



Superior Court of California, County of San Francisco Procurement Department

TO: Transcriptionist Vendors
FROM: Superior Court of California, County of San Francisco
Procurement Department

RFP ISSUE DATE: **May 31, 2023**
SUBJECT: Request for Quote RFP #38-22-002 (Transcriptionist Services) for circumstances where a recording is obtained instead of a transcript from a Court Reporter.

ACTION REQUESTED: You are invited to review and respond to the RFP.

This is a fully electronic RFP process, including electronic submission of quotes.

The RFP includes:

- [DESCRIPTION AND RFP TIMELINE](#)
- [INSTRUCTIONS FOR SUBMITTING PROPOSALS](#)
- [PROVISIONS](#)
- [EVALUATION CRITERIA](#)
- [ATTACHMENT A—Statement of Work](#)
- [ATTACHMENT B— Acceptance of Court Terms & Conditions](#)
- [ATTACHMENT C—DARFUR Contracting Act Form](#)
- [ATTACHMENT D—Quote Template](#)
- [EXHIBIT A—Background check Form \(don't fill unless requested\)](#)
- [EXHIBIT B—Standard Agreement Terms & Conditions](#)

DO NOT CONTACT COURT PERSONNEL ABOUT THIS RFP.
SUBMIT QUESTIONS TO: solicitationsmailbox@sftc.org

DESCRIPTION AND RFP TIMELINE

1. BRIEF DESCRIPTION:
 - A. San Francisco Superior Court (“Court”) is requesting proposals from experienced vendors to transcribe Court proceedings and other official transcripts from audio recordings.
 - B. Vendor will provide Certified transcripts to the Public and to the Court.
 - C. Selected Proposer has a portal to receive recordings, process requests and payments, and deliver transcripts.

2. PERIOD OF PERFORMANCE (Estimated start date):
 Contract for Services begins approximately July 1, 2023 through June 30, 2024 with options to extend.

RFP TIMELINE

The following estimated timeline is provided for proposer’s general information. None of the dates are binding upon the Court:

EVENT	DATE & TIME <i>(all times are Pacific Time)</i>
RFP Issued	May 31, 2023
Deadline for Submission of Questions	3:00 P.M. Five (5) business days after RFP Issued: June 7, 2023
Deadline for Submission of Proposal <i>(Late submissions will not be accepted.)</i>	3:00 P.M. three (3) business days after FAQs published: June 13, 2023
Portal Testing	Approximately two (2) days after Proposal Deadline
Notice of Award	Approximately five (5) business days after Portal Testing: (approximately June 22, 2023)
Background Checks and Contract Negotiations	Approximately June 23, 2023
START DATE OF SERVICES	Approximately July 1, 2023

INSTRUCTIONS FOR SUBMITTING PROPOSAL WITH QUOTE

The following are the instructions for submitting a Proposal in response to this RFP. Failure to follow instructions may result in disqualification. Proposals should provide straightforward, concise information that satisfies the requirements of this RFP. Any Proposer who is disqualified will be notified via email as soon as this disqualification is discovered.

- A. Only submit questions to solicitationsmailbox@sftc.org. Questions and Answers will be compiled in a FAQ and posted on the Court's website. The email subject line to state the following: RFP-38-22-002 (and your company name) Questions
- B. Proposals must only be submitted by authorized personnel with the owner/president/CEO of the business copied and only sent via email to solicitationsmailbox@sftc.org by the submission deadline. Email subject line to state the following: RFP-38-22-002 (company name) Proposal
- C. Proposals are submitted in two, separate 'packets'—Technical Proposal and Cost Proposal.
- D. File format of all documents in PDF only except Cost Proposal Template—keep in original format.
- E. Submit **Cost Proposal** only using **Attachment D** and submit as a separate document from the Technical Proposal packet.
 - A. Must only be submitted using **Attachment D—Quote Template**.
 - B. Must be in accordance with the instructions and provisions stated on the Cost Template.
 - C. Include the Response Options:
 - i. Include the four types of new work: 20-day, 10-day, 5-day, 3-day, and 1-day.
 - ii. The Court considers a page to be approximately 300 words (and no more and no less than 28 lines of text).
 - iii. The number of days designated to a regular (no rush) turnaround time is a 20-day turnaround request, regardless of the number of pages.
 - iv. All other requests can be considered rush requests, regardless of the number pages:
 - a. 20-day work
 - b. 10-day work
 - c. 5-day work
 - d. 3-day work
 - e. 1-day work
 - D. Include the cost for copies of transcripts (from previously ordered new transcript).
- F. Include the following in your **Technical Proposal** response to RFP 38-22-002:
 - A. STATEMENT THAT ALL TRANSCRIPTIONS ARE PERFORMED BY LIVE PEOPLE AND NOT COMPUTER PROGRAMS/ROBOTS/ETC. (This statement should be a stand-alone page of your Proposal, on your company letterhead, and signed by authorized proposer representative.)
 - B. Business Name and Federal ID Number (FEIN).
 - C. Business owners name, address, phone, and email address in body of email.
 - D. Proof of License to conduct business in San Francisco.
 - E. A summary of your business' qualifications and experience to show competence and success in

providing certified transcriptions of Court cases.

- F. Description of experience of transcriptionist staff. (Names of staff and resumes not needed.)
 - G. Provide up to three business references, i.e., someone that can give feedback based on their experience with your business. References should include name, address, phone number, email address, and how many years' experience with your services. Current vendor, if participating in this RFP, exempted from this requirement.
 - H. Submit **Attachments B and C**.
 - I. Provide all information requested throughout this RFP.
 - J. A flow chart of how your portal works for receiving orders, processing payments, and delivering transcripts. (And any other relevant steps.)
 - K. Samples: Respondents who are not currently providing transcription services to the Court must submit three samples of condensed transcripts and completed transcripts in PDF. The quality of these samples will be scored.
- G. Describe how transcriptions will be delivered, stored, catalogued, and later accessed.
- H. Work-Flows
- A. Describe how you will receive recordings from the Court.
 - B. Describe the work-flow for how the Public places orders, pays, and receives transcriptions.
 - C. Describe the work-flow for other important aspects of Public orders.
 - D. Describe the work-flow for how the Court places orders and receives transcriptions.
- I. Bad Audio / Indiscernibles
- A. Proposer to state their process when bad audio is received.
 - B. Proposer to state their process when some audio is indiscernible.
- J. Pursuant to PCC 10295.4, a Judicial Branch Entity, in this case, the Court, shall not enter into any contract with a person or entity identified by the Franchise Tax Board (FTB) or the Board of Equalization (BOE) as one of the 500 largest tax delinquents. Before the Court executes any contract, the Proposer will certify that it is not on either delinquency list. This certification should be on a separate, stand-alone page, on company letterhead and included in the Technical Proposal packet.
- K. A confirmation email will be sent when proposal received. If you don't receive a confirmation email within two (2) hours of submission, proposal may not have been received and you should send a follow-up email in time to meet the deadline.

PROVISIONS

1. Background Checks / Conviction for Serious Crime

Background checks will be conducted as part of the solicitation process. Court will request the form in **Exhibit A** *if Respondent is the top scorer in this solicitation*. Complete the form on **Exhibit A**, as failure to do so will result in the Court moving on to the next highest scored Proposer.

- A. A conviction is not an automatic bar from award of contract. However, the Court may choose not to contract with Vendor based on the nature of the crime.
 - B. If Respondent or an employee or a subcontractor answered “yes” to either of the Conviction questions in **Exhibit A**, please provide detailed information about the convictions(s) on a separate page, including date, location, and nature of offense, and disposition. Input at the top of the page: CONFIDENTIAL so that it will be excluded from any public requests for information.
 - C. A respondent may not use an employee or a subcontractor to prepare a transcript if that person has been convicted of a serious crime.
 - D. This information will be used in determining whether the Court will enter into a Contract with Proposer. Pending charges must be reported immediately upon the commencement of assignment of work.
 - E. If Court contracts with Respondent, Vendor has a continuing obligation to notify the Court of new criminal charges filed against the Contractor, against any principal or officer of the Contractor, or against any employee or subcontractor who is used to prepare a transcript by the Contractor.
2. Background check/Crime Conviction notwithstanding, Court will negotiate an Agreement with winning Proposer using the Court’s contract template.
 3. A sample of the Agreement is included in this RFP as **Exhibit B**.
 4. Payment by the Court, if any, for services is through issuance of a check after invoice processed.
 5. If winning Proposer ultimately does not enter into an Agreement with the Court, then the next highest scored Proposer will be presented with an opportunity to enter into the agreement.
 6. The Court is under no obligation to sign an agreement with any Vendor for any services.
 7. The Court may cancel this RFP at any time for no reason.
 8. 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.

EVALUATION OF PROPOSALS

The Court will evaluate the proposals using the criteria set forth in the table below. An award, if any, may be made to the Highest Scoring Proposer.

CRITERION	PERCENT WEIGHTED
<i>Quality of Samples provided</i>	45%
<i>Cost to the Court</i>	25%
<i>Relevant Experience</i>	10%
<i>Ease of use of Portal</i>	10%
<i>Acceptance of Contract General Provisions</i>	10%
TOTAL	100%

ATTACHMENT A

STATEMENT OF WORK

1. Create transcriptions of Court proceedings and recorded results of DUI Blood Draw Warrants from various recording file types, including, but not limited to .WMV and .WAV.
2. All recordings will be uploaded into Contractor's portal. Therefore, compatibility is essential to be qualified to participate in this RFP.
3. All transcriptions must be Certified and in compliance with California Rules of Court 8.144.
4. Format of Transcriptions
 - A. Transcripts must be in the Court format of 28 lines per page—no more and no less. (Approximately 300 words per page).
 - B. Contracted Vendor must upload transcripts into YesLaw.
 - C. Electronic copies of the transcript must match page per page, line per line.
 - D. Each copy of the transcript must be a complete document and include the transcriber's electronic signature on the certificate page in the last volume.
5. Sanitized Transcription Versions
 - A. In cases involving confidential information, two versions of the same transcript may be required. This would require an original transcript as well as a "sanitized" version in which the Contractor would do a global search and replace certain names and addresses with initials or pseudonyms such as Jane Doe or John Doe.
 - B. The Contractor must have the ability to perform this procedure in a manner that will not delay transcript preparation.
6. Bad Audio / Indiscernibles
 - C. Except in extraordinary and compelling circumstances, Contractor is not entitled to additional compensation because of poor quality audio. Respondents may request sample recordings of Court proceedings.
 - D. Contractor may not refuse to prepare a transcript unless the audio quality throughout is deemed too poor and Court agrees.
7. Acceptance
 - A. Acceptance Procedure: Acceptance of the transcript will be determined within ten working days after receipt of the completed transcript.
 - i. A random check may be made to assure the finished product is at an acceptable level of quality. However, the Court may accept a transcript without review if the Contractor's prior work has consistently met court system standards.
 - ii. If an assignment is unacceptable, the Court will promptly notify the Contractor, and the transcript and invoice will be returned to the Contractor.
 - iii. The Contractor must correct all major transcribing errors and format errors identified by the Court and resubmit a corrected transcript within two business days unless otherwise specified.

- B. Accuracy: Upon receipt of a completed transcript, the Court may make a random check of the transcript and determine the number of major and/or minor errors in the sample.
 - i. Major errors include:
 - a. Transcription or punctuation errors that affect the meaning of the sentence; and
 - b. "Indiscernibles" that are discernible to the Court when listening to the same audio used by the transcriber.
 - c. Major and minor errors will be stated in more detail during contract negotiations.
 - d. The Court will determine the maximum number of allowable major errors in the transcript and will be stated in the Agreement.
 - e. If a sampling of transcripts is at least 99.95 percent accurate, the Court will accept the transcript as is, provided there are no format errors.
 - f. If the sample contains more than the maximum number of allowable errors, the Contractor must correct all major errors in the sample. The corrected transcript must be returned to the Court within two business days unless otherwise specified.
- C. Format Errors: If a transcript contains any format errors, the Court will require that those errors be corrected before accepting the transcript.
 - i. Transcripts returned for correction of format errors, no matter how minor, will be counted when determining if a Contractor has submitted more than eight transcripts that must be returned for correction during the term of the Court may terminate the contract.

8. Payment

- A. Invoices will include information as stated in the Agreement and must be submitted to the Court with each completed transcript assignment.
 - i. The invoice must list the case name, trial court case number, and appellate case number (if applicable), the total number of pages of the completed transcript, and the requested turn-around time.
 - ii. If a charge is based on a Legislated rate, then that must be stated in the invoice.
 - iii. DUI Blood Draw results recordings will be a 10-day turnaround time for a normal, non-rush assignment.
 - iv. Other categories of charges must be listed separately.
 - v. The Court will not pay for any transcription that has less than a 99.95 percent accuracy and is not free from format errors.
 - vi. The Court process payment within 45 days after invoice received for an accepted transcript.
 - vii. Any costs incurred by the Court in correcting or returning a transcript for correction will be deducted from the final payment for the transcript.

9. Timeliness

- A. Transcripts must be submitted within the time specified in the request for transcript.

- i. A Contractor will be paid for a late transcript if it is otherwise acceptable; however, the late transcript will be treated as a rejection and may result in a penalty of \$0.15 per page for subsequent late transcripts.
- ii. A partial transcript, though timely submitted, will be treated as a rejection.
- iii. Two rejected transcripts within a six-month period, or three rejected transcripts within a one-year period, may result in termination of the contract.

10. Deadlines for Completion

- A. 20-day work is due within 20 business days, 10-day work within 10 business days, 5-day work is due within five business days, 3-day work is due within three business days, and 1-day work is due within 24 hours after ordered.
 - i. These deadlines are measured from the date the transcript is assigned to the Contractor or the date the audio is uploaded to the Contractor, whichever is later.
 - ii. A transcript is assigned on the date the Contractor receives an order in their online portal.
 - iii. A transcript is timely if the completed transcript is delivered to the Court on or before 4:30 p.m. Pacific Time (PT) on the due date.
 - iv. Corrected transcripts must be returned to the Court within a determined timeline.
 - v. A transcript is considered returned to the Contractor on the date the Contractor is notified that the transcript is unacceptable. A corrected transcript is timely if the transcript is delivered to the Court on or before 4:30 p.m. PT on the due date.

B. Extensions

Contractor is entitled to five extensions during each year of the contract. An extension may not exceed five business days. If the Contractor exceeds the allowable number of extensions, any transcript turned in after the due date will be treated as late. A late transcript is treated as a rejection and may be grounds for termination.

- i. To request an extension, Contractor must contact the Court in writing before the date the transcript is due and schedule a new due date for the transcript.
- ii. Otherwise, the transcript will be treated as late. As stated above, a late transcript is treated as a rejection.

11. Confidentiality

- A. Transcribers must agree to comply with confidentiality guidelines on any transcript of confidential court proceedings.
- B. A signed confidentiality certificate must be provided to the Court for every employee of the Contractor, and every employee of any subcontractor hired by the Contractor, who performs work related to the Court's transcripts prior to performing work.

12. Ownership of Audio and Transcriptions

- A. Court holds complete ownership rights to all Court audio recordings and transcripts and will photocopy and distribute transcripts without any additional payments to transcribers.
- B. Contractor will not duplicate or distribute any Court transcripts without the prior, written approval from the court.

13. Proposers must have the ability to respond to each of these types of turn-around times with an approximate number of pages (requested from the Court/Public), as reported in 2022:
 - a. 20-day turn-around = Approximately 230 pages per month.
 - b. 10-day turn-around = Approximately 25 pages per month.
 - c. 5-day turn-around = Approximately 15 pages per month.
 - d. 3-day turn-around = Approximately 20 pages per month.
 - e. 1-day turn-around = Approximately 7 pages per month
 - f. DUI Transcripts = Approximately 48 pages per month.

14. Reporting: Court may request from vendor a report for a time period that shows a total of these categories: case name, trial court case number, appellate case number (if applicable), the total number of pages of the completed transcript, the requested turn-around time, and total amount collected by vendor. Vendor will submit the report to the Court within five business days.

END ATTACHMENT A

ATTACHMENT B

ACCEPTANCE OF AGREEMENT TERMS AND CONDITIONS

Instructions: Mark the appropriate choice below, sign this attachment, and include with proposal.

1. Bidder accepts **Exhibit B: Standard Terms and Conditions** without exception.

OR

2. Bidder proposes exceptions or modifications to Exhibit B. Bidder must also submit (i) a red-lined version of Exhibit B that clearly tracks proposed modifications, including any additional provisions that have been proposed, and (ii) a written explanation or rationale for each exception or proposed modification.

Failure to submit a red-lined version with written explanation / rationale may be grounds for rejection of Proposal.

BY (*Authorized Signature*)



PRINTED NAME OF PERSON SIGNING

TITLE OF PERSON SIGNING

END OF ATTACHMENT B

ATTACHMENT D QUOTE TEMPLATE

Company Name: Quote Date:

A. Per CRC Rule 8.130(f)(2) the court reporter shall be paid the "statutory rate" for a completed transcript. Per Government Code sections 69950 and 69954, the cost is \$1.13 for each 100 words; \$0.20 per copy of those 100 words (if ordered at same time), otherwise 0.26 per copy of each 100 words.

B. Court format is 28 lines per page (no more; no less) which is about 300 words per page.

Additional Costs:

TURN AROUND REQUEST	COST PER PAGE (Court)	COST PER PAGE (Public)***	Other: _____	Other: _____
20-Day*				
10-Day				
5-Day				
3-Day				
1-Day				
Reprints** (i.e. copies)				
Redacted Transcript (Cost, if any, in addition to transcript)				
Dui Transcript (10-Day Turnaround)				

*20-Day Turn Around request is a normal, non-rush request, regardless of the number of pages of the transcript. Therefore, a markup in the cost of \$3.39 per page for this turn-around time is not allowed. However, Proposer can propose a lesser amount if they want.

**See Legislated Rates in paragraph A above. Proposer allowed to quote lower rates but not higher rates.

***Information required but not included in the scoring criteria for Cost.

Additional information about pricing factors or to clarify price quote. (*Okay to spill onto an additional page.*):

EXHIBIT A

BACKGROUND CHECK FORM / DECLARATION OF PREVIOUS CONVICTION

Respondent:

Section 1. Authorization for Background Check (to be completed by the Respondent)

I understand that part of the solicitation process includes criminal history investigations of Respondents and any principals or officers of Respondents. By my signature below, I authorize the Court to conduct an investigation into my criminal history and authorize any former or current employer, person, firm, corporation, government agency, police organization, or any other organizations to release to the Court any pertinent information they may have regarding such history.

I release all persons or entities from all liability for any damage that may result from furnishing information to the Court. I also release the Court and all its employees from all liability for any damage that may result from the Court's reliance on the information furnished.

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Full Name (First, Middle Initial & Last) of
of the Respondent or Principal or Officer (Print)

Signature

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List all States of residence, former and current

Names Previously Used

Social Security Number

Date of Birth

Date

Section 2. Disclosure of previous conviction.

Failure of a respondent to disclose a conviction as required shall be an automatic bar to award of a contract.

Have you ever been convicted of a felony? Yes No

Have you ever been convicted of a misdemeanor? Yes No

Respondents who have prior convictions that have been set aside under the terms of a suspended imposition of sentence (SIS), or who have received an unconditional pardon for prior convictions, may answer "no" to these questions. If you are not sure if your situation requires disclosure, please contact the Court Procurement Team who will direct your inquiry to the appropriate Court personnel. Court reserves the right to confirm all background information.

BACKGROUND CHECK FORM / DECLARATION OF PREVIOUS CONVICTION

Employee / Subcontractor:

Section 1. Authorization for Background Check (to be completed by the employee or subcontractor)

I understand that as an employee or subcontractor who is used by a transcription contractor to prepare transcripts, I must undergo a criminal history investigation. By my signature below, I authorize the Court to conduct an investigation into my criminal history and authorize any former or current employer, person, firm, corporation, government agency, police organization, or any other organizations to release to the Court any pertinent information they may have regarding such history.

I release all persons or entities from all liability for any damage that may result from furnishing information to the Court. I also release the Court and all its employees from all liability for any damage that may result from the Court's reliance on the information furnished.

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Full Name (First, Middle Initial & Last) of
of Employee or Subcontractor (Print)

Signature

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List all States of residence, former and current

Names Previously Used

Social Security Number

Date of Birth

Date

Section 2. Disclosure of previous conviction.

Failure of an employee/subcontractor to disclose a conviction as required shall be an automatic bar to award of a contract.

Have you ever been convicted of a felony? Yes No

Have you ever been convicted of a misdemeanor? Yes No

Respondents who have prior convictions that have been set aside under the terms of a suspended imposition of sentence (SIS), or who have received an unconditional pardon for prior convictions, may answer "no" to these questions. If you are not sure if your situation requires disclosure, please contact the Court Procurement Team who will direct your inquiry to the appropriate Court personnel. Court reserves the right to confirm all background information.

EXHIBIT B

STANDARD AGREEMENT TERMS & CONDITIONS

(aka Definitions and General Provisions)

1. **Definitions:** The terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.
 - A. "Acceptance/Accepted" means the written acceptance issued to the Contractor by the Court after the Contractor has completed a Deliverable, Submittal, or other Agreement requirement, in compliance with the Agreement Document.
 - B. "Administrative Director" if not the Court Executive Officer refers to that individual, or authorized designee, empowered by the Court to make final and binding executive decisions on behalf of the Court.
 - C. "Agreement" means this Agreement that sets forth the terms and conditions under which the Court retains the Contractor and the Contractor shall provide consulting Work by executing an individual Work Order, if any, for a particular Project and for a particular Work Order Amount.
 - D. "Amendment" means a written document issued by the Court and signed by the Contractor which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a Change in Work Order Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
 - E. "Confidential Information" means (i) any information related to the business or operations of the JBE, including information relating to the JBE's personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the JBE (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the JBE's satisfaction that: (a) Contractor lawfully knew prior to the JBE's first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.
 - F. "Contract" or "Contract Documents" constitute the entire integrated agreement between the Court and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form, including, without limitation, the Agreement and all related Exhibits and Work Orders. The terms "Contract" or "Contract Documents" may be used interchangeably with the term "Agreement."
 - G. "Contractor" means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the Court to do the Contract Work. The Contractor is one of the parties to this Agreement.
 - H. "Court" means the Superior Court of California County of San Francisco.
 - I. "Coversheet" refers to the first page of this agreement.
 - J. "Data" means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
 - K. "Day" means calendar day, unless otherwise specified.
 - L. "Deliverable(s)" or "Submittal(s)" means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the Court for acceptance.

- M. "JBE" refers to Judicial Branch Entity. For the purposes of this agreement, the JBE is Superior Court of California, County of San Francisco.
- N. "Key Personnel" refers to the Contractor's personnel, whom the Court has identified and approved to perform the Work of the Agreement.
- O. "Material" means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- P. "Notice" means a written document initiated by the authorized representative of either party to this Agreement and given by: i. attaching as a PDF to an email addressed to one of Contractor's Points of Contact as identified in Appendix C, ii. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or ii. Hand-delivered to the other party's authorized representative, which shall be effective on the date of service.
- Q. "Project" refers to all activity relative to a Work Order and/or this Agreement including activity of the Contractor, its Subcontractors, the Court, or Court's representatives in connection with the Contract Work.
- R. "Project Manager's Designee" means an individual that may be designated in a Work Order, as updated from time to time by the Court's Project Manager in accordance with Appendix C.
- S. "Standard Agreement" means the form used by the Court to enter into agreements with other parties.
- T. "Stop Work Order" means the written Notice, delivered in accordance with this Agreement, by which the Court may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision.
- U. "Subcontractor" shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the Contract Documents refer to Subcontractor(s), and unless otherwise expressly stated, the term "Subcontractor" includes, at every level and/or tier, all subcontractors, sub-consultants, and suppliers.
- V. "Term" refers to the period defined by a beginning date and an end date, in accordance with the terms and conditions set forth in the Agreement, during which the Contractor is authorized to provide the Contract Work.
- W. "Third Party" refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the Court or the Contractor, which is not a party to this Agreement.
- X. "Work" or "Contract Work" or "Work to be Performed" may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution and completion of the activities related to this Agreement to the satisfaction of the Court. Work may also be defined to include Tasks, Deliverables, and/or Submittals required by the individual Work Order(s) that are performed or provided by the Contractor.
- Y. "Work Order" refers to a document that is used by the Court to authorize Work pursuant to this Agreement. Each Work Order, if any, shall include details about the nature of the Work the Contractor shall perform, the timeline for completion of the Work, budget requirements, additional reporting guidelines, or other practical details. A Work Order is authorized when the

State Standard Agreement form that is the first page of the Work Order has been bilaterally executed.

- Z. "Work Order Amount" refers to the amount of funds that is encumbered via the State Standard Agreement form that is the first page of each authorized Work Order. The amount that the State may pay to the Contractor for Work provided pursuant to each Work Order shall not exceed the Work Order Amount stated therein.

2. Services Warranty

A. The Contractor warrants and represents that each of its employees, consultants, independent contractors or agents assigned to perform any services or provide any technical assistance in planning, development, training, consulting or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder shall conform to the requirements of this Agreement in all material respects. All warranties, including any special warranties specified elsewhere herein, shall inure to the Court, its successors, assigns, the Court, and any other customer agencies or other beneficiaries of the Work provided hereunder.

B. Contractor warrants that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and (ii) Contractor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Contractor warrants that each Deliverable will conform to and perform in accordance with the requirements of this Agreement and all applicable specifications and documentation. For each such Deliverable, the foregoing warranty shall commence for such Deliverable upon the JBE's acceptance of such Deliverable and shall continue for a period of one (1) year following acceptance. In the event any Deliverable does not conform to the foregoing warranty, Contractor shall promptly correct all nonconformities to the satisfaction of the JBE.

3. **Resources.** Contractor is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.

4. **Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and all JBE-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Contractor's own risk.

5. Stop Work Order

A. The JBE may, at any time, by Notice to Contractor, require Contractor to stop all or any part of the Services for a period up to ninety (90) days after the Notice is delivered to Contractor, and for any further period to which the parties may agree ("Stop Work Order"). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Services covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the JBE shall either (i) cancel the Stop Work Order; or (ii) terminate the Services covered by the Stop Work Order as provided for in this Agreement.

- B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the performance of Services. The JBE shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - i. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Agreement; and
 - ii. Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the JBE decides the facts justify the action, the JBE may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - C. The JBE shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.
- 6. Acceptance of Work**
- A. The Court's Project Manager shall be responsible for the sign-off acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the Court's Project Manager shall apply the acceptance criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings shall be resolved as set forth in this provision.
 - B. Acceptance Criteria for Work ("Criteria") provided by the Contractor pursuant to this Agreement:
 - i. Timeliness: The Work was delivered on time; ii. Completeness: The Work contained the Data, Materials, and features required in the Agreement; and iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
 - C. The Contractor shall deliver the Work to the Court, in accordance with direction from the Court's Project Manager. The Court shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria in all material respects.
 - D. If the Court rejects the Work provided, the Court's Project Manager shall submit to the Contractor a written rejection describing in detail the failure of the Work as measured against the Criteria. If the Court rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
 - E. If the Court's Project Manager requests further change, the Contractor shall confer with the Court's Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work shall be accepted or the question of its acceptability referred to the Court Executive Officer and a principal of the Contractor, as set forth in subparagraph F below.
 - F. If agreement cannot be reached between the Court's Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Court Executive Officer (CEO), or his designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the CEO, or his designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the Court may reject the Work and shall notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the Court may terminate this Agreement pursuant to the terms of

Standard Provisions set forth in this Appendix D. Termination does not relieve the Court of liability for wrongfully rejected Work.

- G. The Court's acceptance of the Work shall not relieve the Contractor from its responsibility for the Work. The Court's acceptance shall not be deemed to be a waiver of its rights should any claims arise from the performance of the Contractor's Work.

7. Contractor's Personnel

- A. Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the JBE is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.
 - B. The Court has the right to review resumes of the Contractor's proposed personnel prior to commencement of the Work of this Agreement. If, in the Court's reasonable opinion, any of the proposed personnel is unsatisfactory or does not meet the Court's requirements, the Contractor shall submit a different candidate for consideration.
 - C. The Court reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the Court under this Agreement if, in the Court's opinion, the performance of the Contractor's personnel is unsatisfactory. The Court agrees to provide Notice to the Contractor in the event it makes such a determination. If the Court exercises this right, the Contractor shall promptly assign replacement personnel, possessing equivalent or greater experience and skills.
 - D. If any of the Contractor's Key Personnel, become unavailable during the Term(s) of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills; any substitute must be Approved by the Court's Project Manager.
 - E. The Contractor shall endeavor to retain the same individuals on the Project during the performance of the Work of this Agreement. However, the Contractor may, with approval of the Court's Project Manager, introduce personnel to the Project with specific skill sets or release personnel from the Project whose skill set is not needed at the time.
 - F. If any of the Contractor's Key Personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the Court, the Court may terminate this Agreement for cause pursuant to General Provisions, as set forth in Appendix D.
 - G. Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.
 - H. Contractor shall cooperate with the JBE if the JBE wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the JBE may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the JBE of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the JBE and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the JBE: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the JBE, the JBE advises are unacceptable to the JBE.
- 8. Subcontracting.** Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of

the JBE. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

9. **Contractor Certification Clauses.** Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JBE if any representation and warranty becomes untrue. Contractor represents and warrants as follows:
- A. **Authority.** Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement.
 - B. **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 JBE.
 - C. **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
 - D. **No Conflict of Interest.** Contractor and any subcontractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
 - E. **The Contractor and employees of the Contractor shall avoid actions resulting in or creating the appearance of (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or, (v) adverse effects on the confidence of the public in the integrity of the government or this Agreement.**
 - F. **No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
 - G. **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform the Services.
 - H. **Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.
 - I. **Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
 - J. **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.
 - K. **Noninfringement.** The Goods, Services, Deliverables, and Contractor's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.

- L. Nondiscrimination. Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.
 - M. National Labor Relations Board Orders. 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.
10. **Tax Delinquency.** Contractor must provide notice to the JBE immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The JBE may terminate this Agreement immediately "for cause" if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.

11. Insurance

- A. Contractor shall provide and maintain at the JBE's discretion and Contractor's expense the following insurance during the Term:
 - i. Commercial General Liability. The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
 - ii. Workers Compensation and Employer's Liability. The policy is required only if Contractor has employees. The policy 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 \$1,000,000 per accident or disease.
 - iii. Automobile Liability. This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. The 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 policy must provide combined single limits of at least \$1,000,000 per occurrence.
 - iv. Professional Liability. This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services

provided under this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that activities commence pursuant to this Agreement.

- v. Commercial Crime Insurance. This policy is required only if Contractor handles or has regular access to the JBE’s funds or property of significant value to the JBE. This policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$1,000,000
- B. Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- C. 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 (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- D. Deductibles and Self-Insured Retentions. Contractor shall declare to the JBE all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the JBE’s approval. Deductibles and self-insured retentions do not limit Contractor’s liability.
- E. Additional Insured Endorsements. Contractor’s commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the JBE, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.
- F. Certificates of Insurance. Before Contractor begins performing Services, Contractor shall give the JBE certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days’ prior written notice to the JBE.
- G. Qualifying Insurers. For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- H. Required Policy Provisions. Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer’s liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the JBE, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- I. Partnerships. If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance

program with the association, partnership, or other joint business venture included as a named insured.

- J. Consequence of Lapse. If required insurance lapses during the Term, the JBE is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

12. Indemnification. Contractor will defend (with counsel satisfactory to the JBE or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) a latent or patent defect in any Goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) 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 JBE's prior written consent, which consent shall not be unreasonably withheld; and the JBE 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.

13. Termination

- A. Termination for Convenience. The JBE may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the JBE, Contractor shall immediately: (a) stop Services as specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.
- B. Termination for Cause. The JBE may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the JBE, is not capable of being cured within this cure period); (ii) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
- C. Termination upon Death. This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
- D. Rights and Remedies of the JBE.
- i. Nonexclusive Remedies. All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the JBE immediately if Contractor is in default, or if a third-party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Contractor is in default, the JBE may do any of the following: (i) withhold all or any portion of

a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following Notice, the JBE's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

- ii. Replacement. If the JBE terminates this Agreement in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the JBE for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the JBE for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the JBE. Contractor shall continue any Services not terminated hereunder.
- iii. Delivery of Materials. In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the JBE with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any JBE-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the JBE shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the JBE's termination is not for cause, the JBE shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the JBE's termination Notice.

14. Court's Obligation Subject to Availability of Funds.

- A. The Court's obligation under this Agreement is subject to the availability of authorized funds. The Court may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the Court, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, any individual Work Order or in any Amendment hereto, the Court may, upon written Notice to the Contractor, terminate this Agreement or any individual Work Order in whole or in part. Such termination shall be in addition to the Court's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation: i. The Court shall be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement to the extent such services are affected by the termination.
- C. Funding for this Agreement in whole or in part through any individual Project beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement or the affected parts shall terminate by these terms without any further action of the parties at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

- 15. **Independent Contractor.** Contractor is an independent contractor to the JBE. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBE. Contractor has no authority to bind or incur any obligation on behalf of the JBE. If any governmental entity

concludes that Contractor is not an independent contractor, the JBE may terminate this Agreement immediately upon Notice.

16. **GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
17. **Retention of Records.** The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with State and Federal law, a minimum retention period being no less than four (4) years after final payment under this Agreement. The Contractor is also obligated to protect Data adequately against fire or other damage.
18. **Audit.** Contractor must allow the JBE or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the JBE five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JBE in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.
19. **Licenses, Permits, and Registries.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services or the delivery of the Goods. Additionally, if Contractor is a charitable corporation or fundraiser doing business in California, they certify that they are in compliance with the requirement to register and submit necessary documentation to California's Office of the Attorney General. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits, authorizations, and registrations, and for any fines and penalties arising from its noncompliance with any applicable law or government code.
20. **Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the JBE's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The JBE owns all right, title and interest in the Confidential Information. Contractor will notify the JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JBE to protect such Confidential Information. Upon the JBE's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the JBE or, if so directed by the JBE, destroy all Confidential Information (in

every form and medium), and (b) certify to the JBE in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the JBE shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

21. **Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Contractor hereby assigns to the JBE ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JBE.

22. **Copyrights and Rights in Data**

A. The Court reserves the right to use and copyright, in whole or in part, any Data produced from this Agreement.

B. The Contractor agrees not to copyright any Data produced from this Agreement unless the Court gives the Contractor express permission to do so. If such permission is obtained and the Data is copyrighted, the Court shall be given an exemption that reserves for it the right to use, duplicate, and disseminate the Data without fee.

23. **Ownership of Intellectual Property.**

A. Unless the Contractor and the Court reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the Court's requirement (i) all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the Court shall be treated as if it were "work for hire" for the Court, and (ii) the Contractor will immediately disclose to the Court all discoveries, inventions, enhancements, improvements, and similar creations (collectively, "Creations") made, in whole or in part, by the Contractor in the course of or related to providing services to the Court.

B. All ownership and control of the above Data, Materials, and Creations, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the Court, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the Court, without any additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the Court. The Contractor agrees to execute any documents required by the Court to register its rights and to implement the provisions herein.

24. **Limitation on Publication.** The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the Court without prior review and written permission by the Court's Communication Director.

25. **Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.

26. **Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
27. **Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the JBE. A waiver of enforcement of any of this Agreement's terms or conditions by the JBE is effective only if expressly agreed in writing by a duly authorized officer of the JBE. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
28. **Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
29. **Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
30. **Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
31. **Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
32. **Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.
33. **Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.
34. **Limitation on Court's Liability:** The Court shall not be responsible for loss of or damage to any non-Court equipment arising from causes beyond the Court's control.
35. **Use of Court or Court Provided Equipment.** Neither the Court nor the Courts shall be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Contractor, or by any of its employees, Subcontractors or agents, even though such equipment may be furnished, rented, or loaned to the Contractor by the Court or Courts.
36. **Disputes.** If Contractor believes that there is a dispute or grievance between Contractor and the Court arising out of or relating to this Agreement, Contractor shall first discuss and attempt to resolve the issue informally with the Court's Project Manager. If the issue cannot be resolved at this level, Contractor shall follow the following procedures:
 - A. If the issue cannot be resolved informally with the Court's Project Manager, Contractor shall submit, in writing, a grievance report together with any evidence to the Project Manager's Supervisor. The grievance report must state the issues in the dispute, the legal authority, or other basis for the Contractor's position and the remedy sought. Within ten (10) working days of receipt of the written grievance report from the Contractor, the Supervisor shall make a determination on the problem, and shall respond in writing to the Contractor indicating the decision and reasons therefor. Should the Contractor disagree with the Supervisor's decision, Contractor may appeal to the next level, following the procedure in "Disputes", paragraph 2, listed below.

- B. Contractor must submit a letter of appeal to the Court Executive Officer (CEO) explaining why the Project Manager's Supervisor's decision is unacceptable. The letter must include, as an attachment, copies of the Contractor's original grievance report, evidence originally submitted, and response from Supervisor. Contractor's letter of appeal must be submitted within ten (10) working days of the receipt of the Supervisor's written decision. The CEO or designee shall, within twenty (20) working days of receipt of Contractor's letter of appeal, review the issues raised and shall render a written decision to the Contractor. The decision of the CEO or designee shall be final.
 - C. All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.
 - D. Pending final resolution of any dispute, Contractor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by Court. Contractor's failure to diligently proceed in accordance with Court's instructions will be considered a material breach of this Agreement.
37. **Provisions Applicable to Certain Agreements.** The provisions in this section are applicable only to the types of orders specified in the first sentence of each subsection. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.
- A. **Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no JBE funds received under this Agreement will be used to 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 JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.
 - B. **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 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.
 - C. **Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
 - D. **Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
 - E. **Iran Contracting Act.** *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to JBE an Iran Contracting Act certification as part of the solicitation process, 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 forty-five (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 JBE to enter into this Agreement pursuant to PCC 2203(c).

- F. **Loss Leader Prohibition.** *If this Agreement involves the purchase of goods, this section is applicable.* Contractor shall not sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.
- G. **Recycling.** *If this Agreement provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods.* Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable. Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
- H. **Sweatshop Labor.** *If this Agreement provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable.* Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor’s records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor’s compliance with the requirements under this section and shall provide the same rights of access to the JBE.
- I. **Federal Funding Requirements.** *If this Agreement is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to the JBE by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions,

terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The JBE may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.

- J. DVBE Commitment.** *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 JBE 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 JBE: (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.
- K. Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to Contractor. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the JBE shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action.
- L. Legal Services.** *If this Agreement is for legal services, this section is applicable.* Contractor shall: (i) adhere to legal cost and billing guidelines designated by the JBE; (ii) adhere to litigation plans designated by the JBE, if applicable; (iii) adhere to case phasing of activities designated by the JBE, if applicable; (iv) submit and adhere to legal budgets as designated by the JBE; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the JBE; and (vi) submit to legal bill audits and law firm audits if so requested by the JBE, whether conducted by employees or designees of the JBE or by any legal cost-control provider retained by the JBE for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the JBE. If (a) the Contract Amount is greater than \$50,000, (b) the legal services

are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, 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 the Agreement equal to the lesser of either (A) thirty (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 period of less than a full year or (B) the number of hours equal to ten percent (10%) 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 a Judicial Branch Entity for legal services.

- M. **Good Standing.** *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.
- N. **Equipment Purchases.** *If this Agreement includes the purchase of equipment, this section is applicable.* The JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the JBE, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the JBE at no expense to the JBE. If a theft occurs, Contractor must file a police report immediately.
- O. **Four-Digit Date Compliance.** *If this Agreement includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the JBE. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.
- P. **Janitorial Services or Building Maintenance Services.** *If this Agreement is for janitorial or building maintenance services, this section is applicable.* If this Agreement requires Contractor to perform Services at a new site, Contractor shall retain for sixty (60) days all employees currently employed at that site by any previous contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.
- Q. **Small Business Preference Commitment.** *This section is applicable if Contractor received a small business preference in connection with this Agreement.* Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the JBE the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

- R. **Competitive Procurement.** *This section is applicable if contract awarded from a Request for Proposal.* All provisions in the Request for Proposal (RFP) shall be applicable and enforceable under this agreement and the provisions in the RFP shall be included as an exhibit to this agreement.
38. **Entire Agreement.** This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a duly authorized officer of the Court.
39. **Order of Precedence.** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
- A. General Provisions;
 - B. Contract form, and any amendments thereto;
 - C. Statement of work, including any specifications incorporated by reference herein;
 - D. Special terms and conditions; and
 - E. All other attachments incorporated in this Contract by reference

*****End*****