

SUPREME COURT OF CALIFORNIA
STANDARD AGREEMENT COVERSHEET (rev [March 2019])
For Legal Services (non-litigation)

AGREEMENT NUMBER NM-201908
FEDERAL EMPLOYER ID NUMBER [REDACTED]

- In this agreement (the "Agreement"), the term "Contractor" refers to **Nielsen Merksamer Parrinello Gross & Leoni LLP**, and the term "Supreme Court" refers to the **Supreme Court of California**.
- This Agreement becomes effective as of **08/01/2019** (the "Effective Date") and expires on **12/31/2019**
- The title of this Agreement is: **Investigation services regarding the State Bar of California's disclosure of information relating to the July 2019 California Bar Examination.**

The title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.

- The maximum Contract Amount that the Supreme Court may pay Contractor under this Agreement is **\$60,000.00**.
- The parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement (made up of this coversheet, the following exhibits, and any attachments) contains the parties' entire understanding related to the subject matter of this Agreement. If there are any inconsistent terms in the exhibits, the following is the order of precedence: Exhibits C, D, B, A, E and F.

- Exhibit A – Scope of Work
- Exhibit B – Payment Provisions
- Exhibit C – General Provisions
- Exhibit D – Definitions
- Exhibit E – Unruh Civil Rights Act and Fair Employment and Housing Act Certification [if Contract Amount (including renewals) is \$100,000 or more.]
- Exhibit F – Darfur Contracting Act Certification
- Attachment I – Contact Information

SUPREME COURT'S SIGNATURE	CONTRACTOR'S SIGNATURE
Supreme Court of California	CONTRACTOR'S NAME (if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.) Nielsen Merksamer Parrinello Gross & Leoni LLP
BY (Authorized Signature) 	BY (Authorized Signature) 
PRINTED NAME AND TITLE OF PERSON SIGNING Jorge E. Navarrete, Clerk/Executive Officer	PRINTED NAME AND TITLE OF PERSON SIGNING KURT R. ONETO - PARTNER
DATE EXECUTED 8/26/2019	DATE EXECUTED 8/22/19
ADDRESS 350 McAllister Street, RM 1295 San Francisco, CA 94102	ADDRESS 1415 L Street, Suite 1200 Sacramento, CA 95814

EXHIBIT A
SCOPE OF WORK

1. **Services.**
 - A. **Matters.** At the direction of, and in consultation with, the Supreme Court's Project Manager, Contractor shall provide services to the Supreme Court by investigating the State Bar of California's disclosure of information relating to the July 2019 California Bar Examination (the "Matter").
 - B. **Staffing.** Contractor must provide the services of **Arthur G. Scotland, Kurt Oneto, Michael Columbo, Hilary Gibson, and James Barolo**, and designated attorneys and employees under their management, in relation to the Matter. Contractor must identify and obtain the Supreme Court's Project Manager's approval for all attorneys, employees and paralegals who will work on the Matter. Contractor must use its best efforts to retain the same participating employees during the course of the Matter.
2. **Budgets.**
 - A. **Initial Budget.** Contractor must prepare a budget for the Matter as requested by the Supreme Court's Project Manager. Each budget report must include an estimate of all fees and costs.
 - B. **Updates.** Contractor must immediately advise the Supreme Court's Project Manager of any developments that may significantly affect a projected budget. If requested by the Supreme Court's Project Manager, Contractor must deliver an updated budget report.
3. **Conflicts.** Contractor has performed a conflicts of interest check and notified the Supreme Court that it does not have any potential conflicts of interest regarding Contractor's representation of the Supreme Court. If Contractor becomes aware of any potential conflicts of interest regarding Contractor's representation of the Supreme Court, it will immediately notify the Supreme Court. Contractor and the Supreme Court will meet and discuss in good faith regarding whether it is necessary to obtain conflict of interest waivers. Contractor states that it does not currently have any matters pending before the Supreme Court, but that it is counsel of record to parties with matters currently pending in the trial courts and Courts of Appeal that could progress to the Supreme Court. Except as provided by the California Rules of Professional Conduct, the California Code of Judicial Ethics, or by any provision of law, in the event that Contractor represents parties before the Supreme Court during the pendency of this Agreement, the Supreme Court will not assert a conflict of interest based solely on this Agreement that would preclude Contractor from representing those parties before the Supreme Court.
4. **Transitioning Matters.** The Supreme Court may, at any time, remove Contractor from the Matter. If the Supreme Court does so, Contractor must transition the Matter as requested by the Supreme Court's Project Manager.
5. **Designation of Project Managers.** All day-to-day requests and communications about the Services must be made through the Project Managers. Formal notices must be delivered in accordance with Section 8 of Exhibit C. Project Managers are authorized to make day-to-day decisions related to the implementation of Services. The Supreme Court's Project Manager may delegate authority with regard to the Matter to the Supreme Court's Project Manager's Designee. The parties' respective Project Managers, the Supreme Court's Project Manager's Designee, and their contact information are on Attachment 1. The Supreme Court's Project Manager may at any time change the Supreme Court's

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Project Manager's Designee upon notice to Contractor via email or other method, without need for an amendment to this Agreement.

- End of Exhibit A -

EXHIBIT B
PAYMENT PROVISIONS

1. **Contract Amount.** The maximum amount the Supreme Court may pay Contractor under this Agreement is the Contract Amount set forth on the Agreement Coversheet. The Contract Amount includes all hourly fees and expenses.

2. **Compensation.**

A. **Hourly Fees.**

For each hour of Services performed, the Supreme Court will pay Contractor for the Services in accordance with the following rates:

partner:	Kurt Oneto	\$ 675.00 / per hour (public agency rate)
of counsel:	Arthur G. Scotland	\$ 995.00 / per hour
of counsel:	Michael Columbo	\$ 435.00 / per hour (public agency rate)
associate:	Hilary Gibson	\$ 450.00 / per hour (public agency rate)
associate:	James Barolo	\$ 375.00 / per hour

B. **Travel Expenses.** Contractor will not invoice the Supreme Court, and the Supreme Court will not reimburse Contractor for travel expenses (e.g., meals, lodging). Contractor shall keep travel to a minimum, and shall obtain the Supreme Court's Project Manager prior written approval before billing for travel time. If travel time is approved by the Supreme Court's Project Manager, the travel time shall be billed at 25% of the respective hourly billing rates set forth in Section 2(A) above. Notwithstanding the foregoing, Contractor will not invoice the Supreme Court, and the Supreme Court will not pay for travel time between Sacramento and San Francisco. The Supreme Court and Contractor shall both require all potential witnesses to travel (at no cost to the Supreme Court or Contractor) to the Contractor's offices in either Sacramento or San Rafael.

C. **Other Expenses.** The Supreme Court will reimburse Contractor, in arrears, for the itemized expenses listed below that Contractor reasonably incurs while performing the Services. The amount the Supreme Court will pay Contractor for these expenses is part of the maximum amount the Supreme Court may pay Contractor under this Agreement described in Section 1 above.

i. **Allowed Expenses.** The Supreme Court will reimburse Contractor, with the Supreme Court's Project Manager's prior written approval for:

Postage, overnight delivery, or courier services at Contractor's actual cost.

Facsimile transmissions and long-distance telephone charges at Contractor's actual cost.

Copies at ten cents (\$0.10) per page.

Computerized legal research at Contractor's actual cost. However, Contractor must obtain approval from the Supreme Court's Project Manager before conducting computerized legal research that will result in charges of more than \$250.00 during any monthly billing period.

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- ii. **Not Allowed Without the Supreme Court's Project Manager's Prior Approval.** Unless Contractor receives the Supreme Court's Project Manager's prior approval, the Supreme Court will not reimburse Contractor for:

Secretarial/clerical services, word processing, computer time, or other staff services such as proofreading or filing.

Overtime for non-attorney employees.

Background check fees.

Expert and consultant fees and expenses.

Other services provided by third parties.

- 3. **Limitations.** The Supreme Court will not pay Contractor for more than two (2) attorneys to attend meetings unless the Supreme Court's Project Manager approves in advance in writing.

- 4. **Invoicing and Payment.**

- A. Contractor must submit invoices to the Supreme Court no more often than once per month, for Services provided and allowed expenses incurred during the preceding month. Contractor's billing partner must personally review each invoice before it is sent to the Supreme Court to determine its accuracy and fairness, and to ensure that the invoice complies with the requirements in this Agreement.

- B. Contractor must submit each original invoice to:

Supreme Court of California
ATTN: Clerk/Executive Officer
350 McAllister Street, RM 1295
San Francisco, CA 94102

- C. Contractor's invoices must be detailed and precise. Contractor's invoices must clearly indicate fees and costs incurred for the current billing period month and include at least the following information:

- i. Agreement number;
- ii. Unique invoice number;
- iii. Contractor's name and address;
- iv. Contractor's federal employer identification number;
- v. Name of the Matter and number of the file;
- vi. Billing period;
- vii. Description of each activity performed for each day Services were performed;
- viii. Name, labor classification (e.g., partner, associate, paralegal), billing rate, and hours worked by each person involved in each activity;
- ix. Breakdown of allowed expenses, identified by billing period;

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- x. Total amount of fees and costs “billed to date,” including the preceding month; and
 - xi. Preferred remittance address, if different from the address on the Coversheet.
- D. Contractor’s invoice must be printed on a printed bill head or signed by the billing partner.
- E. Contractor must keep original invoices, and copies of receipts for all claimed expenses will be provided to the Supreme Court with the submitted invoice.
- F. After the Supreme Court receives Contractor’s invoice, the Supreme Court will either process the invoice for payment or give Contractor specific reasons why part or all of the payment is being withheld and what actions Contractor must take to receive the withheld amount.
- G. Payment does not imply acceptance of Services, that expenses are allowable, or that the invoice is accurate. Contractor must immediately refund any payment made in error, or the Supreme Court may offset the amount paid in error from any payment that is due or that may become due to Contractor under this Agreement or any other agreement between the parties.
- H. Contractor must send to the Supreme Court a completed Std 204, Payee Data Record Form, unless Contractor is a State agency or other governmental entity. Contractor must send an updated Std 204 to the Supreme Court any time relevant information changes.
- I. Contractor must include with any request for reimbursement from the Supreme Court a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the Supreme Court was sought for these costs, and Contractor will provide those records to the Attorney General upon request.
5. **Availability of Funds.** The Supreme Court’s funding comes from the State and is subject to annual budget appropriations. If the State reduces the Supreme Court’s funding, the Supreme Court may not be able to pay Contractor. The Supreme Court will notify Contractor in writing if funds become unavailable or limited during the Term. The Supreme Court will not be in breach of this Agreement for failure to pay Contractor’s invoices if the failure results from the State’s failure to approve and adopt a budget in a timely manner, but the Supreme Court will pay any previously due and unpaid amounts upon approval and adoption of the State budget.
6. **Expenses and Taxes.** Contractor must pay all fees, fines, taxes, or other costs of doing business related to the Services, except for the expenses allowed under Exhibit B, Sections 2.B and 2.C. Unless required by law, the Supreme Court will not withhold any taxes, such as social security or federal income tax, on Contractor’s behalf.

- End of Exhibit B -

EXHIBIT C
GENERAL PROVISIONS

- I. **CONTRACTOR CERTIFICATION CLAUSES.** Contractor represents and warrants that the following statements are true. During the term of the Agreement, Contractor shall not take an action, or omit to perform any act, that results in a representation and warranty becoming untrue. Contractor shall promptly notify the Supreme Court if any representation and warranty becomes untrue.
- A. **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any Supreme Court personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
 - B. **No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under (i) California Public Contract Code ("PCC") sections 10365.5, 10410 or 10411; (ii) Government Code sections 1090 et seq. or 87100 et seq.; or (iii) California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
 - C. **Qualified to Do Business.** If Contractor is a corporation, limited liability company, or limited partnership, Contractor is qualified to do business and in good standing in the State.
 - D. **No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a conflict of interest or default under any of Contractor's other contracts.
 - E. **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 this Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have an adverse effect on Contractor's business, the validity or enforceability of this Agreement, or Contractor's ability to perform this Agreement.
 - F. **Compliance with Laws.** Contractor is in compliance in with all laws, rules, and regulations applicable to Contractor's business and services.
 - G. **Drug Free Workplace.** Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.
 - H. **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.

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- I. **Employment Laws.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (California Government Code sections 12990 et seq.) and associated regulations (California Code of Regulations, title 2, sections 7285 et seq.).
- J. **Non-discrimination.** 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. Each subcontract in effect and authorizing work under this Agreement contains this provision. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination. If the Contract Amount is \$100,000 or more, Contractor certifies under penalty of perjury that it is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code).
- K. **National Labor Relations Board.** 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.
- L. **Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Supreme Court. (Expatriate corporations are certain foreign incorporated entities that are publicly traded in the United States. For additional information, see PCC 10286.1.)
- M. **Child Support Compliance Act.** Pursuant to PCC 7110, if the Contract Amount is greater than \$100,000:
 - i. Contractor recognizes the importance of child and family support obligations, and fully complies with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - ii. Contractor is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- N. **Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.** If the Contract Amount is \$100,000 or more, this section is applicable. Contractor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3 which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital

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or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.

- O. **Iran Contracting Act.** If the Contract Amount is \$1,000,000 or more, this section is applicable. Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Supreme Court to enter into this Agreement pursuant to PCC 2203(c).
- P. **GAAP.** The Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.

- 2. **Indemnity.** Contractor will defend (with counsel satisfactory to the Supreme Court or its designee) indemnify and hold harmless Judicial Branch Entities and Judicial Branch Individuals from and against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (ii) a breach of a representation, warranty, or other provision of this Agreement, and (iii) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any goods, services, or deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Supreme Court's prior written consent, which consent shall not be unreasonably withheld; and the Supreme Court shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. 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.

3. **Insurance.**

- A. **Basic Coverage.** Contractor shall provide and maintain at the Supreme Court's discretion and Contractor's expense the following insurance during the term of this Agreement:
 - i. **Employer's Liability.** The policy is required only if Contractor has employees. It must include workers' compensation 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.
 - ii. **Commercial General Liability.** The policy must cover bodily injury and property damage liability, including coverage for products, operations hazard, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit.

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- iii. **Professional Liability.** This policy must cover liability resulting from errors or omissions committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1 million per claim.
 - iv. **Commercial Automobile Liability.** This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. This policy must cover bodily injury and property damage liability and be 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.
- B. **"Claims Made" Coverage.** If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three years beyond the termination or expiration of this Agreement and the Supreme Court's acceptance of work 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 work commences under this Agreement.
- C. **Umbrella Policies.** Contractor may satisfy required coverage limits through any combination of basic coverage and umbrella insurance.
- D. **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.
- E. **Deductibles and Self-Insured Retentions.** Contractor shall declare to the Supreme 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 Supreme Court approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- F. **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 the Judicial Branch Entities and Judicial Branch Individuals as additional insureds with respect to liability arising out of Contractor's work.
- G. **Certificates of Insurance.** Before Contractor begins performing work, Contractor shall give the Supreme Court certificates of insurance (including professional liability insurance) attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 days' prior written notice to the Supreme Court. Certificates of each of the following policies used to satisfy coverage requirements must contain an additional insured endorsement:
- Commercial general liability insurance;
 - Commercial automobile liability basic coverage insurance; and

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- Commercial umbrella liability insurance.

- H. **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.
- I. **Required Policy Provisions.** Each policy must provide, as follows:
- **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 Individuals, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Individuals; and
 - **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 or a lawsuit is brought, to the limits of the insurer's liability.
- J. **Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:
- i. **Separate.** Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
 - ii. **Joint.** Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- K. **Consequences of Lapse.** If required insurance lapses during the term of this Agreement, the Supreme Court is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

4. **Breach and Remedies.**

- A. **Breach.** A breach exists under this Agreement if Contractor:
- i. Makes a material misrepresentation in writing; or
 - ii. Fails or is unable to meet or perform any obligation in this Agreement, and
Is incapable of curing this failure, or
Does not cure this failure within ten (10) days following notice from the Supreme Court (or within a longer period if specified in the notice).
- B. **Notice.** Contractor must give the Supreme Court notice immediately if Contractor breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.
- C. **Remedies.**
- i. **Available Remedies.** If a breach exists under this Agreement, the Supreme Court may do any of the following:

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Require Contractor to enter into non-binding mediation;

Terminate this Agreement, in whole or in part, in accordance with this Exhibit C;

Withhold all or any portion of a payment otherwise due to Contractor; and

Seek any other available remedy at law or in equity.

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

5. Termination; Effect of Expiration or Termination.

A. By Supreme Court.

By providing written notice, the Supreme Court may terminate this Agreement at any time: (i) for any reason or no reason, or (ii) for cause if Contractor breaches any of its obligations under this Agreement. After receiving such notice, Contractor will cease providing services. Contractor will cooperate with the Supreme Court in the timely and orderly transfer of all related files, records, and information to new legal counsel. Contractor will further cooperate with filing of a substitution of attorneys if necessary. After receiving notice of termination, Contractor shall submit a final invoice for services rendered through date of termination no later than sixty (60) calendar days from the effective date of the termination; the Supreme Court will not pay any Contractor invoice received after this period, and will only pay for services satisfactorily rendered prior to the termination date.

B. By Contractor.

By providing written notice, the Contractor may terminate this Agreement at any time with the Supreme Court's consent or for good cause. The notice shall specify the effective date of termination and reason for the termination. "Good cause" exists if: (a) an undisputed invoice is not paid within ninety (90) days of receipt, and the Supreme Court fails to cure such nonpayment within thirty (30) days of receipt of Contractor's written notice regarding such nonpayment; (b) the Supreme Court fails to meet any other obligation under the Agreement and continues in the failure for fifteen (15) days after Contractor sends written notice of the failure to meet the obligation to the Supreme Court; or (c) a circumstance makes Contractor's continued representation unlawful, unethical or lead to a conflict of interest. Upon termination, Contractor will cooperate with Supreme Court in the timely and orderly transfer of all related files, records, and information to new legal counsel. Contractor will further cooperate with filing of a substitution of attorneys if necessary. Absent the Supreme Court's consent, or showing of good cause for withdrawal, Contractor shall seek permission from the court for withdrawal at its own expense.

C. Effect of Expiration and Early Termination; Survival.

(i) All rights and duties in this Exhibit C and Exhibit D will survive the expiration or termination of this Agreement.

(ii) In the event of termination, expiration, or removal/withdrawal from a Matter, Contractor must withdraw as counsel for the Supreme Court (and any person or entity represented on the Supreme Court's behalf) as soon as it is reasonably possible to do so without (a) prejudice to the Supreme Court's interests (or the interest of any person or entity represented on the Supreme Court's behalf), or (b) violation of Contractor's statutory or ethical duties. Contractor must notify the Supreme Court of any further services, prior to withdrawal or substitution, which Contractor believes are necessary to avoid prejudice to the Supreme Court's interests (or the interest of any person or entity represented on the Supreme Court's behalf), and obtain the Supreme Court's consent prior to performing such services.

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6. **Assignment; Successors.**

A. **Permitted Assignments.**

- i. Contractor may not assign Contractor's rights or duties under this Agreement without the Supreme Court's prior written consent. Consent may be withheld for any reason or no reason. Any attempted assignment will be void or invalid.
- ii. The Supreme Court may assign its rights and duties to any State entity. The Supreme Court will notify Contractor in writing within thirty (30) days following the assignment.
- iii. Any assignment by Contractor will take effect only if there is a written agreement between Contractor and all assignees, stating the assignees:

Are jointly and severally liable to the Supreme Court for performing Contractor's duties in this Agreement;

Affirm the rights granted in this Agreement to the Supreme Court;

Make the representations and warranties made by Contractor in this Agreement; and

Appoint the Supreme Court an intended third-party beneficiary under the written agreement.
- iv. No assignment will release either party of its duties under this Agreement.

B. **Successors.** This Agreement binds the parties as well as their permitted heirs, successors, and assignees.

7. **Subcontracting.**

A. **Permitted Subcontracts.** Contractor may not subcontract its duties under this Agreement without the Supreme Court's prior written consent. Consent may be withheld for any reason or no reason.

B. **Requirements.** Any subcontract by Contractor will take effect only if there is a written agreement between Contractor and each subcontractor, stating each subcontractor:

- i. Agrees to comply with and be bound by the terms and conditions of this Agreement, including Contractor's obligations; and
- ii. Appoints the Supreme Court an intended third-party beneficiary under the written agreement.

C. **No Release.** No subcontract will release Contractor from its duties under this Agreement.

8. **Notices.** Notices under this Agreement must be in writing. Notices must 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 deemed effective as of the first date that the notice was refused, unclaimed, or deemed undeliverable. Notices will be addressed to a party's Project Manager, at the address listed in Attachment 1. For notices to the Supreme Court, Contractor must also send a copy to the Supreme Court's Procurement Manager, at the address listed in Attachment 1.

9. **Union Activities.** Pursuant to Government Code section 16645, if the Contract Amount is over \$50,000: Contractor agrees that no Supreme Court funds received under this Agreement will be used to

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assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no Supreme Court funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

10. **Legal Services Contracts.**

A. **Management.** As required by PCC 10353.5, Contractor shall: (i) adhere to legal cost and billing guidelines designated by the Supreme Court; (ii) adhere to investigation plans designated by the Supreme Court, if applicable; (iii) adhere to phasing of activities designated by the Supreme Court, if applicable; (iv) submit and adhere to legal budgets as designated by the Supreme Court; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the Supreme Court; and (vi) submit to legal bill audits and law firm audits if so requested by the Supreme Court, whether conducted by employees or designees of the Supreme Court or by any legal cost-control provider retained by the Supreme Court for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the Supreme Court.

B. **Pro Bono.** If (a) the Contract Amount is greater than \$50,000, (b) the Services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the Services are to be performed within the State, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in section 6213 of the Business and Professions Code, during each year of this Agreement equal to the lesser of either (i) 30 multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any contract period of less than a full year or (ii) the number of hours equal to 10 percent of the contract amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for nonrenewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with the Supreme Court for legal services.

11. **DVBE Participation Certification.** This section is applicable if Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement. Contractor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the Supreme Court approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the Supreme Court: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

12. **Miscellaneous Provisions; Interpretation.**

- A. **Independent Contractor.** Contractor is an independent contractor to the Supreme Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor or its personnel and the Supreme Court. Nothing Contractor does, or fails to do, in the performance of this Agreement will make Contractor or its personnel an employee of the Supreme Court. The Supreme Court will not provide to Contractor or its personnel the benefits that the Supreme Court provides its employees. If the Internal Revenue Service or any other federal or State governmental agency inquires about Contractor's status as an independent contractor, Contractor must inform the Supreme Court and let the Supreme Court participate in any discussion or negotiation with the agency. If any governmental entity concludes that Contractor is not an independent contractor, the Supreme Court may terminate this Agreement immediately upon notice.
- B. **Contractor's Personnel.**
- i. Contractor must assign to this project only persons who have sufficient training, education and experience to successfully perform their duties. Contractor must endeavor to minimize turnover of personnel performing Services. If the Supreme Court is dissatisfied with any of Contractor's personnel, for any reason or no reason, Contractor must replace them with qualified personnel.
 - ii. Contractor must cooperate with the Supreme Court if the Supreme Court decides to require background checks on Contractor or Contractor's personnel by obtaining, at no additional cost to the Supreme Court, all releases, waivers and permissions the Supreme Court requires. Contractor must not assign personnel who refuse to undergo a background check to perform Services.
- C. **Audit Rights.** Contractor must allow the Supreme Court's designees and the Supreme Court to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement. In addition, (i) this Agreement is subject to examinations and audit by the State Auditor for a period of four years after final payment, and (ii) either party (or its subcontractors) may be audited by other State or federal agencies. If an audit determines that Contractor (or any subcontractors) is not in compliance with this Agreement, Contractor will promptly take actions as directed by the Supreme Court to correct any non-compliance. Nothing in this paragraph requires the provision or disclosure of any information or material covered by the attorney-client privilege without the written consent of the client(s). If an audit determines that Contractor has overcharged the Supreme Court five percent (5%) or more for Services provided during the time period subject to audit, Contractor must reimburse the Supreme Court in an amount equal to the cost of such audit.
- D. **Ownership.**
- i. As between the parties, the Supreme Court is the exclusive owner of all materials Contractor collects and produces in connection with the Services, including copyrights. Within thirty (30) days of the End Date, or upon the Supreme Court's notice at any time, Contractor must give all materials it collects or produces to the Supreme Court (or to another party at the Supreme Court's direction). Unless the Supreme Court specifies otherwise, all files must be saved in Microsoft Word and Excel formats, as applicable. Contractor must maintain its records relating to the Services and invoices, and all other

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materials, in an accessible location and condition for a period of not less than four years after the later of:

The date when Contractor receives final payment under this Agreement; or

The date when the Supreme Court resolves with Contractor the findings of any final audit.

- ii. Contractor may retain copies of any original documents Contractor provides to the Supreme Court.

E. Confidential Information.

- i. Contractor agrees to hold in confidence the following Confidential Information:

All information that the Supreme Court discloses to Contractor; and

All information to which Contractor gains access while providing Services.

- ii. Confidential Information does not include any information that Contractor can demonstrate has been made available to the public (other than through a breach of this Agreement). As between Contractor and the Supreme Court, the Supreme Court owns the Confidential Information, and the Supreme Court authorizes Contractor to use it only for purposes of performing this Agreement. Contractor may also disclose the Supreme Court's Confidential Information to the extent necessary to comply with law, provided Contractor gives the Supreme Court prior written notice and the opportunity to seek confidential treatment of such information. Upon the End Date, Contractor must destroy or return all Confidential Information to the Supreme Court, at the Supreme Court's discretion, and certify to the Supreme Court in writing that it has done so.
- iii. Contractor understands a breach under this Section 12.E may result in irreparable damage for which no adequate remedy may be available. Accordingly, injunctive or other equitable relief will be remedies available to the Supreme Court.

- F. **Publicity.** Contractor must not make any public announcement, press release, or other writing relating to this Agreement that is not itself part of the Services without the prior approval of the Supreme Court's Procurement Manager. In no event will the Supreme Court's Procurement Manager approve any writing that could be construed as an endorsement of the Contractor.

- G. **Choice of Law; Jurisdiction/Venue.** California law, without regard to its choice-of-law provisions, governs this Agreement. Contractor hereby irrevocably submits to the exclusive jurisdiction and venue of the state and federal courts located in California in any legal action relating to this Agreement

- H. **Negotiated Agreement.** The parties have negotiated this Agreement. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.

- I. **Amendment.** No amendment to this Agreement will be effective unless it is on a Supreme Court amendment form and is signed by both parties. The Supreme Court may exercise an option under this Agreement to increase the Contract Amount if applicable and/or extend the expiration date of this Agreement, by notifying the Contractor using the Supreme Court's option form amendment. The Supreme Court's option form amendment will be effective without Contractor's signature.

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- J. **Waiver.** A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.
- K. **Authority and Binding Effect.** Contractor warrants that it has authority to enter into and perform its obligations under this Agreement, and that Contractor's signatory has authority to bind Contractor to this Agreement. This Agreement will not bind the Supreme Court until it is signed by a duly authorized representative of the Supreme Court.
- L. **Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- M. **Headings.** All headings are for reference purposes only and do not affect the interpretation of this Agreement.
- N. **Time of the Essence.** Time is of the essence in the performance of Services under this Agreement.
- O. **Construction.** The term "day" in this Agreement refers to a calendar day.
- P. **Non-Exclusive.** Contractor may perform work for any other person or entity, provided that the other work does not interfere with the Services or constitute a breach under this Agreement. The Supreme Court may use other contractors to perform any work. The Supreme Court does not guarantee Contractor will work a certain number of hours or be offered a certain number of projects.
- Q. **Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.
- R. **Dispute Resolution.** The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. If informal attempts at dispute resolution are unsuccessful, the parties shall participate in nonbinding mediation unless both parties agree to waive such mediation.
- S. **Suspension of Work.** The Supreme Court may instruct Contractor to suspend, delay, or interrupt all or any part of the work for the period of time that the Supreme Court determines appropriate.

- End of Exhibit C -

EXHIBIT D
DEFINITIONS

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

- A. **“Confidential Information”** is defined in Exhibit C, Section 12.E.
- B. **“Contract Amount”** is the maximum amount the Supreme Court may pay Contractor under this Agreement. The Contract Amount is the amount listed in Section 4 of the Coversheet, as amended from time to time.
- C. **“Coversheet”** means the signature page of this Agreement.
- D. **“Effective Date”** is defined in Section 2 of the Coversheet.
- E. **“End Date”** means the date when this Agreement as a whole expires or is terminated pursuant to Exhibit C, Section 5.A.
- F. **“Judicial Branch Entity”** has the meaning stated in Government Code sections 900.3 and 940.3: any superior court, court of appeal, the Supreme Court, or the Judicial Council of California.
- G. **“Judicial Branch Individuals”** means judges, judicial officers, subordinate judicial officers, directors, officers, members, employees, agents, consultants and volunteers of a Judicial Branch Entity.
- H. **“Supreme Court”** means the Supreme Court of California.
- I. **“Matter”** is defined in Exhibit A, Section 1.A.
- J. **“Project Manager”** means the individual designated in Attachment 1.
- K. **“Project Manager’s Designee”** means the individual designated in Attachment 1, as updated from time to time by the Supreme Court’s Project Manager in accordance with Exhibit A, Section 5.
- L. **“Services”** means Contractor’s tasks described in Exhibit A, Section 1.
- M. **“State”** means the state of California.
- N. **“Term”** means the period specified in Section 2 of the Coversheet, as amended from time to time.

- End of Exhibit D -

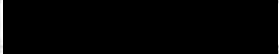

EXHIBIT E
UNRUH CIVIL RIGHTS ACT AND
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the Supreme Court of California for a solicitation of goods or services of \$100,000 or more, or (ii) entering into or renewing a contract with the Supreme Court of California for the purchase of goods or services of \$100,000 or more.

CERTIFICATIONS:

1. Contractor is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. Contractor is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code);
3. Contractor does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code); **and**
4. Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the Contractor to the certifications made in this document.

Contractor Name (Printed) NIELSEN MERKSAMER LLP		Federal ID Number 
By (Authorized Signature) 		
Printed Name and Title of Person Signing KURT R. ONETO - PARTNER		
Date Executed 8/22/19	Executed in the County of SACRAMENTO on the State of CA	

- End of Exhibit E -

EXHIBIT F
DARFUR CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 10478, the following certification must be provided if a proposer currently or within the past three years has had business activities or other operations outside of the United States, it must either (i) certify that it is not a "scrutinized company" as defined in PCC 10476, or (ii) receive written permission from the Supreme Court of California to submit a proposal.

The proposer must insert its company name and Federal ID Number below and complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

<i>Company Name (Printed)</i> NIELSEN MERKSAMER LLP	<i>Federal ID Number</i> [REDACTED]
<i>Printed Name and Title of Person Checking Box (for paragraph 1 or 2 below)</i> KURT R. ONETO - PARTNER	

1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.
- OR
2. We are a "scrutinized company" as defined in PCC 10476, but we have received written permission from the Supreme Court of California to submit a proposal pursuant to PCC 10477(b). *A copy of the written permission from the Supreme Court of California is included with our proposal.*
- OR
3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a "scrutinized company" as defined in PCC 10476.

CERTIFICATION FOR PARAGRAPH 3:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer to the clause in paragraph 3. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>

- End of Exhibit F -

ATTACHMENT 1
CONTACT INFORMATION

The Supreme Court's Project Manager

Name: Jorge E. Navarrete
Title: Clerk/Executive Officer
Supreme Court of California
Address: 350 McAllister Street, RM 1295
San Francisco, CA 94102
Phone: (415) 865-
E-mail: @jud.ca.gov

The Supreme Court's Project Manager's Designee

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

Contractor's Project Manager

Name: Arthur G. Scotland
Title: Of Counsel
Nielsen Merksamer Parrinello Gross
& Leoni LLP
Address: 1415 L Street, Suite 1200
Sacramento, CA 95814
Phone: (916) 446-6752
E-mail: ascotland@nmgovlaw.com

Contractor's Billing Partner

Name: KURT R. ONETO
Title: PARTNER
Address: SAME
Phone: SAME
E-mail: KONETO@NMGVLAW.COM

Supreme Court's Procurement Manager

Stephen Saddler
Manager, Contracts
455 Golden Gate Avenue
San Francisco, California 94102
415-865-
@jud.ca.gov

- End of Attachment 1 -
End of Agreement