

## REQUEST FOR PROPOSAL



### THE STATE BAR OF CALIFORNIA

This document is a Request for Proposal (“RFP”) for services assisting the State Bar of California (“State Bar”) in maintaining and further developing its Lawyer Assistance Program pursuant to California Business and Professions Code (“B&P Code”) section 6230 *et seq.*

Please submit five (5) copies of your proposal in a sealed envelope no later than 5 p.m. on November 23, 2005. All responses to the Request for Proposal shall be submitted to:

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

Attn: Richard Carlton

Contact Information:  
Phone: 415-538-2355  
E-mail: [Richard.Carlton@calbar.ca.gov](mailto:Richard.Carlton@calbar.ca.gov)

#### I. INTRODUCTION

The State Bar of California (“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. In accordance with 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 receives favorable governmental pricing and contract terms.

The State Bar is currently under contract with The Other Bar, Inc. for services in connection with helping California attorneys and judges with substance-related disorders. That contract expires on December 31, 2005.

In 2001 the California Legislature passed the Attorney Diversion and Assistance Act (a copy of which is attached hereto for bidder's reference), B&P Code §6230 *et seq.*, mandating that the State Bar “seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so

afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.” The State Bar has established the Lawyer Assistance Program (“LAP”) to fulfill that mandate.

Business and Professions Code, §6236 further instructed the State Bar to “(work) in cooperation with organizations that provide services and support to attorneys with issues related to substance abuse.” Thus, in order to comply with the Attorney Diversion and Assistance Act and further the mission of protecting the public and the legal profession, the State Bar desires to provide for the continuation of the following services: a) a state-wide network of abstinence-based peer support group meetings for legal professionals; and b) appropriate and immediate responses to inquiries for guidance and support via a toll-free hotline for legal professionals with substance-related disorders. It is essential that these services be provided in close coordination with the existing components of the LAP.

## **II. GENERAL INFORMATION**

### **A. Submission Requirements**

The submission requirements for this RFP are set forth below. A proposal shall constitute an irrevocable offer for 40 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.

To be responsive, a proposal must contain all of the following:

1. A description of the history and organization of the bidder’s firm, including a detailed description, with geographic distribution, of bidder’s experience delivering services the same as or similar to those described in the Statement of Work below.
2. Project Plan and schedule of the bidder’s resources currently available to provide the services described in the Statement of Work below, with special attention to the peer consultant components.
3. A detailed description of existing or proposed statewide network of recovery meetings.
4. A statement of the qualifications, background and experience of the project director, key staff and peer consultants proposed to work on the project.
5. If applicable, at least four references of organizations that have used bidder’s services within the last three years.

6. 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.
7. The most recent annual report, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data.
8. A cost proposal, including a total “not to exceed” cost and a detailed budget in the form attached hereto including administrative costs, individual staff wages, travel, telephone and other costs. 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 “not to exceed” offers and revised line items or entire budgets from such bidders and to make an award and/or conduct negotiations on the basis of such revised offers.

## **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. A proposal may be rejected if it fails to meet the material requirements of the RFP, or if it is incomplete or contains irregularities. 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 Scored Bidder**

An evaluation team will review in detail all proposals that are received to determine the Highest Scored 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 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 original specifications set forth in the RFP, including agreement with the State Bar's contracting requirements (15 %).
2. Agreement with the State Bar's contracting requirements (5%).
3. The 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 (30 %).
4. The financial viability of the bidder as evidenced by standard financial reports and by related factors such as its business plan, market position, and strategic partnerships (20 %).
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 (30 %).

#### **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 December 8, 2005 of the Bar's intention to award the contract to the HSP. It is anticipated that final selection of the HSB will be made by December 15, 2005. 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 others 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 **Richard Carlton** (see contact information above).

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 will bid at its own risk, and if, awarded the contract, will 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 Richard Carlton (see contact information above). All questions must be submitted not later than ten (10) days prior to the deadline 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 such requests no later than 5 days before the deadline for submitting proposals.

#### **G. Addenda**

The State Bar may modify the RFP prior to the date fixed for submission by mailing, e-mailing 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 ten (10) 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.
4. A bidder qualified to protest should contact Robert Hawley, Deputy Executive Director of the State Bar, to attempt an informal resolution (415-538-2277 or [Robert.Hawley@calbar.ca.gov](mailto:Robert.Hawley@calbar.ca.gov)). If he 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 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.** The successful bidder will be expected to provide the following services:
1. Provide a statewide network of peer consultants with extensive personal recovery experience and familiarity with the legal profession and legal community (California lawyers preferred). Furthermore, via this network of available peer consultants, providing a network structure including a statewide presence, a telephonic "hotline," immediate response capabilities, a statewide network of local abstinence-based peer support group meetings, and referrals to treatment when appropriate. Based upon past experience, it is anticipated that these services will require approximately 300 hours per month of service by network peer consultants. Specific forms of assistance to "hotline" callers shall include:
    - Informing callers of both the LAP services and the Contractor's abstinence-

based peer support group meetings;

- Linking callers with peers actively participating in local recovery meetings;
  - When necessary, providing callers with assistance in getting to abstinence-based peer support group meetings and/or to treatment; and,
  - Advising family members and friends of impaired attorneys of the assistance resources available and the strategies available to address the problem.
5. Participate in training provided by the LAP.
  6. Submit to the State Bar, for prior written approval of the content and the manner of distribution, all prepared materials referring to the aforementioned services, including, but not limited to any materials to be published in the general news media or legal media.
  7. Report, in writing and on a monthly basis, to the Director of the LAP or the Director's designee, in a format acceptable to the Director of the LAP, on the services provided pursuant to this contract. All reports shall be prepared so as to protect the privacy of and ensure the anonymity of all callers, consistent with B&P Code 6234. Such reports shall contain, at a minimum, the following numbers for the prior month:
    - Telephone calls received from members requesting information about available forms of assistance;
    - Telephone calls received from non-members (specifying relationship to member) requesting information about available forms of assistance to members;
    - Telephone calls received from members requesting personal assistance;
    - Telephone calls received from non-members (specifying relationship to member) requesting assistance for a member;
    - Return phone calls placed by peer consultants to members and non-members;
    - New program participants attending abstinence-based peer support group meetings;
    - Contacts made by Contractor's peer consultants with impaired members, and results from each contact;
    - Members who have entered treatment as a result of the efforts of Contractor's peer consultants;
    - Members being monitored during the aftercare phase of treatment by Contractor's peer consultants;
    - New abstinence-based peer support group meetings begun;
    - Number of members attending Contractor's abstinence-based peer support

group meetings during the period covered.

8. Maintain appropriate administrative and budgetary records regarding project performance, provide reports to the State Bar as required, and submit to reasonable State Bar audits.
9. Ensure continuing compliance with all applicable federal, state or local laws, regulations, and rulings, pertaining to the activities undertaken under State Bar sponsorship.

**B. Compensation**

Payment for services shall be conditioned on State Bar receipt and reasonable approval of the report described above, and shall be made within 30 days of receipt of that report and invoice.

**C. Term**

The term of this contract will commence on January 1, 2006 and continue until December 31, 2006.

**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 provision specifically reserved for future negotiation in the proposal.

**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**

Vendor will warrant and represent 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 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.

**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**

To the fullest extent permitted by law, the Vendor will agree to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns (the "Indemnities") 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 Vendor, the Vendor's employees, subcontractors, agents, representatives or assigns (collectively, the "Vendor's Agents") in the performance or non-performance of the professional services required to be performed by the Vendor under the Agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. The Vendor will agree that its obligations under this indemnity will survive the expiration and termination of this agreement.

In the event both the State Bar and Vendor are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Vendor will agree to provide, at its own cost, independent counsel for the State Bar. The State Bar may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation wherein the Vendor defends the State Bar.

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

The Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Andrew Conover, Procurement Office, 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. In addition to the insurance required to be obtained and maintained by the Vendor, if the Vendor assigns any portion of the duties under this agreement in accordance with the terms, hereof, 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. Termination**

1. **At Will.** The agreement may be terminated by either party, within its sole discretion, without cause and for any reason, upon fifteen (15) days written notice to the other party.

2. **Default by Vendor.** The agreement may be terminated by the State Bar upon thirty (30) days written notice to the Vendor in the event the Vendor is in default under any of its provisions. In the event the 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. **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, Vendor agrees to take back any affected equipment, products, software, or hardware furnished under this agreement, terminate any services supplied to the State Bar, and relieve the State Bar of any further obligation therefore.

#### **G. Ownership of Documents**

All work product and instruments of the specifications ("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 the State Bar whether or not the work is completed.

In the event of termination of this agreement, or abandonment or suspension of work performed hereunder, 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 the State Bar as of such date. The term "work product" shall include, without limitation, any and all versions of any and all drawings, plans, graphs, photographs, slides, studies, schedules, budgets, estimates, layouts, and legislative bills other work product and any services which have been or will be prepared or rendered by the Vendor, or under the Vendor's direction, pursuant to this agreement. The Vendor will covenant, warrant and represent to the State Bar that the Vendor has the right to assign the copyright and the work product. The Vendor will refrain from disclosing any and all versions of plans to any third party without first obtaining the written consent of the State Bar. The Vendor will not use or permit a third party to use any of the work product in connection with this project or any other project without the written consent of the State Bar.

The Vendor will agree to deliver to the State Bar within five (5) days of a written request, all or any portion of the work product set forth in the State Bar's request. The Vendor will be permitted to retain copies for information and reference. The Vendor will provide the State Bar with updated copies of all work product on a monthly basis either on a computer disk or other reproducible format as requested by the State Bar.

#### **H. Confidentiality and Publicity**

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

#### **I. Compliance with Laws**

The Vendor agrees to comply with all applicable federal, state, and local laws and regulations, including but not limited to the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 *et seq.*) and any applicable regulations promulgated there under (Cal. Code of Regs., tit. 2, § 72850.0 *et seq.*). Vendor agrees to include the non-discrimination and compliance provisions of this clause in any and all subcontracts to perform work under the agreement.

#### **J. Assignment/Subcontracting**

1. **Assignment.** The Vendor will not assign or transfer its interest, in whole or in part, under this agreement, without the written consent of the State Bar, which consent may be granted or withheld in the sole and absolute discretion of the State Bar. The parties acknowledge that the State Bar's obligations under this agreement primarily concern the financial ability to carry through the terms of payment. Therefore, the State Bar may assign or transfer part or all of its interest in this agreement, provided that such assignment shall not become effective, and the State Bar will not be released from its obligations under this agreement, until such time as the State Bar or the State Bar's assignee makes payment to the Vendor of all fees and payments then due and payable to the Vendor.
2. **Subcontracting.** The Vendor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the delivery of equipment and services, subject to the approval of the State Bar.

The Vendor will clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship

between the Vendor and its subcontractor to be maintained during the term of this agreement. Any such proposed subcontract shall be subject to the written approval of the State Bar prior to award of such subcontract by the Vendor. No subcontract will be approved unless the Vendor provides a written guarantee that the Vendor's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above.

## **K. General Provisions**

1. **Force Majeure.** Neither party will be deemed in default of this agreement or any provision hereunder to the extent that any delay or failure in the performance of the obligations of such party (other than the payment of money) results from any significant and material causes beyond its reasonable control and without fault or negligence by such party. Examples of such causes include, but are not limited to, (1) acts of God or public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) embargoes, (9) earthquakes, and (10) unusually severe weather.
2. **Governing Law.** This agreement will be governed by the laws of the State of California without giving effect to its principles of conflict of laws.
3. **Attorneys' Fees.** In the event either party institutes any action or proceeding against the other party relating to this agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit shall be entitled to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this agreement into any judgment.
4. **Arbitration** Any question, claim or dispute arising out of or in connection with this agreement in excess of Five Thousand Dollars (\$5,000.00) shall be referred to binding arbitration, except with respect to disputes regarding breaches of confidentiality. Such arbitration shall take place before a single arbitrator in the City and County of San Francisco, and shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. The arbitrator will be bound to apply legal principles in accordance with California law. By agreeing to this arbitration clause, neither party waives applicable defenses or immunities available to it under California law. Any arbitration demand made under this clause must be made no later than one year from the expiration or termination of this agreement. Each party will be solely responsible for payment of its own pro-rata share of any expenses and fees incurred during the course of the arbitration. Disputes of Five Thousand Dollars (\$5,000) or less shall be handled in Small Claims Court in the

City and County of San Francisco.

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