The State Bar of California

REQUEST FOR PROPOSAL

This document is a Request for Proposal ("RFP") for Financial Support and Analysis.

The State Bar is seeking proposals to review the agency's financial controls, fund accounting principles (financial reporting and budgeting), and existing cost allocation methodology. The term desired is for a period of one year, with an option to renew for an additional one-year term.

Please submit 4 copies of your proposal no later than 4 p.m. on May 27, 2015 to:

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

Attn: Francisco Gomez
Executive Director
415-538-2170
francisco.gomez@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 purpose of the State Bar of California is to ensure that the people of California are served by the legal profession in a manner consistent with the highest standards of professional competence, care, and ethical conduct; to carry out such additional programs as may be required by law or by rule of court; and to contribute generally to the science of jurisprudence and the administration of justice. The State Bar serves as an administrative adjunct to the California Supreme Court in all matters pertaining to the admission, discipline, and regulation of California lawyers. The California Constitution, the State Bar Act and California Rules of Court vest in the State Bar the duty to regulate the legal profession, formulate and elevate educational and professional standards, raise the quality of legal services, advance the science of jurisprudence, and aid in the improvement of the administration of justice.

The State Bar is a unified, or integrated bar, and membership is mandatory for all attorneys who are licensed to practice law in the state. In addition to its mandated licensing, disciplinary and certification functions, the State Bar offers a number of other programs designed to assist, educate and protect its members and the public. The State Bar's programs are financed by fees paid by attorneys and applicants to practice law. The State Bar has over 253,000 members, making it the largest unified state bar in the country with offices located in Los Angeles and San Francisco. For

more than 80 years, The State Bar of California has shaped the development of the law, regulated the professional conduct of the state's lawyers and provided greater access to the justice system for all citizens. More information about the organization can be found at http://www.calbar.ca.gov/AboutUs.aspx.

II. STATEMENT OF WORK

The State Bar is seeking one or more CPA accounting and finance firms experienced in public sector financial accounting and budgeting to provide the following assistance. Interested parties can bid on one or more of the identified projects:

A. General Financial Audit

Conduct an audit of the State Bar's existing financial controls in cash receipts, expense reimbursement, payroll, accounts payable and check/cash disbursements, procurement and purchasing card functions. Assess controls, identify any weak points, and recommended control enhancements.

B. Accounting Principal Review

Review the State Bar's use of fund accounting principles with respect to financial reporting and budgeting, make recommendations with respect to the State Bar's effective use of fund accounting in public sector and nonprofit environments.

C. Cost Allocation Review

Review and assess the State Bar's existing cost allocation methodology for spreading "overhead" administrative costs among the programs benefitting from the administrative costs. The existing methodology was developed in 1999 and updated in 2002. The process needs to be reviewed and assessed to determine if it is still an effective tool to assess costs across the organization or whether adjustments are appropriate in the methodology.

D. Consulting Services As Needed

Provide general accounting and finance consulting assistance to the State Bar as requested.

III. GENERAL INFORMATION

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

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

A. Submission Requirements

To be considered responsive, a proposal must contain the following, prefaced by a table of contents, 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. Bidders must submit Attachment B: Vendor History Questionnaire electronically in native .xls format per instructions below.

4. A description of at least three similar projects completed by the bidder within the past three years. Include personal references with contact information for each.

5. Qualifications, background and experience of the project director and other staff proposed to work on the project.

6. A general description of the techniques, approaches and methods to be used in completing the project.

7. A detailed cost proposal, including any travel costs and other expenses. If necessary, contractors' travel expenses will be reimbursed in accordance with the public Travel and Business-Related Expense Policy. It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. 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.

8. 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.

B. Submission Requirements Format Summary

Proposals should be prepared simply and economically, providing a straightforward and concise description of the Vendor's ability to meet the requirements of this RFP. Emphasis should be on completeness and clarity of content.

1. Deliver 4 physical hardcopies to the attention of Francisco Gomez, no later than 4 p.m. May 27, 2015.

2. Each set should include all attachments requested, including copies of the electronic attachments itemized below.

3. Deliver electronically via email directly to anndrew.conover@calbar.ca.gov in native unlocked format as noted below:

   a. Attachment A: Itemized Cost Proposal **n/a** ***[there is no cost form for this RFP]***

   b. Attachment B: Vendor History Questionnaire (.xls)

Proposals that fail to address each of the submission requirements above may be deemed non-responsive and will not be further considered. The State Bar, solely upon its own discretion, will judge vendors on their overall compliance, and may judge a vendor to be materially compliant, even if that vendor is non-compliant to a particular requirement of the RFP.

If specific submission components are particularly large and self-contained they may be included in a separate appendix rather than in the body of the proposal. Submittals should not direct the evaluation team to general brochures, marketing materials or websites to obtain information related to the specific submission requirements; submittals that utilize references to external materials as an answer will be considered non-responsive.

Submittals should provide straightforward and concise information that fulfill the requirements of the RFP. Emphasis should be placed on brevity, conformity to the State Bar's instructions, and completeness and clarity of content. Proposals should not include generic promotional materials and graphics that increase page count and PDF file size without addressing substantive content. Hard copy brochures and marketing materials may be included as a supplement if desired.

C. Rejection of Proposals

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

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

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

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

D. Evaluation Process and Highest Scored Bidder

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

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

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

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

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

1. The following criteria will be used in reviewing and comparing the proposals and in determining the HSB. The weight to be assigned to each criterion appears following each item.

    a. Responsiveness of the proposal to the submission requirements set forth in the RFP (10%).

    b. Agreement with the State Bar's contracting requirements (10%).

    c. The technical ability, capacity, and flexibility of the bidder to perform the contract in a timely manner and on budget, as verified by, e.g., the quality of any demonstration, client references, demonstrated success in projects with similar requirements and any other contracts with the State Bar (40%).

    d. The total cost of the proposal. If the proposal contains itemized rates, per piece pricing, or commission-based pricing, the State Bar reserves the right to calculate total contracted cost by calculating rates using either previous known usage activity or future projected volume. Costs will be evaluated only if a proposal is determined to be otherwise qualified.

Costs should be itemized by type to allow the State Bar to implement the proposal over the term of the contract (40%).

2. If a large number of proposals are received, the State Bar reserves the right to review the proposals using a tiered evaluation system. All qualified proposals will be evaluated based on the Submission Requirements and Cost, with the top candidates advancing as finalists and receiving a full evaluation as outlined above.

E. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSB will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice sent to bidders on or about June 3, 2015 of the Bar's intention to award the contract to the HSB. It is anticipated that final selection of the HSB will be made by May 10, 2015. The evaluation team will select a winning proposal subject to approval by the Board of Trustees. 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 and responsive 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, Procurement Director 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.

F. Errors in the RFP

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

If prior to the date fixed for submissions, a bidder knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the bidder shall bid at its

own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

G. Questions Regarding the RFP

Questions regarding the RFP may be addressed in writing to Francisco Gomez at francisco.gomez@calbar.ca.gov. All questions must be submitted no later than 5 days prior to the date for submission of proposals. Questions and answers regarding the RFP may be shared with all bidders known to be interested in submitting a proposal.

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

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

H. Addenda

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

I. Withdrawal and Resubmission/Modification of Proposals

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

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

J. Protest Procedure

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

1. The bidder has submitted a proposal that it believes is or should have been the HSB, under the criteria set forth above;

2. The bidder believes that its proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and

3. The bidder believes that the State Bar has incorrectly selected another bidder.

A bidder qualified to protest should contact Andrew Conover, Procurement Director, (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: Chief Financial Officer

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

K. News Releases

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

L. Disposition of Materials

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

IV. CONTRACTING REQUIREMENTS

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

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

A. Time of Essence

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

B. Warranties and Representations

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

2. License. In those instances where required, the Vendor represents and warrants that the Vendor holds a license, permit or special license to perform the services pursuant to this agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and shall keep and maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while the Vendor is performing the services pursuant to the agreement.

3. Conflict of Interest. Vendor understands and acknowledges that the State Bar is a public corporation and, consequently, certain State Bar employees and volunteers are subject to government-mandated conflict-of-interest provisions. These provisions concern, among other things, accepting gifts or gratuities from potential contracting entities and contracting with entities owned or controlled by the State Bar, certain persons associated with the State Bar, or its employees. With this understanding, Vendor will not take any action which creates a situation which would or which could appear to result in violation of the conflict-of-interest code provisions by any State Bar employee or volunteer. Further, Vendor certifies that its employees and the officers of its governing body will avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement will have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.

C. Equipment, Tools, Supplies

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

personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

D. Indemnity Obligations of Vendor

Vendor will indemnify and defend the State Bar (including its Board of Trustees, officers, director, agents, employees and volunteers, as the same may be constituted from time to time) from all claims, demands, damages, debt, liability, obligations, costs, expenses, liens, actions or cause of actions (including but not limited to actual damages, fines and attorneys' fees, whether or not litigation is actually commenced) arising out of: (i) the material breach by Vendor of any warranty, representation, term or condition made or agreed to by Vendor; (ii) all products and services prepared by or for Vendor hereunder and provided to State Bar; (iii) any claim or action for personal injury, death or otherwise involving alleged defects in Vendor's business or any of its products or services provided to State Bar; (iv) any breach by Vendor of any statutory or regulatory obligation; (v) the actual or alleged infringement by Vendor of any Intellectual Property Rights of any person or entity; and/or (vi) any act or omission of Vendor, its employees, agents or subcontractors.

E. Insurance Obligations of Vendor

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

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars ($2,000,000.00); at least One Million Dollars ($1,000,000.00) personal and advertising injury limit; at least One Million Dollars ($1,000,000.00) premises and operations limit; at least One Million Dollars ($1,000,000.00) each occurrence limit;

2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars ($1,000,000.00) per occurrence;

3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars ($1,000,000.00) combined single limit; and

4. Professional liability insurance with a general aggregate limit of Three Million Dollars ($3,000,000.00) and an occurrence limit of Three Million Dollars ($3,000,000.00).

The Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Risk Management, true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days of the execution of this agreement. Each such policy will name the State Bar as an additional insured and will state that the Vendor's policy shall be primary and that any insurance carried by the State Bar shall be noncontributing with respect thereto. Each such policy will provide for thirty

(30) days prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If the Vendor fails to secure and maintain insurance policies complying with the provisions of this agreement, the State Bar may purchase the appropriate insurance policies and the Vendor will pay upon demand the cost of it to the State Bar or the State Bar may terminate this agreement. Additionally, if the Vendor assigns any portion of the duties under this agreement, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

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

F. State Bar as Public Corporation

Vendor understands and agrees that the State Bar is a public corporation within the judicial branch of the State of California, and may be subject to special regulatory oversight by various branches of State government. Vendor further understands and agrees that any and all financial reports, analyses and data prepared in conjunction with this agreement may be provided at any time to any one or more of the following, including, but not necessarily limited to: the State Bar's Board of Trustees, the California Supreme Court, the California State Auditor and legislative subcommittees. Vendor expressly consents to the provision of such information and agrees that it will not in any way impede or prevent the State Bar from fulfilling its reporting obligations. Vendor further waives any and all claims against, and forever releases the State Bar and its Board of Trustees from any and all liability arising out of or in connection with the State Bar's disclosure of any State Bar audit information as part of its audit reporting obligations.

G. Termination

1. **At Will.** The agreement may be terminated by the State Bar, in its sole and complete discretion, upon thirty (30) days written notice to Vendor. In the event of termination pursuant to this section, the vendor's sole compensation will be for that portion of services performed or goods delivered up to the date of termination, together with reimbursable expenses, if any then due. Vendor will not be paid for any services, goods or reimbursable expenses associated with any work or service not specifically authorized by the State Bar.

2. **Default by Vendor.** This agreement may be terminated by the State Bar upon fifteen (15) days written notice to the Vendor in the event the Vendor is in default under any of its provisions. In the event this agreement is terminated due to the default by the Vendor, the Vendor will not be entitled to receive any compensation for services performed or for any reimbursable expenses incurred, and the State Bar will have the right to have the services completed by other parties and the Vendor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable

expenses, if any, provided for in this agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential damages caused directly or indirectly by the Vendor's default.

3. **Automatic Termination.** This agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) sale of the business of either party; (c) failure to comply with federal, state or local laws, regulations or requirements, or (d) expiration of the agreement.

4. **Authorization of Funds.** If the term of this agreement extends into fiscal year(s) subsequent to that in which it is signed, it is understood that the continuation of this contract is subject to the authorization of sufficient funding for such purpose by the California State Legislature and the Governor of the State of California. If sufficient funds are not so authorized, the parties mutually agree that the contract may be terminated or amended as appropriate in response to the reduction in funding. If the agreement is terminated, Vendor agrees to take back any affected equipment, products, software, or hardware furnished under this contract, and relieve the State Bar of any further obligation, except for the State Bar's obligation to pay for services already performed pursuant to this agreement.

H. Confidentiality and Publicity

Confidentiality Obligations. "**Confidential Information**" means all information identified in written or oral format by the State Bar as confidential, a trade secret or proprietary information, including without limitation, membership records, data, non-public information pertaining to financial, personnel, or the activities, business or operations of the State Bar, and the terms, conditions and existence of this Vender Services Agreement. Vendor shall not disclose Confidential Information to any third party other than persons in the direct employ of Vendor who have a need to have access to and knowledge of the Confidential Information solely for the purpose of carrying out Vendor's duties under the Agreement. Vendor shall take appropriate measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure. Vendor shall have no obligation with respect to information which (i) Vendor can demonstrate was rightfully in possession of or known to Vendor without any obligation of confidentiality prior to receiving it from the State Bar; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by Vendor from a source other than the State Bar without any obligation of confidentiality; (iv) is disclosed by Vendor under a valid order created by a court or government agency, provided that Vendor provides prior written notice to the State Bar of such obligation and the opportunity to oppose such disclosure. Upon written demand of the State Bar, Vendor shall cease using the Confidential Information and return the Confidential Information and all copies, notes or extracts thereof to the State Bar within ten (10) days of receipt of notice. The parties agree that this Section applies retroactively to all disclosures made by the State Bar prior to the execution of this Agreement, and that the terms and conditions herein supersede any prior non-disclosure and confidentiality agreement previously entered into by the parties.

Injunctive Relief. Vendor hereby acknowledges and agrees that in the event of any breach of this Agreement by Vendor, including, without limitation, the actual or threatened disclosure or unauthorized use of Confidential Information in violation of this Agreement without the prior express written consent of the State Bar, the State Bar may suffer an irreparable injury, such that a remedy at law may not afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, Vendor hereby agrees that the State Bar shall be entitled, upon proper showing of probably risk of such injury, to seek specific performance of Vendor's obligations under this Agreement and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief will be in addition to and not in lieu of any appropriate relief in the way of monetary damages as may be granted by a court of competent jurisdiction.

No Publicity. Vendor shall not issue any public announcements concerning the State Bar, including, without limitation, referencing the State Bar on Vendor's website or other publicity or promotional materials without the State Bar's prior written consent.

I. Rights in Work Product

Intellectual Property Rights Defined. For purposes of this Agreement, the term "Intellectual Property Rights" means know-how, inventions, patents, patent rights, and registrations and applications, renewals, continuations and extensions thereof, works of authorship and art, copyrightable materials and copyrights (including, but not limited to, titles, computer code, designs, themes, concepts, artwork, graphics and visual elements, and methods of operation, and any related documentation), copyright registrations and applications, renewals and extensions therefore, mask works, industrial rights, trademarks, service marks, trade names, logos, trademark registrations and applications, renewals and extensions therefore, derivative works, trade secrets, rights in trade dress and packaging, publicity, personality and privacy rights, rights of attribution, paternity, integrity and other similarly afforded "moral" rights, and all other forms of intellectual property and proprietary rights recognized by the U.S. laws, and other applicable foreign and international laws, treaties and conventions.

Work Product. **Vendor** recognizes and agrees that all right, title and interest, including all Intellectual Property Rights, which may be prepared, procured or produced in whole or in part in, or resulting from, the Services rendered by **Vendor** pursuant to this **Agreement**, including, without limitation, any and all Deliverables, (collectively referred to as "Work Product") shall constitute a "work **made for hire" as defined in 17 U.S.C. Section** 101, that **Vendor** will create the Work Product within the scope of this **Agreememt**, and that all right, title and interest in and to the Work Product shall immediately vest in the State Bar**.** To ensure that the Work Product shall become the property of the State Bar, irrespective of its status as a "work made for hire", in consideration of the mutual **promises contained in this** A**greement**, **Vendor** hereby agrees to transfer, in perpetuity, to the State Bar all of the right, title and interest in the Work Product, in the United States of America and throughout the world, and agrees to assign any and all renewals and extensions of each such copyright that may be secured under the laws now or hereafter pertaining; and **Vendor** shall execute at the State Bar's expense, all documents reasonably required to perfect the foregoing rights in the State Bar. In the event **Vendo**r fails to execute any documents, **Vendo**r appoints the State Bar as its attorney-in-fact to execute such documents on **Vendo**r's behalf. **Vend**or hereby waives and/or transfers any

and all moral rights, including without limitation any right to identification of authorship or limitation on subsequent modification that **Vendor** (or its employees, agents or consultants) has or may have in the Work Product or any part thereof.

No Transfer of Title in and to Vendor's Pre-Existing IP. Notwithstanding the foregoing, the State Bar acknowledges that independent of this Agreement, Vendor has created, acquired or otherwise has rights in and may, in connection with the performance of this Agreement, employ certain intellectual property, including, without limitation, various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques (collectively, "Pre-Existing IP"). The State Bar and Vendor intend that title in and to such Pre-Existing IP shall remain vested in Vendor, provided however, that to the extent that Deliverable incorporates any Pre-Existing IP, Vendor hereby grants to the State Bar a world-wide, non-exclusive, fully paid-up, royalty-free, irrevocable right and license to use such Pre-Existing IP as incorporated into such Deliverable to enable the State Bar to have full use of such Deliverable as contemplated by this Agreement, including, without limitation, the right to run, execute, copy, modify, create derivative works, display, distribute and sublicense such rights.

J. Compliance with Laws

Vendor will comply with all applicable laws, ordinances and regulations adopted or established by federal, state or local governmental bodies or agencies, including but not limited to the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and any applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.), ADA/ADAAA, and section 508 of the Rehabilitation Act. Vendor will include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

K. Staffing

No Assignment, Subcontracting, Delegation or Transfer.

(a) Vendor shall not assign, subcontract, delegate or otherwise transfer any of the rights, duties or obligations of this Agreement to any third party without the prior written consent of the State Bar and compliance with the requirements as set forth in Section (b) below.

(b) Conditions Precedent for Vendor to Subcontract the Services. Vendor may only retain third parties ("**Subcontractors**") to furnish any portion of the Services and permit such Subcontractors to have access to Confidential Information (as defined in Section H) if Vendor notifies the State Bar in advance in writing and the State Bar agrees in writing to allow the use of such Subcontractors. Vendor shall only use such approved Subcontractors to the extent and insofar as reasonably required in connection with the performance of Vendor's obligations under this Agreement; provided that all such Subcontractors shall execute a written agreement: (i) sufficient to secure compliance by such Subcontractors with the obligations of confidentiality concerning Confidential Information as set forth in Section H of this Agreement; (ii) in accordance with Section I (Rights in Work Product), acknowledging such Subcontractor's work-for-hire obligation and Subcontractor's obligation to transfer and/or assign any rights, title, and interest to all materials and Work Product in connection with performance hereunder in the event the

Subcontractor's work is not considered a work for hire, and (iii) effecting assignments of all Intellectual Property Rights concerning the Work Product, including the Deliverables to the State Bar as specified in Section I. The State Bar, upon request, may review such agreements at any time before or after execution by such Subcontractors to ensure compliance with this Agreement.

Assignment of Personnel. Vendor will have control of the employees or independent contractors (individually and collectively, the "personnel") it assigns to the work of the Project; provided, however, that if the State Bar becomes dissatisfied with the performance of any of Vendor's personnel providing Services, the State Bar may notify Vendor of the details of the unsatisfactory performance and the parties shall cooperate to remedy the problem as soon as reasonably possible. If the State Bar makes such a request, Vendor shall use its best efforts to reassign any personnel who are the subject of the State Bar's dissatisfaction and instead attempt to provide Services through replacement personnel. Services performed under the terms of this Agreement will be performed at the State Bar's offices, Vendor's offices, or at other locations as specified in the Statement Of Work(s).

Vendor's Project Liaison. In the applicable Statement Of Work, Vendor shall designate an employee of sufficient management rank to act as its representative in dealing with the State Bar ("**Vendor's Project Liaison**"). Vendor's Project Liaison shall represent Vendor and have responsibility for ensuring that Vendor performs its obligations under this Vender Services Agreement and the Statement Of Work and for communicating with the State Bar regarding Project status and issues. Vendor shall use reasonable efforts to minimize changing the person who is serving as the Vendor's Project Liaison during the Term.

L. General Provisions

1. Independent Contractors. The relationship of the parties established under this Agreement is that of independent contractors. This Agreement shall not be construed to establish a partnership, joint venture, agency, employer-employee, or other similar relationship between the parties. Neither the State Bar nor Vendor is liable for any of the obligations or liabilities the other incurs.

2. Vendor Acknowledgements. Vendor further acknowledges and agrees:

   (a) The State Bar will not withhold any amount for any tax or other withholdings from any sums due Vendor under this Agreement;
   (b) Unless otherwise provided in this Agreement, Vendor will furnish all labor, tools, equipment and materials necessary for the performance of the Services;
   (c) Vendor has no rights under workers' compensation laws or to the coverage under the State Bar's workers' compensation plan as a result of any Services performed. Notwithstanding the extent to which any workers' compensation rights are ever determined to exist, Vendor waives, to whatever extent possible, any and all rights Vendor has or may have under workers' compensation laws and to coverage under the State Bar's workers' compensation plan;

(d) Vendor assumes full and sole responsibility for the payment of all compensation and expenses for its employees, including workers' compensation coverage as required, all federal, state and local income taxes, unemployment and disability insurance, Social Security and other applicable withholdings.

3. Entire Agreement. This Agreement, including its Exhibits, supersedes any and all other agreements, either oral or written, which may exist between the parties, and contains all of the covenants and agreements between the parties as of the Effective Date. By signing below, each party acknowledges that no agreements, statements or promises outside of those expressly set forth in this Agreement will be binding on the parties.

4. Jurisdiction. This Agreement is deemed to have been made and entered into by the parties at San Francisco, California, and will be construed according to the laws of the State of California. Any litigation arising out of or in connection with the Agreement will be filed in the appropriate court in San Francisco, California.

5. Waiver. No waiver of a breach, failure of any condition, or right or remedy contained in or granted by the provisions of the Agreement will be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy will be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing so specifies.

6. Modifications. No amendment, alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by both of the parties.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which, together will constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email or any other reliable means will be effective for all purposes as delivery of a manually executed original counterpart. Either party may maintain a copy of this Agreement in electronic form. The parties further agree that a copy produced from the delivered counterpart or electronic form by any reliable means (for example, photocopy, facsimile or printed image) will in all respects be considered an original.

8. Titles. The titles used are not a part of this Agreement and are included solely for convenience and have no bearing upon and do not in any way limit the application of the terms and conditions of this Agreement.

9. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

10. Disputes. Vendor will continue with his/her/its responsibilities under the Agreement during any dispute.

11. Authority to Contract. Each party represents and warrants that it has full power to enter into and perform its respective obligations under this Agreement and that the person signing this Agreement has been properly authorized and empowered to enter into this

Agreement. Each party acknowledges that it has read, understands, and will be bound by this Agreement.

12. Force Majeure. Neither party will be deemed in default of this agreement or any provision hereunder to the extent that any delay or failure in the performance of the obligations of such party (other than the payment of money) results from any significant and material causes beyond its reasonable control and without fault or negligence by such party. Examples of such causes include, but are not limited to, (a) acts of God or public enemy, (b) acts of the government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) embargoes, (i) earthquakes, and (j) unusually severe weather.

13. Audit. Vendor agrees that the State Bar or its designee shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Vendor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Vendor agrees to allow the State Bar or its designee access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Vendor agrees to include a similar right of the State Bar or its designee to audit records and interview staff in any subcontract related to performance of this Agreement.