV103296	700
8	Xerox WorkCentre 5665PT	WTM778940	20,000
9	Xerox WorkCentre 5665PT	WTM004227	3,000
10	Xerox WorkCentre 7346	LXW321241	B&W - 1,800 Color- 2,000
11	Xerox WorkCentre 5755APT	XEH604670	4,300
12	Xerox WorkCentre 5755APT	XEH604537	6,600
13	Xerox WorkCentre 5740APT	XEH612699	700
14	Xerox WorkCentre 5740APT	XEH612635	1,300
15	Xerox WorkCentre M15i	PDE171907	60
16	Xerox WorkCentre M15i	PDE171896	15
17	Xerox WorkCentre M15i	PDE172047	15
18	Xerox WorkCentre 4118X	YHT646977	50
19	Xerox WorkCentre 4118X	PLA002766	60
20	Xerox WorkCentre 232HC	URT805645	1,750

## 1.3 Location of Services

The location for services to machines 1 through 18 is the Court of Appeal, Third Appellate District, 621 Capitol Mall, Sacramento, California, 95814. The location for services to machines 19 and 20 is the Mediation Center, 2890 Gateway Oaks Drive, Suite 210, Sacramento, California, 95833.

## 2. Contractor's Personnel

- A. Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the Court is dissatisfied with any of Contractor's personnel, for any reason or no reason, Contractor shall replace them with qualified personnel.
- B. Contractor shall cooperate with the Court if the Court wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Court may require. Contractor shall not

RFP Title: Maintenance Contract for Copiers and Fax Machines

RFP Number: 3 DCA RFP 11/12-03

assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Court of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Court and performed by Contractor.

**3. Project Managers**

The project manager is John G. Sulpizio, Supervising Administrative Specialist, or designee, Court of Appeal, Third Appellate District, 621 Capitol Mall, 10th Floor, Sacramento, CA 95814, 916-654-0209.

**4. Special Provisions for Agreements for Equipment, Materials, or Supplies; Loss Leader Prohibition**

If this Agreement involves the furnishing of equipment, materials, or supplies, Contractor shall not sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

## APPENDIX B

### PRICING AND PAYMENT

#### 1. General

The Contractor may invoice the Court and the Court shall compensate Contractor under this Agreement as set forth in this Appendix B.

#### 2. Compensation

**2.1** Payment will not be made until the services are provided.

**2.2** Payment will be made upon the submission of an accurate invoice containing a full explanation of the services provided, service period, accurate billing address, invoice number, invoice date, vendor name and remittance address, and submission to the Court at the address identified in the contract as “billed to” or “invoice submitted to” for payment.

#### 3. Expenses

**3.1 Allowable Expenses.** There are no allowable expenses in this contract. All expenses of the Contractor are expected to be included in the cost proposal.

**3.2 Limitation on Travel Expenses.** There are no allowable travel expenses in this contract. All travel costs are to be borne by the Contractor.

#### 4. Invoicing and Payment

**4.1 Invoicing.** Contractor shall submit invoices to the Court in arrears no more frequently than monthly. Contractor’s invoices must include information and supporting documentation sufficient in detail for the Court to understand and evaluate the proportion of any invoice attributable to a specific machine. The Contractor shall invoice the services to the machines in the Court separately from those machines located in the Mediation Center and make note of the location for each on the invoice. Contractor shall adhere to reasonable billing guidelines issued by the Court from time to time.

**4.2 Acceptance; Payment.** All goods, services, and deliverables are subject to written acceptance by the Court. The Court may reject any goods, services or deliverables that (i) fail to meet applicable requirements or acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late. Payment does not imply acceptance of Contractor’s invoice, goods, services, or deliverables. Contractor shall immediately refund any payment made in error.

RFP Title: Maintenance Contract for Copiers and Fax Machines

RFP Number: 3 DCA RFP 11/12-03

- 4.3 Availability of Funds.** The Court's obligation to compensate Contractor is subject to the availability of funds. The Court shall notify Contractor if funds become unavailable or limited during the Term.

## APPENDIX C

### INFORMATION TECHNOLOGY AGREEMENTS GENERAL TERMS AND CONDITIONS

#### 1. Contractor's Certification Clauses

**1.1 Representations and Warranties.** Contractor or Contractor's representative (Contractor) certifies that the following representations and warranties are true:

(A) *Authority.* Contractor is qualified to do business and in good standing in the State of California. Contractor has authority to enter into and perform its obligations under this Agreement, which constitutes a valid and binding obligation of Contractor.

(B) *Not an Expatriate Corporation.* Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the Court.

(C) *Sales and Use Tax Collection.* Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.

(D) *No Gratuities.* Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any member, justice, judicial officer, judge, officer, employee, or agent of a Court with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning its performance under this Agreement.

(E) *No Conflict of Interest.* Contractor has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410, or 10411, which, in general, limit entering into (i) follow-on contracts with a consultant who would benefit thereby from the consultant's advice provided under the first contract, or (ii) contracts with former employees of the Court; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with certain JBEs.

(F) *No Interference with Other Contracts.* To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.

(G) *No Litigation.* No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform under this Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse effect on Contractor's business, the validity or enforceability of this Agreement, or Contractor's ability to perform under this Agreement.

(H) *Compliance with Laws Generally.* Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.

(I) *Work Eligibility.* All personnel assigned to perform work under this Agreement are able to work legally in the United States and possess valid proof of work eligibility.

(J) *Union Organizing.* As required under Government Code sections 16645 - 16649, Contractor has not used any funds received from the Court under this Agreement to assist, promote, or deter union organizing.

(K) *Drug Free Workplace.* Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.

(L) *No Harassment.* Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.

(M) *Non-discrimination.* Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.

(N) *Special Provisions regarding Compliance with National Labor Relations Board Orders.* If this Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from the Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

(O) *Special Provisions regarding Compliance with the Sweatfree Code of Conduct.* If this Agreement provides for furnishing equipment, materials, or supplies, or for the laundering of apparel, garments or corresponding accessories:

- No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Court under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code section 6108.
- Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the Court.

*(P) Special Provisions regarding the Electronic Waste Recycling Act.* If this Agreement provides for the purchase or lease of covered electronic devices under Public Resources Code section 42460 et seq., Contractor complies with the requirements of the Electronic Waste Recycling Act of 2003, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.

*(Q) Special Provisions regarding the Use of Postconsumer Material.* If this Agreement provides for the purchase and sale of goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of Contractor's postconsumer material in these goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or Contractor website:

- Contractor has delivered a declaration to the Court specifying the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code section 12200 in goods offered or sold to the Court, regardless of whether the goods meet the requirements of Public Contract Code section 12209.1;
- Under penalty of perjury, the declaration is true and correct and will remain so until Contractor delivers any amendment of the current declaration to the Court, in which case the current declaration as amended will be true and correct; and



- If Contractor sells under this Agreement any printer or duplication cartridges that comply with Public Contract Code section 12209, Contractor has so specified in the declaration required under this section.

(R) *Special Provisions regarding the Use of Postconsumer Material.* If this Agreement provides for the purchase and sale of goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of Contractor's postconsumer material in these goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or Contractor website:

- Contractor has delivered a declaration to the Court specifying the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code section 12200 in goods offered or sold to the Court, regardless of whether the goods meet the requirements of Public Contract Code section 12209.1;
- Under penalty of perjury, the declaration is true and correct and will remain so until Contractor delivers any amendment of the current declaration to the Court, in which case the current declaration as amended will be true and correct; and
- If Contractor sells under this Agreement any printer or duplication cartridges that comply with Public Contract Code section 12209, Contractor has so specified in the declaration required under this section.

**1.2. Covenant as to Representations and Warranties.** Contractor shall cause its representations and warranties above to remain true during the term of this Agreement, and Contractor shall promptly notify the Court if any representation and warranty becomes untrue.

## **2. Special Provisions for Agreements for Equipment, Materials, or Supplies; Loss Leader Prohibition**

If this Agreement involves the furnishing of equipment, materials, or supplies, Contractor shall not sell or use any article or product as a "loss leader" as defined in Business and Professions Code section 17030.

## **3. Special Provisions Applicable to Competitively Bid Agreements; Antitrust Claims**

If goods or services under this Agreement were obtained by means of a competitive bid, Court and Contractor shall comply with the requirements of Government Code sections 4552-4554, which concern the assignment of claims and reimbursement of specified costs regarding the Clayton Act (15 U.S.C., sec. 15) and the Cartwright Act (Business and Professions Code, section 16700 et seq.).

#### **4. Special Provisions Regarding Contractor Insurance**

##### **4.1. Coverage Amounts.**

(A) *Commercial General Liability.* In addition to any other insurance required under this Agreement, Contractor shall provide and maintain at Contractor's expense Commercial General Liability coverage if this Agreement involves the hazardous activities or any other activity specified in the *Judicial Branch Contracting Manual*, Chapter 8, Appendix D, Section 11. The policy must cover bodily injury and property damage liability, including coverage for the products – completed operations hazard and liability assumed in a contract, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit.

(B) *Other Liability.* In addition to any other insurance required under this Agreement, unless waived in writing by the Court, Contractor shall provide and maintain at Contractor's expense the following additional coverage during the term of this Agreement:

(1) *Workers Compensation and Employer's Liability.* If Contractor has employees, Contractor must maintain workers' compensation coverage to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;

(2) *Commercial Automobile Liability.* If Contractor will use a vehicle in the performance of this Agreement, Contractor must maintain commercial automobile liability coverage covering bodily injury and property damage liability and applicable to all vehicles used in Contractor's performance of this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.

(3) *Commercial Crime Insurance.* If Contractor performs this Agreement regularly on the Court's premises, or handles or has regular access to the Court's funds or property of significant value, Contractor must maintain commercial crime insurance covering dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; damage to Court buildings, and property; and fraudulent transfer of money, securities, and property. The minimum liability limit must be approved by the Court and relate to the value of property at risk.

**4.2. "Claims Made" Coverage.** If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the Court's acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that Services commence under this Agreement.

**4.3. Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.

**4.4. Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

**4.5. Deductibles and Self-Insured Retentions.** Contractor shall declare to the Court all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the Court's approval. Deductibles and self-insured retentions do not limit Contractor's liability.

**4.6. Additional Insured Status.** Contractor shall require Contractor's commercial general liability insurer, Contractor's commercial automobile liability insurer, and, if applicable, Contractor's commercial umbrella liability insurer to name Judicial Branch Entities and Judicial Branch Personnel as additional insureds with respect to liability arising out of Contractor's Services under this Agreement.

**4.7. Certificates of Insurance.** Before Contractor begins performing services, Contractor shall give the Court certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 or more days' prior written notice to the Court. Any replacement certificates of insurance are subject to the approval of the Court, and, without prejudice to the Court, Contractor shall not perform work before the Court approves the certificates.

**4.8. Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.

**4.9. Required Policy Provisions.** Each policy must provide, as follows:

(A) *Insurance Primary; Waiver of Subrogation.* The basic coverage provided is primary and non-contributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; and

(B) *Separation of Insureds.* The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.

**4.10. Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:

(A) *Separate*. Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or

(B) *Joint*. Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

**4.11. Consequences of Lapse.** If required insurance lapses during the Term, the Court is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

## 5. Confidential Information; Publicity

A. *Confidential Information.* Contractor agrees to hold in confidence the following confidential information Contractor receives in connection with this Agreement:

1. All written information that is marked confidential;
2. All non-public information in electronic form to which Contractor has access;
3. All verbal information the Court later confirms in writing is confidential;
4. All information pertaining to court cases obtained during the course of services performed under this agreement; and
5. Any information related to the business operations of the Court and Judicial Branch Entities, including information relating their personnel or users.

The Court owns the confidential information, and the Court authorizes Contractor to use it only for purposes of performing this Agreement. For example, Contractor may give confidential information on a “need-to-know” basis to Contractor’s professional services providers, employees and subcontractors who have also executed confidentiality agreements that protect the Court’s confidential information to the same extent as this section. Contractor may also disclose the Court’s confidential information to the extent necessary to comply with law, provided Contractor gives the Court advance notice. No information regarding any court case or proceedings before the court may be discussed with anyone other than court staff.

B. *Publicity.* Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the Court’s Project Manager.

C. *Specific Performance.* Contractor understands a default under this section will result in irreparable damage for which no adequate remedy will be available.

Accordingly, injunctive or other equitable relief is a remedy that the Court will be entitled to seek.

## **6. Indemnity**

Contractor shall indemnify and defend (with counsel satisfactory to the JBE Office of the General Counsel) the Court, Judicial Branch Entities, and Judicial Branch Personnel against all claims, damages, losses, and expenses, including attorney fees and costs, founded upon (i) Contractor's performance of, or failure to perform, the Services or Contractor's other duties under this Agreement, or (ii) any other breach by Contractor of this Agreement. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

## **7. Termination and Cancellation; Effect of Expiration or Termination**

### **7.1 Early Termination and Cancellation Rights**

- A. The Court may terminate this entire Agreement immediately "for cause" if Contractor is in default;
- B. The Court may also cancel delivery immediately of all or any portion of undelivered Contractor's Services, and, proportionately, Contractor's compensation except to reimburse Contractor for its actual costs incurred before expenses arising out of early termination by the Court, and any direct expenses incurred by cancellation of Services in process that are custom made for the Court), if:
  - 1. the Court determines that having Contractor provide the Services has become infeasible due to changes in applicable laws or regulations; or
  - 2. expected or actual funding to compensate Contractor is withdrawn, reduced, or limited.
- C. The Court may terminate this entire Agreement, with or without cause, by giving Contractor 30 days' notice.
- D. This entire Agreement will terminate immediately without further action of the parties upon the death, or temporary or permanent incapacity, of a natural person who is a party to this Agreement or a general partner of a partnership that is a party to this Agreement.

### **7.2 Effect of Expiration and Early Termination; Survival**

- A. Upon the Termination Date:

1. The Court shall be released from compensating Contractor for Services, other than those Contractor satisfactorily performed before the Termination Date.
  2. Without prejudice to the Court, Contractor shall be released from performing Services.
- B. All provisions of this Appendix C will survive the expiration or termination of this Agreement, except for section 1 and promises regarding the maintenance of insurance in section 4 (other than section 4.2, which will also survive).

## **8. Default and Remedies**

### **8.1 Default**

A default exists under this Agreement if:

- A. Contractor fails or is unable to meet or perform any of Contractor's duties under this Agreement, and this failure is not cured within 30 days following notice of default or is not capable of being cured within this cure period;
- B. Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business;
- C. Contractor makes or has made under this Agreement any representation or warranty that is or was incorrect, inaccurate, or misleading;
- D. Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under this Agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make this Agreement admissible when required is not fulfilled or performed.

### **8.2 Notice**

A. *General Notice* Notices under this Agreement must be in writing. Notices may be delivered in person, via a reputable express carrier, or by registered or certified mail (postage pre-paid). Notice is effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the notice was refused, unclaimed, or deemed undeliverable.

Notices must be addressed to a party's project manager, if one is designated in Appendix A; otherwise, notices must be addressed to the individual(s) in the signature block of this Agreement. Either party may change its address for receipt of notice by entering a different recipient and address below or by giving notice at any time to the other party in the manner permitted by this paragraph.

If to the Court:

Name: John G. Sulpizio  
Title: Supervising Administrative Specialist  
Address: 621 Capitol Mall, 10th Floor  
Sacramento, CA 95814  
Phone: 916-651-9311  
E-mail: John.Sulpizio@jud.ca.gov

If to Contractor:

Name:  
Title:  
Address:  
Phone:  
E-mail:

B. *Notice regarding Default.* Contractor shall notify the Court immediately if Contractor defaults, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement.

### 8.3 Remedies

A. *Available Remedies.* The Court may do any of the following:

1. Withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor;
2. Require Contractor to enter into non-binding mediation;
3. Exercise, following notice, the Court's right of early termination; and
4. Seek any other remedy available at law or in equity.

B. *Remedies Cumulative.* All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

## 9. Audits and Records

**9.1 Audit.** Contractor shall allow the Court's designees and the Court to review and audit Contractor's documents and records relating to this Agreement, subject only to a lawyer's duty of confidentiality owed to a represented party. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit.

**9.2 Ownership.** The Court is the exclusive owner of all records and other material collected or produced in connection with Contractor's performance under this Agreement. Upon request at any time, subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the Court or to another party at the Court's direction. Contractor shall maintain all other materials in an accessible location and condition for a period of not less than four years after the later of:

- Contractor's receipt of final payment under this Agreement; and
- The Court's resolution with Contractor of the findings of any final audit.

**9.3 Copies.** Contractor may retain copies of any original documents Contractor provides to the Court.

## **10. Choice of Law and Jurisdiction**

California law, without regard to its choice-of-law provisions, governs this Agreement. Jurisdiction for any legal action arising from this agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.

## **11. Limitation of Liability**

In no event will the Judicial Branch Entities or the Court be liable for any lost profits or revenues, or for any indirect, incidental, special, exemplary, punitive, or consequential damages arising from or related to this Agreement, regardless of the form of action, even if advised of the possibility of such damages. In no event will the Judicial Branch Entities' or the Court's aggregate liability for direct damages arising out of or related to this Agreement for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to the Contractor by the Court under this Agreement.



## **APPENDIX D**

### **DEFINED TERMS**

As used in this Agreement, the following terms have the indicated meanings:

**“Agreement”** means this Standard Agreement.

**“Contractor”** means the person or entity named in the Agreement.

**“Compensation”** means all remuneration owed to Contractor under the terms and conditions of this Agreement.

**“DVBE”** is an acronym for Disabled Veteran Business Enterprise.

**“Expiration Date”** is the last day of the Term, unless the Initial Term is extended by exercise of an option. In that event, the Expiration Date will instead refer to the date specified as the expiration date in the notice of exercise of the option.

**“Initial Term”** is the period commencing on the Effective Date and expiring on the Expiration Date set forth in this Agreement.

**“Court”** is the Court of Appeal, Third Appellate District.

**“Judicial Branch Entity” and “JBE”** means any California superior or appellate court, the Judicial Council of California, the Administrative Office of Courts, and the Habeas Corpus Resource Center; these entities comprise the “Judicial Branch.”

**“Judicial Branch Personnel”** means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.

**“Loss,”** as used in the indemnity provisions of this Agreement includes any actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorneys’ fees.

**“Mediation Center”** is a facility located at 2890 Gateway Oaks Drive, Suite 210, Sacramento, California 95833

**“Option Period”** means the period, if any, through which this Agreement may be extended by a party.

**“Services”** are Contractor’s duties as defined in Appendix A.

RFP Title: Maintenance Contract for Copiers and Fax Machines

RFP Number: 3 DCA RFP 11/12-03

**“Tenant”** is the Court of Appeal, Third Appellate District, as an occupant of the tenth, eleventh, and twelfth floors of the U.S. Bank Tower located at 621 Capitol Mall, Sacramento, California 95814.

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

**“Termination Date”** has the same meaning as “Expiration Date” unless this Agreement is validly terminated before the applicable Expiration Date, in which case Termination Date means the effective date this Agreement is validly terminated.

**“U.S. Bank Tower”** is an office building located at 621 Capitol Mall, Sacramento, California 95814.