

ATTACHMENT 2 – FORM OF CONTRACT

**STANDARD AGREEMENT**

AGREEMENT NUMBER <b>TBD</b>
--------------------------------

1. In this Agreement, the term “Contractor” refers to **TBD**, and the term “JBE” refers to the **Superior Court of California, County of Butte**.

2. This Agreement is effective as of **TBD** (“Effective Date”).

3. The maximum amount the JBE may pay Contractor under this Agreement is **TBD** (the “Contract Amount”).

4. The purpose or title of this Agreement is: **Copy Machine Leasing Services**

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

5. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement and is mutually binding on the parties in accordance with its terms.

Appendix A – Statement of Work

Appendix B – Pricing and Payment

Appendix C – General Terms and Conditions

Appendix D – Defined Terms

<b>JBE’S SIGNATURE</b>	<b>CONTRACTOR’S SIGNATURE</b>
<b>Superior Court of California, County of Butte</b>	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized)</i>
BY <i>(Authorized Signature)</i>  <b>TBD</b>	BY <i>(Authorized Signature)</i>  <b>TBD</b>
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Kimberly Flener, Court Executive Officer</b>	PRINTED NAME AND TITLE OF PERSON SIGNING <b>TBD</b>
DATE EXECUTED <b>TBD</b>	DATE EXECUTED <b>TBD</b>
ADDRESS 1 Court Street, Oroville CA 95965	ADDRES <b>TBD</b>

## APPENDIX A

This Statement of Work is subject to the Agreement between Contractor and the JBE. By executing this Statement of Work, the Parties agree to be bound by the terms and conditions set out in the Agreement with respect to the Services to be performed under this Statement of Work. Unless otherwise defined in this Appendix A, each capitalized term used herein shall have the meaning set forth in Appendix D.

### **1. Term of this Statement of Work.**

The term of this Statement of Work will commence on **TBD** (the "SOW Effective Date") and will continue until **TBD**; At the Court's option, this agreement may be extended an additional two years via written amendment. Expiration or termination of the Agreement will not serve to terminate this Statement of Work. All applicable terms and conditions of the Agreement will continue to apply to this Statement of Work until the expiration or termination of this Statement of Work.

### **2. JBE's Requirements and Description of Services and Deliverables.**

- 2.1. Vendor shall retain title and ownership responsibilities of leased equipment.
- 2.2. Vendor as owner of equipment shall bear the responsibility of obtaining insurance against loss or damage of property due to accidents, theft, vandalism, and acts of nature, i.e., earthquakes, fires, floods, lightning, etc. The Court shall not be required to obtain insurance for any of the copiers leased from the Vendor.
- 2.3. The Court shall not be liable for loss or damage to the equipment furnished by the Vendor from any cause whatsoever while the equipment is in the possession of the Court, except when loss or damage resulted from the sole negligence of the Court. If damage or loss occurs to the installed equipment caused by negligence or willful act of the Court, reimbursement to the Vendor may be made as follows: The Vendor shall submit an invoice and a written damage or loss evaluation/claim to the Court's authorized representative. If the damaged equipment can be repaired, the Vendor will invoice the Court at the Vendor's lowest current manufacturer's list price rates for parts and labor.
- 2.4. In general, the Lease Program service shall include delivery, installation, and set up with removal of all shipping debris, providing all consumable supplies (except paper), emergency repair service during normal business hours, periodic preventive maintenance, and unlimited operator training.
- 2.5. Initial Supplies - There shall always be enough supplies (except paper) delivered with each copier to ensure a minimum of one month's usage.
- 2.6. Maintenance costs shall include all maintenance (emergency, preventive, and remedial), and all operation supplies (Drum replacements and consumable supplies (except paper) including but not limited to: toner, developer, fuser agent, staples, sumps, preventive maintenance kits) as well as the pickup, return, and recycling of all used supply cartridges (such as for toner, developer, fuser oil, etc.).
- 2.7. Vendor shall not ship or install equipment without a properly executed purchase order.
- 2.8. Coordination is paramount in order that the Court may manage the removal of existing equipment with the delivery of new equipment. This is especially important for locations with limited space or with large copier/printers, and will minimize the downtime experienced by Court divisions during the change out of equipment. Vendor shall in no instance deliver or remove equipment without the agreement, in advance, of the Court representative.

2.9. Equipment Acceptance Testing - Deliveries are not considered complete until:

- 2.9.1. Equipment has been delivered in the configuration as ordered.
- 2.9.2. Equipment has been properly installed and made ready for use by Vendor's trained personnel.
- 2.9.3. Initial 30-day operations supplies have been delivered.
- 2.9.4. All training has been provided to the personnel at the delivery site.
- 2.9.5. The Court representative has signed and dated an acceptance certificate indicating that the above conditions have been met. A signed bill of lading or delivery receipt obtained by the carrier is not considered acceptable.

2.10. Add/Delete Equipment: The Court reserves the right to:

- 2.10.1. Add additional copier/printers to the Lease Program at any time during the contract period at the contracted lease and maintenance prices.
  - 2.10.2. Add and/or delete copier options or services to this Contract. Should an option or service requirement be deleted, payment to the Vendor will be reduced proportionally, to the amount of option or service reduced in accordance with the contract price. In the event of additional options or services, which are not contemplated by the Agreement, prices for such additions will be negotiated between the Vendor and the Court.
  - 2.10.3. In addition, the Court reserves the right to have a copier relocated after the initial installation at no cost to the Court.
- 2.11. The Court evaluates their business objectives on an ongoing basis. In supporting changes to our business environment, equipment and feature upgrades may be reviewed. Possible lease of additional machines or features and machine upgrades will be evaluated and discussed with the vendor on a case-by-case basis, as needs arise.
- 2.12. Changes in equipment, such as upgrades and downgrades selected from the same Vendor, shall be allowed during the ordering period and shall not be considered an early termination. There shall be no penalties or additional costs for upgrading or downgrading copier/printers during the ordering period, provided that the lease term is renewed for a three (3)-year period beginning on the date the new copier is received.
- 2.13. Third (3rd) Party Financing: If the selected Vendor chooses to finance its copier/ printers proposed to the Court through a third party leasing company, any such arrangement shall be solely between the Vendor and the leasing company. The Court shall remain clear of all such arrangements and will not alter or amend any terms or conditions of this Contract to accommodate a third party. Vendor shall remain the sole source of contact with the Court.
- 2.14. Vendor shall provide full orientation and training for Court personnel at no cost to the Court. Training is to be provided in four stages: (1) Key operators shall receive full training and orientation one week prior to the installation of equipment, (2) Court personnel shall receive full orientation and training on site at the location of each copier installation after completed copier installation. (3) Network connectivity, print driver installation and other technical support training, also at no cost to the Court, will be scheduled prior to delivery/ installation. (4) Subsequent training at no cost to the Court shall be available on an ongoing basis during the contract term for the purposes of training new personnel, providing refresher sessions, increasing user productivity through effective use of features, providing assistance with new procedures or equipment, etc.
- 2.15. Training shall be provided as often as required at no cost to the Court.
- 2.16. Training shall include instructions on the proper use of the equipment and features, briefing on the safety precautions, how to load paper, toner, and other consumable supplies as well as how to clear paper jams. Each copier shall be delivered with an operator's instruction manual.
- 2.17. Each model of copier/printer leased under this Agreement must comply with all general requirements stated herein, plus those specific requirements applicable to the volume group for which that copier is being offered.

- 2.18. Leased copiers should be from the same manufacturer to facilitate the Court staff's ability to use the different copy machines provided.
- 2.19. Machines leased must be designated as digital. The equipment must come with a platen and be able to scan once and print many with electronic collating; it must also be multi-task/multi-functional and be capable of multiple functions, including: copy, print and/or scan. These functions must be available whether machine is standalone or networkable.
- 2.20. For purposes of the initial installations, all subsequent installations, and the duration of the term of this contract, all equipment shall be new and assembled for the first time from new components by the manufacturer. The Court shall be the first user of the new equipment with no previous placements (ever) on rental or lease or ever placed in the Vendor's or customer location as a demonstration unit including employee home offices. All equipment performance and reliability standards shall conform to "new" specifications.
- 2.21. All parts and components supplied by the Vendor in the process of maintaining and servicing the new equipment for the duration of this contract shall be new Original Equipment Manufacture (OEM) parts and components.
- 2.22. The Vendor shall provide specification sheets listing all accessories, features, functions and technical requirements of each model copier/printer.
- 2.23. All copiers must allow administrators to assign pin numbers/accounting codes for authorized users as well as allow tracking of usage by individual users or departments.
- 2.24. Copiers shall have programmable cost center/accounting meters, with a minimum of 50 separate cost centers/meters; vendor to specify the number of digits accommodated per pin number/accounting code.
- 2.25. Resolution on all B&W and Color equipment offered must be at least 600 dpi output for copying, scanning and printing.
- 2.26. The Vendor shall specify all electrical requirements, including the necessity for special electrical receptacles, dedicated lines, etc. The Vendor will provide an adequate surge protection device, at no cost to the Court, for each digital copier/printer installed. Each device shall meet the OEM's recommendations for electrical surge protection.
- 2.27. One of the three paper trays may be adjustable. Vendors may include auxiliary paper trays in order to meet this requirement.
- 2.28. When rated at a speed equal to or greater than 60 cpm copiers shall be capable of inserting tabs/or slip sheets.
- 2.29. Copiers shall be operational as a "walk-up" digital copier, whether on the Court network or not.
- 2.30. Copiers shall have the capability for date-stamping and page numbering. Date-stamping and page numbering may be added to specific copiers. Vendor shall identify whether or not date-stamping and page numbering is optional and delineate all functions of this feature. If optional, Vendor shall identify all costs (i.e. equipment, software, installation, etc.) and technical requirements necessary for the operation of this feature.
- 2.31. If some or all of the goods being provided by Vendor are on CAL OSHA's "Hazardous Substances List," Vendor shall forward a completed Material Safety Data Sheet (MSDS) to the Court.
- 2.32. A stand, table or similar equipment must be provided for all non-floor models at no additional cost to the Court.

- 2.33. Accessories such as sorters, document feeders, large capacity trays, etc., must be available as specified in the detailed item specifications Technical Literature.
- 2.34. The Court promotes the leasing of energy efficient, materials efficient and reduced toxic level products where availability, quality and budget constraints allow. Vendors are expected whenever possible to provide products that earn the ENERGY STAR and meet the current ENERGY STAR specifications for energy efficiency with power management features enabled.
- 2.35. Copier/printers shall be able to produce clean, acceptable images using recycled paper made for xerographic purposes with up to 30% recycled content.
- 2.36. All equipment must have features or options for securing document distribution. Copiers shall include software that provides security, including but not limited to: data security, print security and copy security. This security feature shall, at a minimum, erase all latent images off of the image server, as well as all hard drives (secure print option and disk overwrite capability).
- 2.37. All copiers leased with the network access option must be compatible with the TCP/IP networking protocol and be capable of operating with Windows XP, Windows Vista, and Windows 7 workstations. All equipment offered must have 10/100M/1000B Ethernet connection capability.
- 2.38. If copiers with network connectivity are selected, they will be connected to the Court's Windows environment. The vendor shall be responsible for providing technical support during the network connection phase. Each networked digital printer/copier shall be capable of allowing printing from any desktop PC within the Court's network. Scan to email capability shall be compatible with SMTP and (optionally) LDAP support.
- 2.39. All networked digital printers/copiers must have internal CPUs.
- 2.40. Any software operating upgrades issued during the term of the lease shall be installed and provided to the Court at no charge.
- 2.41. The Court reserves the right to test Vendor's equipment to ensure compatibility with the Court's network. User testing may also be conducted during this period. The Vendor is responsible for installing trial equipment in the offices of the Court to support this testing process, if requested. Installation of trial equipment shall be at no cost to the Court.
- 2.42. Vendor shall provide migration and transition support services to Court IT staff and the general user population at no charge. Vendor shall provide technical training, at no charge, for the Court's Information Systems (IS) employees relative to the connection of end users for networked printers/copiers.
- 2.43. The Vendor shall be responsible for backing-up and restoring of information stored on electronic media when the repair or replacement could affect any data stored on the equipment.
- 2.44. The Vendor shall keep complete records available to the Court, documenting all programming changes, software installations or upgrades and trouble fixes including those done remotely.
- 2.45. For security reasons, remote access to the copiers by the Vendor (e.g., remote diagnostics or copier usage) will not be made available.
- 2.46. The Vendor shall submit, in duplicate, an invoice that reflects a complete listing by site location and machine serial number of each copier which shows:
- 2.46.1. The total monthly billing amount due by machine
  - 2.46.2. Copy counter (meter) readings at the beginning and end of the month for each accounting meter on each machine.
  - 2.46.3. The total maintenance cost chargeable to each copier for that month.
- 2.47. The invoice must be dated and contain the following information:

- 2.47.1. Name and address of Vendor
- 2.47.2. Contract number
- 2.47.3. Payment terms
- 2.47.4. Purchase order number

Failure to provide this information will cause the Court to return the invoice for corrections and thus delay payment.

- 2.48. The Court is exempt from federal excise taxes and no payment will be made for any taxes levied on the vendor's or any Subcontractor's employee's wages. The Court will pay for any applicable State of California or local sales or use taxes on the products provided or the services rendered. Taxes shall be included as a separate line item on a vendor's invoice.
- 2.49. Vendor shall not assess a one-time fee, shipping fee, packing or unpacking fee, or any types of fee on any copier placement or removal.
- 2.50. Vendor warrants and represents that Vendor and firm's personnel possess such expertise, experience and resources to provide the equipment and services required under the Agreement in a diligent, timely and professional manner consistent with the highest standards of the industry. Vendor warrants that all equipment and services provided will be in conformance with the specifications provided by the equipment manufacturer and the Court. Vendor further warrants that all manufacturer's warranties will be assigned to the Court or provide comparable warranties. Vendor agrees to unconditionally guarantee all equipment against defect in material, workmanship and performance for a period of one year from the date of acceptance by the Court, unless otherwise specified.
- 2.51. The Court will not tolerate repeated service calls for recurring problems. If the Court elects to have the equipment immediately replaced with an equivalent unit in new condition, then, the following provisions shall apply:
  - 2.51.1. Proposed replacement unit must meet the approval of the Court CEO or designee. Vendor shall bear the cost for the removal of the original equipment and the cost for delivery of the replacement unit.
  - 2.51.2. Period of lease shall remain the same as on original equipment.
  - 2.51.3. The monthly lease cost and cost per copy maintenance charge of the replacement unit shall not exceed the costs of the original unit.
- 2.52. On-Site Service Call Categories: The Vendor's on-site maintenance shall include all calls found to be necessary by the service representative to maintain the equipment in optimum operating condition including preventive maintenance service calls, emergency service calls, and all required remedial service calls.
- 2.53. Each regularly scheduled preventive maintenance call shall include a complete inspection, essential cleaning, lubrication, replacement of worn or broken parts, and mechanical adjustments to accommodate for new parts or to compensate for wear. Preventive maintenance will be based upon the specific needs of the copier as determined by the manufacturer. All maintenance parts and labor cost shall be included in the cost-per-copy maintenance price. Regularly scheduled preventive maintenance calls shall be scheduled in advance with the designated Court representative.
- 2.54. On-call remedial maintenance shall be provided on an "as needed" basis as determined by the Court.
- 2.55. Emergency service calls are defined as: A call from the Court where a machine is reported "down" (e.g., one or more of the machines primary functions are not working or producing unacceptable results).
- 2.56. Maintenance Personnel: Only fully trained and qualified technicians shall perform the maintenance on copier/printers. Vendor shall furnish, install, and maintain all equipment in accordance with manufacturer's specifications.

- 2.57. Vendor's on-site maintenance shall include all labor, mileage, travel time, and all replacement parts necessary to maintain said equipment in optimum operating condition for service calls to Court location of equipment. All replacement parts include but are not limited to: drum, fuser rollers, oil, cleaning blades, and any accessories such as auto document feeder, stapler, sorters, etc.
- 2.58. The Court's expectations are that equipment furnished shall be maintained in a high quality state of operation at all times.
- 2.59. Vendor shall provide, with each machine, an on-site service log. This log shall be updated each time service is performed on the machine.
- 2.60. Vendor shall provide, install, and maintain equipment that meets or exceeds the specifications contained in this contract.
- 2.61. The Court reserves the right to allow the Vendor to substitute any new equipment offered by the Vendor on all unshipped and future orders if the equipment capabilities are equal to, or greater than, the contract equipment. The Court CEO or designee shall be the final authority as to acceptability.
- 2.62. In the event of manufacturer discontinuation, the Vendor shall substitute equipment with equal or better capabilities for the same or less cost than the discontinued equipment. The Vendor shall not substitute any equipment without the prior written approval of the Court CEO or designee.
- 2.63. Vendor shall be responsible for replacing any items received in damaged condition at no cost to the Court. This includes all shipping costs for returning non-functional/damaged equipment to the Vendor for replacement.
- 2.64. The warranties set forth will not be subject to any disclaimer or exclusion of warranties or to any limitation of Vendor's liability under the Agreement. Vendor will provide a contact person available and authorized to remedy any non-conformity with these warranties.
- 2.65. Vendor shall have sufficient management and qualified manufacturer trained and certified technicians to service all copier/printers supplied under the agreement for the life of any and all the copiers/printers leased under this agreement. The Vendor shall have a sufficient number of technicians to serve and support the requirements under this contract within the specified response time.
- 2.66. It will be the responsibility of the Vendor to provide repair service(s) within four (4) hours on-site after a call is placed, during normal business hours of 8:00 AM. to 5:00 PM Pacific Time, Monday through Friday, if the call is placed before 1:00 PM Pacific Time. If the call is placed after 1:00 PM., service or maintenance shall be provided by 10:00 AM the following work day. Failure to meet the four (4)-hour on-site response time on a continual basis as documented by the Court shall result in liquidated damages. If the reported defect(s) remain unresolved for a period of sixteen (16) business hours or more, the Vendor will provide the Court with a comparable loaner copier at no charge unless alternative arrangements are agreed to in advance by an authorized representative of the Court. If the original equipment cannot be repaired to the satisfaction of the Court, permanent replacement equipment with equal or greater specifications must be provided, at no cost to the Court. Loaner equipment will be replaced within 30 days with the original machine or a newly manufactured permanent replacement.
- 2.67. The Vendor will be required to provide a maximum down-time guarantee on each copier/printer of no more than 5% during any calendar month. Down-time is calculated from the time the Court places the call, and ends when the machine is up and running correctly. It is based on the machine being inoperative or the copies made being unusable (at the sole determination of the Court). A calendar month consists of normal business hours 8:00 AM. to 5:00 PM., Monday through Friday, except for Court holidays. If a machine exceeds the 5% requirement during a month, the Vendor will be required to provide a credit of \$25 to the Court on the invoice for the following month. If the machine exceeds the maximum down-time guarantee for two (2) consecutive months, the Court may require that the machine be replaced. The maximum down-time guarantee shall remain in force during the entire term of the contract.

- 2.68. All service calls except those designated as (a) preventive maintenance; (b) operational software or equipment upgrades; or (c) Court operator's negligence or abuse will be included in the down-time analysis.
- 2.69. Vendor shall provide telephone support and a toll-free phone number for placing service calls, which will be available Monday through Friday, 8:00 AM to 5:00 PM. Within two (2) hours of receiving the initial service call, the Vendor is required to contact the Court to establish an estimated time of arrival (ETA).
- 2.70. There will be no additional charges or overtime for time spent repairing equipment before or after the Court's normal operation hours (8:00 AM to 5:00 PM Pacific Time).
- 2.71. The Court shall not be charged for copies made by Vendor's technicians during preventive or remedial maintenance service. Vendor will have available and operational a meter credit arrangement, to allow for machine malfunctions and to compensate for extra meter clicks when service technicians make test copies in servicing or repairing the machine. This provision is not intended to cover defects in copy quality, which are the result of operator errors (incorrect paper selection, operation of machine with insufficient toner, etc). The credit must be presented to an authorized representative of the Court at the time of service.
- 2.72. Vendor is responsible for any damage to the premises of any site as a result of installation or repair and shall repair and restore to the original condition any area so damaged to the satisfaction of the court and within the time frame designated by the Court.
- 2.73. Vendor shall guarantee the availability of replacement parts, applicable accessories and equipment for the duration of the contract term. Vendor shall have in place an inventory and delivery system of parts and consumable supplies in quantities sufficient to serve the requirements of this contract. It shall be the responsibility of the Vendor to maintain stock levels of all consumable supplies at the individual copier sites. If adequate stock is not available at a site, the Vendor must deliver the necessary items within four (4) hours on site after receipt of a verbal request. It is the responsibility of the Vendor to track the inventory and usage of supplies to ensure adequate availability.
- 2.74. If delivery of maintenance services or service performance is repeatedly unsatisfactory, the Court may terminate this contract in whole or in part and in that event, the Vendor shall be liable for fixed, agreed, and liquidated damages accruing until the time the Court may reasonably obtain delivery or performance of similar services and supplies. The liquidated damages shall be in addition to excess costs under the default clause Liquidated Damages For Failure To Meet Four-Hour Service Call Response Time: If the Vendor fails to provide repair service within the required four (4) hours from the time of notification, a \$50 liquidated damages charge will be deducted for each incident.
- 2.75. The Vendor shall maintain an inventory record that identifies all equipment delivered under this contract. The inventory record will include make and model, Court location, and serial number of all installed equipment; Vendor's record of performed maintenance and repair; monthly volume by machine or copies produced; total billing for all copying services provided during each billing period.
- 2.76. Quarterly, the Vendor shall submit to the Court administrative representative, a Service Summary Report per location, listing (a) beginning dates/ times of all service calls; (b) description of problem per service call; (c) completion dates of all service calls; (d) number of hours or days down time per copier/printer; (e) Courtwide down-time % and (f) individual down-time % for each copier.
- 2.77. The Vendor shall also provide a quarterly report to the Court administrative representative indicating both Courtwide average response time and individual average response time for each copier/printer.
- 2.78. Monthly Usage Report: The Vendor shall provide the Court administrative representative a monthly cumulative report on copier volumes. The report shall include each copier, monthly usage and year-to-date totals.
- 2.79. Vendor shall guarantee that the equipment and prices proposed, including maintenance and supplies, shall be available to the Court for the entire contract period.

- 2.80. It shall be the Vendor's responsibility to examine each delivery site and to advise the Court of any safety, space, or special requirements that are to be met prior to delivery of equipment. Special requirements may include telecommunication line and jack for computer networking, dedicated electrical line, special electrical plug-in outlet, etc.
- 2.81. If the Vendor's equipment requires any special electrical accommodation (i.e., dedicated power line, isolation transformer, power filter, surge protector or suppressor, etc.), it shall be the Vendor's responsibility to provide and/or coordinate with Court such requirements at the Vendor's expense.
- 2.82. Vendor shall clean area and properly dispose of all packing materials, boxes, etc. immediately after installation and repair services are performed.
- 2.83. While Vendor's employees are on Court's premises, Vendor shall maintain strict work discipline and affect its work in compliance with governmental laws and occupational health and safety regulations.
- 2.84. Vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required to deliver and install digital copiers/ printers under the Agreement. The Vendor is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the Court. The Court has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required for performing services under the Agreement.
- 2.85. Access to Court building(s) will be as directed by the Court administrative representative.
- 2.86. The Vendor will inform its employees of restricted areas where their access is forbidden. Restricted areas will be designated by the Court representative(s).
- 2.87. Vendor shall not permit any employee who has been convicted of a felony to perform on the contract. Vendor's assigned personnel must have completed a criminal background and fingerprinting clearance check through Vendor's personnel policies and procedures prior to commencing services under this Agreement. Court reserves the right to review Vendor's fingerprinting and background policy as well as the actual results of personal background and security clearances conducted on the Vendor's assigned personnel.
- 2.88. Vendor shall ensure that no equipment or supplies will be delivered to the Site(s) prior to the date(s) agreed upon in the phase-in schedule by the Court's authorized representative.
- 2.89. Vendor will retain all confidential information provided by the Court, or inadvertently obtained while performing service, in the strictest confidence and will neither use it nor disclose it to anyone other than employees requiring the information to perform services under the Agreement entered into between the Court and Vendor without the prior written consent of the Court. The Court will retain the right to enjoin any unauthorized disclosure in an appropriate court of law. Vendor will not issue any public announcements concerning the Court without the prior written consent of the Court.
- 2.90. Vendor shall be responsible for all material(s) shipped prior to and during installation until the Court gives acceptance in writing. All risk of loss or expense associated with storing material(s) prior to the date of acceptance by the Court is the responsibility of the Vendor.
- 2.91. Vendor shall provide and pay for all materials, labor, tools, transportation and handling, and other facilities necessary for the furnishing, delivery, and assembly plus inspection before and after installation of all items specified herein.
- 2.92. Vendor shall at all times keep the premises and the areas in which the work is performed free from accumulation of waste materials or rubbish as well as the tools, installation equipment, machinery and surplus materials during the progress of the work and until completion thereof. The Vendor shall remove from the premises all crates, wrappings and other flammable waste materials or trash from the building. If

the premises are not maintained properly, the Court may have any accumulations of non-recyclable waste materials or trash removed with costs to be incurred by the Vendor as deemed appropriate.

- 2.93. It will be the responsibility of the Vendor to have qualified trained sales/service staff personnel to provide software and technical assistance at any location, including assistance in problem solving, maintenance, machine operation, etc. Vendor must also have access to manufacturer's technical resources for problems that are beyond the ability of the Vendor's staff. Such assistance shall be available at no cost and within twenty-four (24) hours of notification by the Court.
- 2.94. The Vendor shall provide for each site, at no additional cost, and in unlimited quantities, an operator training program for a primary operator, a back-up key operator and an operations demonstration for the casual users to be scheduled at mutually agreed times prior to the initial installation and monthly thereafter if requested.
- 2.95. If Vendor's books, records and other documents relevant to this Contract are not sufficient to support and document that allowable services were provided to eligible clients, the Vendor shall reimburse the Court for the services not so adequately supported and documented. Pertaining to audits, Vendor shall make available to the Court access to its computer files containing the history of contract performance and all other documents related to the audit. Additionally, any software used by the Vendor shall be made available for auditing purposes at no cost to the Court.
- 2.96. If at any time it is determined by the Court that a cost for which payment has been made is a disallowed cost, the Court shall notify the Vendor in writing of the disallowance and the required course of action, which shall be at the option of the Court either to adjust any future claim submitted by the Vendor by the amount of the disallowance or to require repayment of the disallowed amount by the Vendor forthwith issuing a check payable to the Court. Records may be audited by the Court or its designated representative at any time during regular working hours. Records may be audited if the contract is terminated in order to arrive at termination costs. Records may be audited to determine the Court's rights and the Vendor's obligations. Records may be audited to establish facts relative to any claim against the Vendor that may result in a charge(s) against the Court.
- 2.97. The Vendor and the Court shall have the use of data and reports resulting from this contract without additional cost or other restriction except as may be established by law or applicable regulation. Each party shall supply to the other party, upon request, any available information that is relevant to this contract and its performance.
- 2.98. The Vendor agrees that none of its officers or employees shall use or reveal any research, legal documents, or statistical information furnished by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained. Copies of such information shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings, unless ordered by a court of competent jurisdiction. The Court shall be notified immediately upon receipt of any such order of court, pertaining to production of such information.
- 2.99. Vendor shall provide the Court administrative representative a list of ALL employees who will access Court facilities under this contract. Background checks may be performed on those employees and access to Court facilities will be granted to those who have passed the background checks.

### **3. Schedule, Deliverables and Date(s) of Delivery.**

Contractor shall provide the Services based on the timelines contained in the table below:

**TBD**

### **4. Contractor Personnel.**

**TBD**

5. Supplemental Provisions.

TBD

BY SIGNING BELOW, the Parties agree to be bound by the terms of this Statement of Work as of the SOW Effective Date.

**Court**

Signature: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**Contractor**

Signature: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

SAMPLE CONTRACT

## APPENDIX B

### **Pricing and Payment**

Unless otherwise defined in this Appendix B, each capitalized term will have the meaning set forth in Appendix D.

#### **1. Service Fees.**

In consideration of and subject to the satisfactory performance by Contractor of the Services, the JBE shall pay to Contractor the Service Fees as set forth in this Appendix B. Except as expressly set forth in this Appendix B: (i) the Service Fees are the entire compensation for all Services under this Agreement; and (ii) all expenses relating to the Services are included in the Service Fees and shall not be reimbursed by the JBE. The maximum amount payable to Contractor under this Agreement will not exceed the Contract Amount. The Contract Amount may be changed only by amendment to this Agreement. Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement. Contractor shall immediately refund any payment made in error. The JBE shall have the right at any time to set off any amount owing from Contractor to the JBE against any amount payable by the JBE to Contractor under this Agreement.

#### **2. Expenses.**

2.1 Allowable Expenses. Contractor may submit for reimbursement, without mark-up, only the following categories of expense:

2.2 Limitation on Travel Expenses All travel is subject to preauthorization and approval by the JBE.

2.3 Limitation on Expenses. Contractor shall not invoice the JBE, and the JBE shall not reimburse Contractor, for expenses of any type that exceed in the aggregate during the term of any Statement of Work the amount of **TBD**.

2.4 Required Certification. Contractor must include with any request for reimbursement from the JBE a certification that the 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 JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

#### **3. Invoicing and Payment.**

3.1 Invoicing. Contractor's invoices must include information and supporting documentation, including a workload report in the form the JBE may specify from time to time. Contractor shall adhere to reasonable billing guidelines issued by the JBE from time to time. Contractor shall invoice the JBE for the applicable Service Fees upon Acceptance of each Deliverable by the JBE and in accordance with payment milestones and schedules under this Agreement. The JBE will not make any advance payment for Services. Contractor shall provide invoices with the level of detail reasonably requested by the JBE. The JBE will pay each correct, itemized invoice received from Contractor after Acceptance, in accordance with the terms hereof.

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

#### **4. Taxes.**

Unless otherwise required by law, the JBE is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The JBE shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the JBE pursuant to this Agreement.

5. Retention Amount. Notwithstanding the terms of this Appendix B, and without limiting the rights of the JBE under the Agreement, the JBE shall have the right at the time of Acceptance, with respect to those Deliverables in the Statement of Work, to withhold fifteen percent (15%) from the amounts to be paid by the JBE to Contractor therefor, until Acceptance of the final Deliverable under such Statement of Work.

## APPENDIX C

### General Terms and Conditions

Unless otherwise defined in this Appendix C, each capitalized term used herein shall have the meaning set forth in Appendix D.

#### 1. Services

1.1 Performance of Services. Contractor shall perform the Services described in this Agreement, the Statement of Work, and the Specifications. Except as set forth in the Statement of Work, Contractor is responsible for providing all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for delivery of the Services and to meet Contractor's obligations under this Agreement.

##### 1.2 Stop Work Orders.

(a) Effect. The JBE may, at any time, by written stop work order to Contractor, require Contractor to stop all, or any part, of the Services or other work called for by this Agreement for a period of up to ninety (90) days after the stop work order is delivered to Contractor, and for any further period to which the Parties may agree. Upon receipt of a stop work order, Contractor shall promptly comply with the terms of the stop work order and take all reasonable steps to end the incurrence of any costs, expenses or liabilities allocable to the Services or other work covered by the stop work order during the period of work stoppage. Within ninety (90) days after a stop work order is delivered to Contractor, or within any extension of that period mutually agreed to by the Parties, the JBE shall either: (i) cancel the stop work order; or (ii) terminate the work covered by the stop work order.

(b) Expiration or Cancellation. If a stop work order is canceled by the JBE or the period of the stop work order or any extension thereof expires, Contractor shall promptly resume the Services or other work covered by such stop work order. The JBE shall make an equitable adjustment in the delivery schedule, and the applicable Statement of Work shall be modified, in writing, accordingly, if: (i) the stop work order directly and proximately results in an increase in the time required for the performance of any part of the Statement of Work; and (ii) Contractor asserts its right to such equitable adjustment within thirty (30) days after the end of the period of work stoppage.

1.3 Change Orders. From time to time during the term of this Agreement, the Parties may mutually agree on a change to the Services, which may require an extension or reduction in the schedule and/or an increase or decrease in the fees and expenses and/or the Services (each, a "Change"), including: (i) a change to the scope or functionality of the Deliverables; or (ii) a change to the scope of the Services. In the event the Parties agree on a Change, the Parties will seek to mutually agree on a change order identifying the impact and setting forth any applicable adjustments in the Statement of Work and/or payments to Contractor. An authorized representative of each Party shall promptly sign the mutually agreed upon change order to acknowledge the impact and to indicate that Party's agreement to the adjustments.

1.4 Third Party or JBE Services. Notwithstanding anything in this Agreement to the contrary, the JBE shall have the right to perform or contract with a Third Party to perform any service within or outside the scope of the Services, including services to augment or supplement the Services or to interface with the IT Infrastructure of the Judicial Branch Entities or JBE Contractors. In the event the JBE performs or contracts with a Third Party to perform any such service, Contractor shall cooperate in good faith with the Judicial Branch Entities and any such Third Party, to the extent reasonably required by the JBE, and the JBE shall reimburse Contractor for its actual out-of-pocket costs. Such cooperation shall include, without limitation, providing such information as a person with reasonable commercial skills and expertise would find reasonably necessary for the JBE or a Third Party to perform its work relating to the Services.

##### 1.5 Data and Security.

(a) Safety and Security Procedures. Contractor shall maintain and enforce, at the Contractor Service Locations, industry-standard safety and physical security policies and procedures. While at each JBE Service Location, Contractor shall comply with the safety and security policies and procedures in effect at such JBE Service Location.

(b) Data Security. Contractor shall comply with the Data Safeguards. Contractor personnel and Subcontractors shall not attempt to access, and shall not allow access to the JBE Data and other Confidential Information that is not required for the performance of the Services by such personnel or Subcontractors. In the event Contractor or a Subcontractor discovers or is notified of a breach or potential breach of security relating to the JBE Data or other Confidential Information, Contractor shall promptly, at its own expense: (i) notify the JBE Project Manager of such breach or potential breach; and (ii) if the applicable JBE Data or other Confidential Information was in the possession of Contractor or Subcontractors at the time of such breach or potential breach, Contractor shall (1) investigate and cure the

breach or potential breach and (2) take measures satisfactory to the JBE to prevent such breach or potential breach from recurring.

(c) Security Assessments. At least once a year, or upon the JBE's request, Contractor shall, at its expense, perform, or cause to have performed an assessment of Contractor's compliance with the safety and security policies set forth in this Agreement or any Statement of Work. Contractor shall provide to the JBE the results, including any findings and recommendations made by Contractor's assessors, of such assessment, and, at its expense, take any corrective actions. The JBE and JBE Contractors may, at the JBE's expense, perform the assessments described in this Section and "snap" assessments (e.g., safety and data/physical security assessments) of the JBE Service Locations.

#### 1.6 Project Staff.

(a) Contractor Project Manager. The Contractor Project Manager shall serve, from the Effective Date, as the Contractor project manager and primary Contractor representative under this Agreement. The Contractor Project Manager shall (i) have overall responsibility for managing and coordinating the performance of Contractor's obligations under this Agreement, including the performance of all Subcontractors; and (ii) be authorized to act for and bind Contractor and Subcontractors in connection with all aspects of this Agreement. The Contractor Project Manager shall respond promptly and fully to all inquiries from the JBE Project Manager.

(b) Contractor Key Personnel. The JBE reserves the right to interview and approve proposed Contractor Key Personnel prior to their assignment to the JBE. Contractor shall not replace or reassign any Contractor Key Personnel unless the JBE consents in advance in writing or such Contractor Key Personnel (i) voluntarily resigns or takes a leave of absence from Contractor, (ii) has his/her employment, professional or other for-hire relationship terminated by Contractor, (iii) fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) dies or is unable to work due to his or her disability. If Contractor needs to replace a Contractor Key Personnel for any of the foregoing reasons, Contractor shall (1) notify the JBE promptly, (2) provide resumes for proposed replacement Contractor Key Personnel within two (2) Business Days after so notifying the JBE, and (3) be responsible for all costs and expenses associated with any replacement of any Contractor Key Personnel member (including, without limitation, any costs and expenses associated with training, project orientation or knowledge transfer reasonably required for replacement personnel to provide the applicable Services).

(c) Subcontractors. Contractor shall not subcontract or delegate any of the obligations under this Agreement except as approved by the JBE in writing in advance. The JBE may withdraw its approval of a subcontractor if the JBE determines in good faith that the subcontractor is, or will be, unable to effectively perform its responsibilities. If the JBE rejects any proposed subcontractor in writing, Contractor will assume the proposed subcontractor's responsibilities. No subcontracting shall release Contractor from its responsibility for performance of its obligations under this Agreement. Contractor shall remain fully responsible for the performance of Subcontractors hereunder, including, without limitation, all work and activities of Subcontractors providing services to Contractor in connection with the Services. Contractor shall be the sole point of contact with Subcontractors under this Agreement, and Contractor shall be solely responsible for Subcontractors, including, without limitation, payment of any and all charges resulting from any subcontract. The JBE's consent to any subcontracting or delegation of Contractor's obligations will take effect only if there is a written agreement with the Subcontractor, stating that the Contractor and Subcontractor: (i) are jointly and severally liable to the JBE for performing the duties in this Agreement; (ii) affirm the rights granted in this Agreement to the JBE; (iii) make the representations and warranties made by the Contractor in this Agreement; (iv) appoint the JBE an intended third party beneficiary under Contractor's written agreement with the Subcontractor; and (v) shall comply with and be subject to the terms of this Agreement, including with respect to Intellectual Property Rights, Confidential Information and Data Safeguards.

**(d) Project Staff.** Contractor shall appoint to the Project Staff: (i) individuals with suitable training and skills to perform the Services, and (ii) sufficient staffing to adequately provide the Services. Contractor shall make commercially reasonable efforts consistent with sound business practices to honor the specific request of the JBE with regard to assignment of its employees. The JBE may require Contractor to remove any personnel from the Project Staff that interact with any personnel of the Judicial Branch Entities or JBE Contractors (including, without limitation, the Contractor Project Manager) upon providing to Contractor a reason (permitted by law) for such removal. Contractor may, with the JBE's consent, continue to retain such member of the Project Staff in a role that does not interact with any personnel of the Judicial Branch Entities or JBE Contractors. The Contractor Project Manager and the JBE Project Manager shall work together to mitigate any impact on the schedule as set forth in a Statement of Work caused by any replacement of a Project Staff member. Contractor shall be responsible for all costs and expenses associated with any Project Staff replacement. Contractor shall assure an orderly and prompt succession for any Project Staff member who is replaced. If the Contract Amount is over \$200,000 (excluding Consulting Services), then Contractor shall give priority consideration 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) Conduct of Project Staff.**

(i) While at the JBE Service Locations, Contractor shall, and shall cause Subcontractors to: (1) comply with the requests, standard rules and regulations and policies and procedures of the Judicial Branch Entities regarding safety and health, security, personal and professional conduct generally applicable to such JBE Service Locations, and (2) otherwise conduct themselves in a businesslike manner.

(ii) Contractor shall enter into an agreement with each of the members of the Project Staff, which assigns, transfers and conveys to Contractor all of such Project Staff member's right, title and interest in and to any Developed Works, including all Intellectual Property Rights in and to Developed Works.

(iii) Contractor shall cooperate with the JBE if the JBE wishes to perform any background checks on Contractor's employees or contractors 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 remove from the Project Staff any person refusing to undergo such background checks and any other person whose background check results are unacceptable to Contractor or that, after disclosure to the JBE, the JBE advises are unacceptable to the JBE or the Judicial Branch Entities.

**1.7 Licenses and Approvals.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by Applicable Laws for the performance of the Services. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any Applicable Law.

**1.8 Progress Reports.** As directed by the JBE, Contractor must deliver progress reports or meet with JBE personnel on a regular basis to allow: (i) the JBE to determine whether the Contractor is on the right track and the project is on schedule, (ii) communication of interim findings, and (iii) opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly.

## **2 Delivery, Acceptance, and Payment.**

**2.1 Delivery.** Contractor shall deliver to the JBE the Deliverables in accordance with this Agreement, including the Statement of Work.

**2.2 Acceptance.** All Services and Deliverables are subject to written acceptance by the JBE. The JBE may reject any Services or Deliverables that: (i) fail to meet applicable requirements, Specifications, or acceptance criteria, (ii) are not as warranted, (iii) are performed or delivered late, or not provided in accordance with this Agreement; or (iv) contain Defects. Payment does not imply acceptance of Contractor's invoice, Services or Deliverables. If the JBE provides Contractor a notice of rejection for any Deliverable or Service, Contractor shall modify such rejected Deliverable or Service at no expense to the JBE to correct the relevant deficiencies and shall redeliver such Deliverable or Service to the JBE within ten Business Days after Contractor's receipt of such notice of rejection, unless otherwise agreed in writing by the Parties. Thereafter, the Parties shall repeat the process set forth in this Section until Contractor's receipt of the JBE's written acceptance of such corrected Deliverable or Service (each such JBE written acceptance, an "Acceptance"); provided, however, that if the JBE rejects any Deliverable or Service on at least two occasions, the JBE may terminate that portion of this Agreement which relates to the rejected Deliverable or Service at no expense to the JBE.

2.3 Fees and Payment. Subject to the terms of this Agreement, the Contractor shall invoice the JBE, and the JBE shall compensate Contractor, as set forth in Appendix B. The Service Fees to be paid to Contractor under this Agreement shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the JBE shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature which Contractor incurs.

**3 Representations and Warranties.** Contractor represents and warrants to the JBE as follows:

3.1 Authorization/Compliance with Laws. (i) Contractor has full power and authority to enter into this Agreement, to grant the rights and licenses herein and to perform its obligations under this Agreement, and that Contractor's representative who signs this Agreement has the authority to bind Contractor to this Agreement; (ii) the execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action on the part of Contractor; (iii) Contractor shall not and shall cause Subcontractors not to enter into any arrangement with any Third Party which could reasonably be expected to abridge any rights of the Judicial Branch Entities under this Agreement; (iv) this Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms; (v) Contractor is qualified to do business and in good standing in the State of California; (vi) Contractor, its business, and its performance of its obligations under this Agreement comply with all Applicable Laws; (vii) Contractor pays all undisputed debts when they come due; and (viii) this Agreement will not create a breach or conflict of interest under any of Contractor's other contracts.

3.2 No Gratuities or Conflict of Interest. Contractor: (i) 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; and (ii) has no interest that would constitute a conflict of interest under Public Contract Code sections 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.

3.3 No Litigation. No Claim or governmental investigation is pending or threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this Agreement.

3.4 Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the JBE.

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

3.6 No Interference. 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.

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

3.8 No Harassment / Non-discrimination. 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. 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 has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.

3.9 Special Provisions regarding Domestic Partners, Spouses, and Gender Discrimination. If the Contract Amount is \$100,000 or more, Contractor is in compliance with Public Contract Code section 10295.3, which places limitations on contracts with contractors whose benefits provisions discriminate between employees with spouses and employees with domestic partners..

3.10 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.

3.11 Special Provisions regarding Compliance with the Child Support Compliance Act. If the Contract Amount is \$100,000 or more: (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 provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

3.12 Intellectual Property. Contractor shall perform its obligations under this Agreement in a manner that the Services (including each Deliverable) and any portion thereof, does not infringe, or constitute an infringement, misappropriation or violation of, any Intellectual Property Right. Contractor has full Intellectual Property Rights and authority to perform all of its obligations under this Agreement, and Contractor is and will be either the owner of, or authorized to use for its own and the Judicial Branch Entities' benefit, all Contractor Works and Third Party Works used and to be used in connection with the Services.

3.13 Services and Deliverables. (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 use efficiently the resources or services necessary to provide the Services; and perform the Services in the most cost efficient manner consistent with the required level of quality and performance. Contractor represents and 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 representation and warranty in this Section 3.13 shall commence for such Deliverable upon the JBE's acceptance of such Deliverable, and shall continue for a period of one year following Acceptance. In the event any Deliverable does not conform to the foregoing provisions of this Section 3.13, Contractor shall promptly correct all non-conformities.

3.14 Malicious Code. No Services or Deliverable will contain any Malicious Code. Contractor shall immediately provide to the JBE written notice in reasonable detail upon becoming aware of the existence of any Malicious Code. Without limiting the foregoing, Contractor shall use best efforts and all necessary precautions to prevent the introduction and proliferation of any Malicious Code in the Judicial Branch Entities' IT Infrastructure or networks or in the Contractor systems used to provide Services. In the event Contractor or the JBE discovers the existence of any Malicious Code, Contractor shall use its best efforts, in cooperation with the JBE, to effect the prompt removal of the Malicious Code from the Deliverables and the Judicial Branch Entities' IT Infrastructure and the repair of any files or data corrupted thereby, and the expenses associated with the removal of the Malicious Code and restoration of the data shall be borne by Contractor. In no event will Contractor or any Subcontractor invoke any Malicious Code.

3.15 Four-Digit Date Compliance. Contractor will provide only Four-Digit Date Compliant Deliverables and/or Services to the JBE. "Four-Digit Date Compliant" Deliverables and Services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries.

3.16 Miscellaneous. The rights and remedies of the JBE provided in this Section 3 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. The representations and warranties that Contractor makes in this Section 3 shall be true and accurate as of the Effective Date, and shall remain true during the term of this Agreement and the Termination Assistance Period. Contractor shall promptly notify the JBE if any representation or warranty becomes untrue.

#### **4 Intellectual Property.**

4.1 Contractor/Third Party Works. Contractor shall set forth in an exhibit to each Statement of Work all Contractor Works and Third Party Works that Contractor intends to use in connection with that Statement of Work. The JBE shall have the right to approve in writing the introduction of any Contractor Works or Third Party Works into any Deliverable or Service prior to such introduction. Contractor grants to the Judicial Branch Entities, together with all JBE Contractors, without additional charge, a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, non-exclusive license to use, reproduce, perform, display, transmit, distribute, modify, create derivative works of, make, have made, sell, offer for sale and import Contractor Works and Third Party Works (including Source Code) and to sublicense such rights to other entities, in each case for the purpose of conducting the Judicial Branch Entities' business.

4.2 Rights in Developed Works. Upon their creation, the Developed Works (and all Intellectual Property Rights therein) will be the sole and exclusive property of the JBE. Contractor (for itself, Project Staff and Subcontractors) hereby irrevocably assigns, transfers and conveys to the JBE without further consideration all worldwide right, title and

interest in and to the Developed Works, including all Intellectual Property Rights therein. Contractor further agrees to execute, and shall cause Project Staff and Subcontractors to execute, any documents or take any other actions as may be reasonably necessary or convenient to perfect the JBE's or its designee's ownership of any Developed Works and to obtain and enforce Intellectual Property Rights in or relating to Developed Works. Contractor may use Developed Works solely to provide the Services during the term of this Agreement. Contractor shall promptly notify the JBE upon the completion of the development, creation or reduction to practice of any and all Developed Works.

4.3 **Retention of Rights.** The JBE retains all rights, title and interest (including all Intellectual Property Rights) in and to the JBE Works. Subject to rights granted herein, Contractor retains all rights, title and interest (including all Intellectual Property Rights) in and to the Contractor Works.

4.4 **Third-Party Rights.** Contractor hereby assigns to the Judicial Branch Entities all of Contractor's licenses and other rights (including any representations, warranties, or indemnities that inure to Contractor from third parties) to all Third Party Works incorporated into the Deliverables or Services. If such licenses and rights cannot be validly assigned to or passed through to Judicial Branch Entities by Contractor without a Third Party's consent, then Contractor will use its best efforts to obtain such consent (at Contractor's expense) and will indemnify and hold harmless the JBE, Judicial Branch Entities and Judicial Branch Personnel against all Claims arising from Contractor's failure to obtain such consent.

## **5 Confidentiality.**

5.1 **General Obligations.** 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 Project Staff (including Subcontractors) with a need to know for performance of the Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this Section 5. The provisions of this Section 5 shall survive beyond 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 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.

5.2 **Removal; Return.** Contractor will not remove any Confidential Information from Judicial Branch Entities' facilities or premises without the JBE's express prior written consent. 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.

5.3 **Breach of Confidentiality.** Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations hereunder, that any such breach will likely result in irreparable harm, and therefore, 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.

## **6 Indemnification.**

6.1 **General Indemnity.** Contractor shall indemnify, defend (with counsel satisfactory to the JBE), and hold harmless Judicial Branch Entities and Judicial Branch Personnel against all Claims founded upon: (i) Contractor's performance of, or failure to perform, the Services or Contractor's other duties under this Agreement, (ii) any other breach by Contractor under this Agreement; or (iii) Third Party Claims relating to infringement or misappropriation of any Intellectual Property Right by Contractor or the Deliverables, software, systems or other materials provided by Contractor or Subcontractors to Judicial Branch Entities (collectively, the "Covered Items"). 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.

6.2 **Certain Remedies.** If any Covered Item provided under this Agreement becomes, or in Contractor's or the JBE's reasonable opinion is likely to become, the subject of any Claim arising from or alleging infringement, misappropriation or other violation of, or in the event of any adjudication that such Covered Item infringes, misappropriates

or otherwise violates any Intellectual Property Right of a Third Party, Contractor at its own expense shall take the following actions in the listed order of preference: (a) secure for the Judicial Branch Entities the right to continue using the applicable Covered Item; or (b) if commercially reasonable efforts are unavailing, replace or modify the infringing Covered Item to make it noninfringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Covered Item.

## **7 Insurance.**

7.1 Basic Coverage. Contractor shall provide and maintain at Contractor's expense the following insurance during the Term:

(a) Workers Compensation and 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;

(b) Commercial General Liability. The policy must cover bodily injury and property damage liability, including coverage for the products – completed operations hazard and liability assumed in a contract, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit; and

Professional Liability. The 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.

(c) Commercial Automobile Liability. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in the performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.

7.2 Commercial Crime Insurance. 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; damage to JBE buildings, and property; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$1 million.

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

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

7.5 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.

7.6 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.

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

7.8 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 30 or more days' prior written notice to the JBE. Any replacement certificates of insurance are subject to the approval of the JBE, and, without prejudice to the JBE, Contractor shall not perform work before the JBE approves the certificates.

7.9 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.

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

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

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

7.11 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 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.

7.12 Consequences 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.

## **8 Term / Termination.**

8.1 Term. This Agreement shall commence on the Effective Date and continue until terminated in accordance with the terms of this Agreement.

8.2 Termination for Convenience. The JBE may terminate, in whole or in part, this Agreement and/or any Statement of Work for convenience (without cause) upon thirty (30) days prior written notice. The JBE's notice obligations under the foregoing sentence shall not apply to any stop work orders issued by the JBE under this Agreement or any Statement of Work. 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) place no further subcontracts, except as necessary to complete the continued portion of this Agreement.

8.3 Early Termination. The JBE may terminate, in whole or in part, this Agreement or any Statement of Work immediately "for cause" if Contractor is in Default. The JBE may also terminate this Agreement or limit Contractor's Services (and proportionately, Contractor's fees) upon written notice to Contractor without prejudice to any right or remedy of the Judicial Branch Entities if: (i) expected or actual funding to compensate the Contractor is withdrawn, reduced or limited; or (ii) the JBE determines that Contractor's performance under this Agreement has become infeasible due to changes in Applicable Laws.

### **8.4 Rights and Remedies of the JBE.**

(a) All remedies provided for 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 non-binding 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.

(b) If the JBE terminates this Agreement or any Statement of Work 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 Judicial Branch Entities for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the JBE or Judicial Branch Entities. Contractor shall continue the Services not terminated hereunder.

(c) In the event of any expiration or termination of this Agreement or the applicable Statement of Work, Contractor shall promptly provide the JBE with all originals and copies of the Deliverables (including: (i) any partially-completed Deliverables and related work product or materials; and (ii) any Contractor Works, Third Party Works, and Developed Works comprising such Deliverables or partially-completed Deliverables), Confidential Information, JBE Data, JBE Works, and all portions thereof, in its possession, custody, or control. In the event of any termination of this Agreement or a Statement of Work, 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 based on a Default, JBE shall pay any fees due under this Agreement for Deliverables completed and accepted as of the date of the JBE's termination notice.

8.5 Termination Assistance. At the JBE's request and option, during the Termination Assistance Period, Contractor shall provide, at the same rates charged immediately before the start of the Termination Assistance Period, to the JBE or to its designee (collectively, "Successor") services reasonably necessary to enable the JBE to obtain from another contractor, or to provide for itself, services to substitute for or replace the Services, together with all other services to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to the Successor (collectively, the "Termination Assistance Services"). Termination Assistance Services will be provided to the JBE by Contractor regardless of the reason for termination or expiration. At the JBE's option and election, the JBE may extend the Termination Assistance Period for an additional six (6) months.

8.6 Survival. Termination of this Agreement shall not affect the rights and/or obligations of the Parties which arose prior to any such termination (unless otherwise provided herein) and such rights and/or obligations shall survive any such expiration or termination. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including Sections 4 through 10 of these General Terms and Conditions.

## 9 **Special Provisions.**

9.1 Special Provisions for Agreements Providing for Compensation of \$50,000 or more; Union Activities Restrictions. As required under Government Code sections 16645-16649, if the Contact Amount is \$50,000 or more, Contractor agrees that no JBE funds received under this agreement will be used 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 JBE funds were used for those expenditures and no reimbursement from the JBE was sought for these costs. Contractor will provide those records to the Attorney General upon request.

9.2 Special Provisions regarding DVBE Participation Certification. If Contractor made a commitment to achieve disabled veterans business enterprise (DVBE) participation, Contractor shall within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the JBE: (1) the total amount the prime Contractor received under the Agreement; (2) the name and address of any disabled veterans business enterprises that participated in the performance of this Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under this Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

9.3 Special Provisions Applicable to Competitively Bid Contracts; Antitrust Claims. If this Agreement resulted from a competitive bid, Contractor shall comply with the requirements of the Government Code sections set out below.

(a) 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 pursuant to the bid. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Contractor. (GC 4552)

(b) If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the 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 the 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. (GC 4553)

(c) Upon demand in writing by the Contractor, the JBE shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (1) the JBE has not been injured thereby, or (2) the JBE declines to file a court action for the cause of action. (GC 4554)

9.4 Special Provisions regarding Iran Contracting Act. If the Contract Amount is \$1,000,000 or more, 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 JBE to enter into this Agreement pursuant to PCC 2203(c).

9.5 Special Provisions regarding Conflict Minerals. Contractor certifies either: (i) it is not a “scrutinized company” as defined in PCC 10490(b), or (ii) the goods or services the Contractor will provide to the JBE are not related to products or services that are the reason the Contractor must comply with Section 13(p) of the Securities Exchange Act of 1934.

9.6 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.

9.7 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.

9.8 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](http://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.

9.9 Special Provisions for Federally-funded Agreements. If this Agreement is funded in whole or in part by the federal government, then:

(a) 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 the Agreement were executed after that determination was made.

(b) This Agreement is valid and enforceable only if sufficient funds are made available to the JBE by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, 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.

(c) 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.

(d) The Parties may amend the Agreement to reflect any reduction in funds.

## **10 General.**

10.1 Audits. Contractor shall allow the JBE and its designees to review and audit Contractor’s documents and records relating to this Agreement, and Contractor shall retain such documents and records for a period of four years following final payment under this Agreement. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit. Contractor shall provide to the Judicial Branch Entities and JBE Contractors, on Contractor’s premises (or, if the audit is being performed of an Subcontractor, Subcontractor’s premises if necessary), space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office-related equipment and

duplicating services as the Judicial Branch Entities or such JBE Contractors may reasonably require to perform the audits described in this Section. Without limiting the foregoing, this Agreement is subject to examinations and audit by the State Auditor for a period three years after final payment.

10.2 References. In this Agreement and the Appendixes: (a) the Appendixes shall be incorporated into and deemed part of this Agreement and all references to this Agreement shall include the Appendixes; (b) the Article and Section headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement; (c) references to and mentions of the word “including” or the phrase “e.g.” means “including, without limitation” and (d) unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.

10.3 Assignment. This Agreement will not be assignable by Contractor in whole or in part (whether by operation of law or otherwise) without the prior written consent of the JBE. Any assignment 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.

10.4 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth below:

If to Contractor:	If to the JBE:
TBD	TBD

Either Party may change its address for notification purposes by giving the other Party written notice of the new address in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) Business Days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

10.5 Independent Contractors. Contractor and Subcontractors in the performance of this Agreement shall act in an independent capacity and not as officers or employees or agents of the Judicial Branch Entities or JBE Contractors. Neither the making of this Agreement nor the performance of its provisions shall be construed to constitute either of the Parties hereto as an agent, employee, partner, joint venturer, or legal representative of the other, and the relationship of the Parties under this Agreement is that of independent contractors. Neither Party shall have any right, power or authority, express or implied, to bind the other.

10.6 Covenant of Further Assurances. Contractor covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, Contractor shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

10.7 Publicity. News releases and other public disclosures pertaining to this Agreement will not be made by Contractor without prior written approval of the JBE.

10.8 Third Party Beneficiaries. Except as otherwise provided by this Agreement with respect to the Judicial Branch Entities and JBE Contractors, each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties.

10.9 Governing Law; Jurisdiction; and Venue. This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Contractor hereby irrevocably submits to the exclusive jurisdiction and venue of the state and federal district courts located in California in any legal action concerning or relating to this Agreement.

10.10 Follow-On Contracting. Subject to certain exceptions, no person, firm, or subsidiary thereof who has been awarded a Consulting Services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the Consulting Services contract.

10.11 Order of Precedence. Any conflict among or between the documents making up this Agreement will be resolved in accordance with the following order of precedence (in descending order of precedence):

- (i) Appendix C - The General Terms and Conditions and Appendix D – Defined Terms;
- (ii) The Coversheet;
- (iii) Appendix B – Pricing and Payment;
- (iv) Appendix A – Statement of Work; and
- (v) Any exhibits to the Agreement.

10.12 Miscellaneous. 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. No amendment to this Agreement will be effective unless in writing. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. If any part of this Agreement is held unenforceable, all other parts remain enforceable. A Party's waiver of enforcement of any of this Agreement's terms or conditions is effective only if in writing. 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. Time is of the essence regarding Contractor's performance of the Services. The Services may not be performed outside of the United States. The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but taken together, all of which shall constitute one and the same Agreement.

## **APPENDIX D**

### **Defined Terms**

“**Acceptance**” is defined in Appendix C, Section 2.2.

“**Agreement**” means this Standard Agreement as defined on the Coversheet, including the following: Appendix A (Statement of Work), Appendix B (Pricing and Payment), Appendix C (General Provisions), and Appendix D (Defined Terms).

“**Applicable Law**” means any applicable laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders.

“**Business Day**” means any day other than Saturday, Sunday or a scheduled JBE holiday.

“**Claims**” means claims, suits, actions, arbitrations, demands, proceedings, fines, penalties, losses, damages, liabilities, judgments, settlements, costs, and expenses (including reasonable attorneys’ fees and costs), including those based on the injury to or death of any person or damage to property.

“**Confidential Information**” means: (i) any information related to the business or operations of Judicial Branch Entities, including information relating to Judicial Branch Entities’ personnel and users; (ii) all financial, statistical, personal, technical and other data and information of the Judicial Branch Entities (and proprietary information of third parties provided to Contractor) that is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know is confidential; and (iii) all Deliverables, Developed Works, JBE Works and JBE Data. Confidential Information does not include information (that Contractor demonstrates to the JBE’s satisfaction, by written evidence): (a) that Contractor lawfully knew prior to the JBE’s first disclosure to Contractor, (b) that a Third Party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) that is, or through no fault of Contractor has become, generally available to the public.

“**Consulting Services**” refers to the services performed under “Consulting Services Agreements,” which are defined in Public Contract Code section 10335.5, substantially, as contracts that: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (iv) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type. The end product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

“**Contract Amount**” has the meaning set forth on the Coversheet.

“**Contractor Key Personnel**” means the Contractor Project Manager and those Project Staff members identified as “Key Personnel” as set forth in a Statement of Work.

“**Contractor Project Manager**” means the employee identified in a Statement of Work as the Contractor project manager.

“**Contractor Service Location(s)**” means any location (except for a JBE Service Location) from which Contractor performs Services.

“**Contractor Works**” means Works owned or developed prior to the provision of the Services, or developed by Contractor independently from the provision of the Services and without use of the JBE Works or Confidential Information.

“**Coversheet**” refers to the first sheet of this Agreement.

“**Data Safeguards**” means industry-standard safeguards against the destruction, loss, misuse, unauthorized disclosure, or alteration of the JBE Data or Confidential Information, and such other related safeguards that are set forth in Applicable Laws, a Statement of Work, or pursuant to JBE policies or procedures.

“**Default**” means if any of the following occurs: (i) Contractor breaches any of Contractor’s obligations under this Agreement, and this breach is not cured within ten (10) days following notice of breach or 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; (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading; or (iv) any act, condition, or item required to be fulfilled or performed by Contractor to (x) enable Contractor lawfully to

enter into or perform its obligations under this Agreement, (y) ensure that these obligations are legal, valid, and binding, or (z) make this Agreement admissible when required is not fulfilled or performed.

“Defect” means any failure of any Deliverable to conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation.

“Deliverables” means any Developed Works, Contractor Works and Third Party Works, or any combination thereof (including those identified as “Deliverables” in a Statement of Work, together with all Upgrades thereto), as well as any other items provided pursuant to the Services.

“Developed Works” means Works created, made, or developed by Contractor or Subcontractors, either solely or jointly with the Judicial Branch Entities or JBE Contractors, in the course of the performance of the Services under this Agreement, and all Intellectual Property Rights therein and thereto, including, without limitation, (i) all work-in-process, data or information, (ii) all modifications, enhancements and derivative works made to Contractor Works, and (iii) all Deliverables; provided, however, that Developed Works do not include Contractor Works.

“Documentation” means all technical architecture documents, technical manuals, user manuals, flow diagrams, operations guides, file descriptions, training materials and other documentation related to the Deliverables; together with all Upgrades thereto.

“Effective Date” has the meaning set forth on the Coversheet.

“Intellectual Property Rights” means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

“IT Infrastructure” means software and all computers and related equipment, including, as applicable, central processing units and other processors, controllers, modems, servers, communications and telecommunications equipment and other hardware and peripherals.

“JBE” has the meaning defined in the coversheet of this Agreement.

“JBE Contractors” means the agents, subcontractors and other representatives of the Judicial Branch Entities, other than Contractor and Subcontractors.

“JBE Data” means all data and information of the Judicial Branch Entities or JBE Contractors disclosed to or accessed by Contractor or Subcontractors, including all such data and information relating to the Judicial Branch Entities and their respective contractors, agents, employees, technology, operations, facilities, markets, products, capacities, systems, procedures, security practices, court records, court proceedings, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter, patents and other intellectual property and proprietary information.

“JBE Project Manager” means the individual appointed by the JBE to communicate directly with the Contractor Project Manager.

“JBE Service Locations” means any JBE facility at which Contractor performs Services.

“JBE Works” means Works owned, licensed, made, conceived, or reduced to practice by a Judicial Branch Entity or a JBE Contractor, any Works developed or acquired separate from this Agreement, and all modifications, enhancements, derivative works, and Intellectual Property Rights in any of the foregoing.

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

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

“Malicious Code” means any (i) program routine, device or other feature or hidden file, including any time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm any of the Judicial Branch Entities’ hardware, software, data or other programs, and

(ii) hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.

“Parties” means the JBE and Contractor, collectively.

“Party” means either the JBE or Contractor, as the case may be.

“Project Staff” means the personnel of Contractor and Subcontractors who provide the Services.

“Service Fees” means the fees for the Services set forth in Appendix B or the applicable Statement of Work.

“Service Location(s)” means any JBE Service Location or Contractor service location.

“Services” means, collectively, the services provided under this Agreement, including those services and Deliverables set forth in a Statement of Work, and any incidental services or responsibilities that are reasonable and customary in the industry and not specifically described in this Agreement (or the Statement of Work), but which are required for the performance and delivery of these services.

“Source Code” means human-readable program statements written by a programmer or developer in a high-level or assembly language that are not directly readable by a computer and that need to be compiled into object code before they can be executed by a computer.

“Specifications” means with respect to each Deliverable, the detailed statements and documents setting out the functionality and requirements for each component of the Deliverable.

“Statement of Work” means one or more statements of Services and/or Deliverables to be provided pursuant to and governed under the terms of this Agreement, substantially in the form attached as Appendix A, as agreed to by the Parties.

“Subcontractor” means the agents, subcontractors and other representatives of Contractor performing Services hereunder who are not employees of Contractor.

“Term” means the term of this Agreement.

“Termination Assistance Period” means the period commencing upon the expiration or termination of this Agreement and each Statement of Work and expiring six (6) months thereafter, as such period may be extended by the Parties.

“Third Party” means any person or entity other than the JBE or Contractor.

“Third Party Works” means Works that are licensed or obtained by Contractor from a Third Party.

“Upgrades” means all new versions, bug fixes, error corrections, workarounds, updates, upgrades, modifications, patches and new releases of software, Deliverables, or Documentation.

“Works” means all inventions (whether patentable or not), discoveries, literary works and other works of authorship (including software), designations, designs, know-how, technology, tools, ideas and information.