***[Please note: notwithstanding the provisions below or in the RFP, the Judicial Council reserves the right at its discretion to negotiate any or all items with individual Proposers, including the right to propose or require additional terms and conditions for the agreement prior to agreement execution.]***

JUDICIAL COUNCIL OF CALIFORNIA

STANDARD AGREEMENT COVERSHEET

|  |  |  |
| --- | --- | --- |
|  |  | AGREEMENT NUMBER |
|  |  |  |
| FEDERAL EMPLOYER ID NUMBER |
|  |  |
| THIS AGREEMENT is made and entered into this \_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Effective Date”), in the State of California, by and between the parties identified below.  |
| In this agreement (the “Agreement”), the term “Contractor” or “Vendor” refers to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the term “Judicial Council” refers to the Judicial Council of California. |
| The Contractor shall perform the services set forth in the Agreement, including virtual data center operational services for a shared services environment. The terms and conditions for providing these services, including terms for compensation, are set forth in the attached exhibits, incorporated into and made a part of this Agreement. |
| This Agreement shall commence upon the Effective Date, as set forth above, and shall expire at 11:59PM Pacific Time, on the\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, unless renewed or terminated in accordance with Article 17 hereof. |
|  |

|  |  |
| --- | --- |
| **JUDICIAL COUNCIL’S SIGNATURE** | **CONTRACTOR’S SIGNATURE** |
| **Judicial Council of California** |  CONTRACTOR’S NAME *(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)*  1015771tr |
|  BY *(Authorized Signature)*? |  BY *(Authorized Signature)*? |
|  PRINTED NAME AND TITLE OF PERSON SIGNING **Sample Only – Do Not Sign** |  PRINTED NAME AND TITLE OF PERSON SIGNING   |
|  DATE EXECUTED |  DATE EXECUTED  |
|  ADDRESS **Attn: Branch Accounting and Procurement** | **Administration Division**  **455 Golden Gate Avenue** **San Francisco, CA 94102** |  ADDRESS  |

INFORMATION TECHNOLOGY SERVICES AGREEMENT

**by and between**

**and**

**THE JUDICIAL COUNCIL OF CALIFORNIA.**

LIST OF EXHIBITS TO THIS AGREEMENT

|  |  |
| --- | --- |
| Exhibit A | Transition Plan **(to be determined)** |
| Exhibit B | Statement of Work (**to be determined**) |
| Exhibit C | Scope of Work **(to be determined)** |
| Exhibit D | Unruh Civil Rights Act and FEHA Certification |
| Exhibit E | Fees |
| Exhibit F | Service Level Requirements and Fee Reductions |
| Exhibit G | Private Contractor Management Control Agreement and CJIS Security Addendum  |
| Exhibit H | CJIS Security Policy |
| Exhibit I | CLETS Policies, Practices, and Procedures |
| Exhibit J | [Intentionally Omitted] |
| Exhibit K | Relationship Management and Contract Change Management  |
| Exhibit L | Termination Assistance Plan |
| Exhibit M | Reports |
| Exhibit N | Resource Inventory |

INFORMATION TECHNOLOGY SERVICES AGREEMENT

This Information Technology Services Agreement (the “Agreement”) is entered into by and between [NAME], a \_\_\_\_\_\_corporation having a place of business at \_\_\_\_\_\_\_ (the contracting party referred to herein as the “Vendor” and on the cover sheet attached hereto as the “Contractor”), and the Judicial Council of California (“Judicial Council”). The Judicial Council and the Vendor are each referred to herein as such or, individually, as a “Party” or, collectively, as “Parties.”

RECITALS

WHEREAS, the Vendor desires to provide to the Judicial Council, and the Judicial Council desires to obtain from the Vendor, the information technology operations, administration, management, and other services described in this Agreement on the terms and conditions set forth in this Agreement; and

WHEREAS, the Vendor shall cooperate with the Judicial Council with respect to each Party’s performance under this Agreement, including the Vendor’s provision of the Services to the Judicial Council.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

# DEFINITIONS. (In alphabetical order)

The following defined terms used in this Agreement shall have the meanings specified below.

“Acceptance” shall mean the Judicial Council’s written acceptance in accordance with the process set forth in Section 4.

“Additional Resource Charges” or “ARCs” shall be the fees set forth in Exhibit E to be charged per Resource Unit for Services above the resource volume baselines set forth in Exhibit E.

“Affiliate” of a Party means, respectively, any entity that controls, is controlled by, or is under common control with such Party, where “control” means ownership of more than fifty percent (50%) of the outstanding voting securities of the entity in question or the power to otherwise control the voting or affairs of such entity.

“Agreement” means this Information Technology Services Agreement by and between the Judicial Council and the Vendor.

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

“ARC/RRC Fee Report” means the detailed invoice provided to the Judicial Council by the Vendor on a monthly basis describing the ARC/RRC Fees incurred by the Judicial Council and the Vendor during the preceding month.

“ARC/RRC Fees” means the Additional Resource Charges and the Reduced Resource Credits, collectively.

“Asset” means equipment, hardware, Software, contracts, leases and other assets used in provision of the Services. Assets are considered in use as of the date of deployment.

“Auditors” means, with respect to a Party, the independent third‑party auditors designated by such Party in writing from time to time, in its sole discretion. With respect to the Judicial Council, such term shall include the Judicial Council Auditor of Public Accounts, the staff of the Joint Legislative Review and Audit Commission (JLARC), the Judicial Council Department of Accounts, and the Judicial Council Internal Audit Services.

“Availability” means the percentage of time that a given Service or System is fully operational and available when its resources are called upon at a random point in time. Availability represents a measure of the fraction of time (expressed as a percentage) during a defined period when the Service or System is deemed to be equal to or better than a Designated Service Level.

Availability (%) = 100% - Unavailability (%)

* + - Where Unavailability is defined as:
	+ Unplanned Outage Duration x 100%
		- Schedule Time - Planned Outages

“Base Fees” means the baseline fees set forth in Exhibit E to be charged for Services within the resource volume baselines set forth in Exhibit E.

“Break/Fix” means a Judicial Branch Group request placed due to a Software or hardware Incident/Problem encountered in accessing or operating information technology resources where support services are required to Resolve the Incident/Problem.

“Business Day” means Monday through Friday, exclusive of Judicial Council-observed holidays or other Judicial Council-mandated non-working days.

“Call” means a communication counted for each unique Incident that is received via telephone, voicemail, fax and/or e-mail, involving a separate individual event that results in opening a help desk Trouble Ticket. For Incidents where multiple calls are related to a single point of failure, such calls will be considered as a single Call; will not result in opening a separate help desk Trouble Ticket; and will not be aggregated or counted as individual Calls for measuring Call volume statistics.

“Call Back” means a follow-up Call to an authorized user of the help desk after a help desk Trouble Ticket is closed to determine level of satisfaction of such End-User.

“Change(s)” means any change, modification, action or decision with respect to the Services or the Systems.

“Change of Control” means with respect to the Vendor only: the sale, transfer, exchange or other disposition (including disposition in full or partial dissolution) of fifty percent (50%) or more of the beneficial ownership (as defined in Rule 13(d) of the Securities Exchange Act of 1934) of the voting power of Vendor, or of the assets of Vendor that constitute a substantial or material business segment of Vendor.

“Claim” shall have the meaning set forth in Section 22.4.

“CLETS Data” means any and all data accessed through the Department of Justice’s California Law Enforcement Telecommunications System.

“Confidential Information” means: (i) any information related to the business or operations of the Judicial Branch Group, including court records, and information relating to court proceedings, security practices, and business methodologies, (ii) information relating to Judicial Branch Group’s personnel, users, contractors, or agents, including information that the Judicial Council’s personnel, agents, and users upload, create, access or modify pursuant to this Agreement; (iii) all financial, statistical, technical and other data and information of the Judicial Branch Group (and proprietary information of third parties provided to Vendor), including trade secrets and other intellectual property, or proprietary information; (iv) data and information that is designated confidential or proprietary, or that Vendor otherwise knows, or would reasonably be expected to know is confidential; and (v) Personal Information, Deliverables, Developed Works, and Judicial Branch Materials. Confidential Information does not include information (that Vendor demonstrates to the Judicial Council’s satisfaction, by written evidence): (a) that Vendor lawfully knew prior to the Judicial Council’s first disclosure to Vendor, (b) that a third party rightfully disclosed to Vendor free of any confidentiality duties or obligations, or (c) that is, or through no fault of Vendor has become, generally available to the public.

“Configuration Management Database (CMDB)” means a managed database repository that contains all relevant information about the components of the information system used in Judicial Council’s information technology environment and the relationships between those components. Within this context, components of an information system are referred to as configuration items including software, hardware, documentation, and personnel. The CMDB shall be the system of record for documenting supported data center hardware and data center supported electronic data exchanges. Vendor shall provide updates to the CMDB as modified by the Parties through a Service Change Order.

“Consents” means, collectively, the Initial Consents and the Exit Consents.

“Contract Change Management” shall have the meaning set forth in Exhibit K.

“Contract Year” means each twelve (12) month period during the Term, commencing on [\_\_\_\_\_\_\_\_] and expiring [\_\_\_\_\_\_\_]of the following calendar year, provided that for the first year of this Agreement, the “Contract Year” shall commence on the Effective Date and expire on [\_\_\_\_\_\_\_\_].

“Corrective Assessment” means a type of Fee Reduction that may be assessed upon Vendor’s failure to achieve a Critical Milestone; all Corrective Assessments will be specified in the tables attached to Exhibit F.

“Courts” shall mean the superior courts, the appellate courts, Supreme Court and any other courts of the State of California.

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

“Covered Items” shall have the meaning set forth in Section 22.2(a).

“Critical Milestone” shall have the meaning set forth in Exhibit F.

“Critical Services” means those Services identified as “Critical” in Exhibit B and those Services that are subject to the Service Levels designated as Mission Critical, Business Critical, or Critical under Systems Classifications in Exhibit F (Appendix F.1).

“Data Safeguards” means the highest industry-standard safeguards (including administrative, physical, technical, and procedural safeguards) against the destruction, loss, misuse, unauthorized disclosure, or alteration of Judicial Branch Data or Confidential Information, and such other related safeguards that are set forth in Applicable Laws, this Agreement, a Statement of Work, or pursuant to Judicial Council policies or procedures.

“Dedicated Systems” means the Systems (including any hardware) used solely to provide Services to the Judicial Branch Group, including such Systems at Judicial Branch Service Locations.

“Default” means if any of the following occurs: (i) Vendor breaches any of Vendor’s obligations under this Agreement, and this breach is not cured within ten (10) days following notice of breach (or in the opinion of the Judicial Council, is not capable of being cured within this cure period); (ii) Vendor or Vendor’s creditors file a petition as to Vendor’s bankruptcy or insolvency, or Vendor 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) Vendor 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 Vendor to (x) enable Vendor to lawfully 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.

“Deliverable(s)” means any Developed Works, Vendor Materials, and other Third-Party materials, 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, goods, or equipment provided by the Vendor or Vendor Agents to the Judicial Branch Group during the course of performing Services.

“Designated Service Levels” or “Service Level Requirement(s)” or “SLR(s)” means the service levels and standards for the performance for the Designated Services set forth in Exhibit F.

“Designated Services” or “Services” shall have the meaning set forth in Section 2.1(b).

“Developed Works” shall have the meaning set forth in Section 20.4.

“Effective Date” shall mean [\_\_\_\_\_\_\_\_\_\_\_\_\_].

“End Date” means the later of the (a) Effective Date of the expiration or termination of this Agreement, and (b) last day of the Termination Assistance Period.

“End-User” means (a) any employee, contractor, or representative of Judicial Council; and (b) any other person who is determined by Judicial Council, in its sole discretion, to require access to any of the Services, which may include Judicial Branch Group or Judicial Branch Agents.

“Exit Consents” means all licenses, consents, authorizations, and approvals that are necessary to allow Vendor and Vendor Agents to assign any contracts for maintenance or support services provided by third parties to the Vendor and used by the Vendor to provide the Services.

“Fee Reductions” shall have the meaning set forth in Exhibit F.

“Fees” means the Base Fees, the Additional Resource Charges and any other amounts payable by the Judicial Council to the Vendor pursuant to this Agreement, as further set forth on the Exhibit E attached hereto.

“Force Majeure Event” shall have the meaning set forth in Section 11.1.

“Improved Technology” means any technology developments, including new developments in Software and Machines that could reasonably be expected to have a positive impact on the Judicial Branch Group’s business, to the extent generally made available by the Vendor or the Vendor Agents to the Vendor’s customers.

“Incident” means any event which is not part of the standard operation of a Service and which causes, or may cause, an interruption to, or a reduction in, the quality of that Service. Judicial Council will determine the Incident priority level of each reported Incident.

“Initial Consents” means all licenses, consents, authorizations and approvals that are necessary to allow the Vendor and the Vendor Agents to: (a) use solely in connection with this Agreement (i) the Vendor Materials, Vendor Proprietary Software and Vendor Third Party Software, (ii) any assets owned or leased by the Vendor or the Vendor Agents, and (iii) any third party services retained by the Vendor and the Vendor Agents to provide either the Services, Transition Services or the Termination Assistance Services; and (b) assign to the Judicial Council the Developed Works.

“Intellectual Property Rights” means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (a) rights associated with works of authorship, including but not limited to copyrights, moral rights and mask work rights; (b) rights in and relating to the protection of trademarks, service marks, trade names and goodwill; (c) rights in and relating to the protection of trade secrets and confidential information; (d) patents, designs, algorithms and other industrial property rights and rights associated therewith; (e) other intellectual and industrial property and proprietary rights (of every kind and nature however designated) relating to intangible property that are analogous to any of the foregoing rights, whether arising by operation of law, contract, license or otherwise; and (f) registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force throughout the world (including without limitation rights in any of the foregoing).

“Interest” means interest at the rate of one and a half percent (1.5%) per month, or the maximum rate allowed under law, whichever is lower.

“Judicial Branch Agents” means the agents, contractors and other representatives of the Judicial Branch Group, other than the Vendor and the Vendor Agents.

“Judicial Branch Data” means all data and information, including Confidential Information, that is: (i) stored within or accessed from the Dedicated Systems or Leveraged Systems, including data and information which is created for the Judicial Council or the Judicial Branch Group in the course of the Vendor or the Vendor Agents providing the Services, or (ii) that has been submitted to, or accessed by, the Vendor or the Vendor Agents , including all such data and information relating to the Judicial Branch Group and their respective contractors, agents, employees, personnel, 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.

“Judicial Branch Group” means, collectively, the Judicial Council, and any Courts, and other local or state entities in the State of California, including local justice partners. The Judicial Branch Group includes without limitation the California Department of Justice, California Department of Motor Vehicles, and California Department of Technology.

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

“Judicial Branch Service Location(s)” means any Judicial Branch Group service location(s) and such other service locations that the Judicial Council may designate for the provision of the Services.

“Judicial Council Application” means any current and future Software set forth in Exhibit N (Appendix N.1) as such Appendix is updated throughout the Term by Judicial Council together with any other Software that is included in a Work Order for deployment in a data center located at one of the Judicial Branch Service Locations.

“Judicial Council Works” shall have the meaning set forth in Section 20.1.

 “Level 1 Support” shall mean the support provided to End-Users’ at first point of contact for all Incidents with respect to the Designated Services. Level 1 Support shall include without limitation the following services: End-User calls shall be answered and screened for the nature of the calls, the calls shall be logged into a call tracking system, a Priority Level shall be assigned to each reported Incident, and all Incidents that can be Resolved without escalation are Resolved.

“Level 2 Support” shall mean all support following Level 1 Support, as further described in Exhibit C (Scope of Work), to assess operating environments and Software versions, perform diagnostic procedures, and Resolve Incidents. Level 2 Support Incidents shall be worked on continuously until Resolved; except for Incidents that cannot be Resolved without correction of errors in the third party Software, in which case the Vendor shall escalate the Incident to Level 3 Support.

“Level 3 Support” shall mean support to Resolve Incidents that cannot be Resolved without correction errors in the third-party Software.

“Leveraged Systems” means the Systems used to provide the Services to the Judicial Branch Group, but specifically excluding the Dedicated Systems.

“Machines” means computers and related equipment, including, as applicable, central processing units and other processors, controllers, modems, communications and telecommunications equipment (voice, data and video), cables, storage devices, printers, terminals, other peripherals and input and output devices, and other tangible mechanical and electronic equipment intended for the processing, input, output, storage, manipulation, communication, transmission and retrieval of information and data.

“Outage” means a specialized case of an End-User Break/Fix Call affecting a substantial group of End-Users (“flood calls”); calls are placed to the help desk to inform, inquire or complain about accomplishing tasks with, accessing or operating information technology resources.

“Parties” means, individually or collectively, Vendor or the Judicial Council.

“Personal Information” means any personally identifiable information (e.g., person’s name, address, credit card number, email address) that is provided, generated, collected, accessed, stored or obtained pursuant to this Agreement, including transactional and other data pertaining to individuals.

“Priority Level 1, 2, 3 and 4” shall have the meanings set forth in Exhibit F, Appendix F.1.

“Problem” means a condition identified as a result of multiple Incidents that exhibit common symptoms. Problems can also be identified from a single significant Incident, indicative of a single error, for which the cause is unknown, but for which the impact is significant.

“Project Staff” means the personnel of Vendor and Vendor Agents who provide the Services.

“Reduced Resource Credits” or “RRCs” shall be the fees set forth in Exhibit E to be credited per Resource Unit for Services below the resource volume baselines set forth in Exhibit E.

“Related Documentation” means all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describes the function and use of the Software or tools, as applicable.

“Resolve” or “Resolution” means to repair, replace, reconfigure, reinstall, re-route, or otherwise provide a complete solution to an Incident that returns the system and/or End-User(s) to non-degraded full functionality. Implementing a Workaround is a partial or temporary resolution.

“Resource Unit” or “RU” shall have the meaning set forth in Exhibit E.

“Resource Measurement” shall have the meaning as set out in Exhibit E.

“Root Cause Analysis” means a problem analysis process undertaken to identify and quantify the underlying cause(s) of an Incident, and document the necessary corrective actions to be taken to prevent recurring problems and/or trends which could result in problems.

“Service Area” means any one of the following service areas: Data Center Operational Services, Data Network Management Services, and IT Service Management, as further described in Exhibit C.

“Service Change Order” shall have the meaning set forth in Section 9.1.

“Service Change Request” means a request for a Change with respect to Services.

“Service Level Objective(s)” or “SLO(s)” mean service levels and standards for the performance for the Designated Services that Vendor will target and report on in the same manner as SLRs. SLOs are not subject to the remedies available to SLRs, and SLOs may not be converted to SLRs without the joint agreement of the Parties.

“Service Location(s)” means any Judicial Branch Service Location, or Vendor Service Location as applicable.

“Service Requests” means a request made via Call, e-mail, web chat, or other means regarding a range of in scope service offerings.

“Services” means the Designated Services, Transition Services and Termination Assistance Services, collectively.

“Software” means the source code and object code versions of any applications programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation, in whatever form or media, including the tangible media upon which such applications programs, operating system software, computer software languages, utilities or other computer programs and Related Documentation are recorded or printed, together with all corrections, improvements, updates and releases thereof.

“Statement(s) of Work” shall mean each of the descriptions of services set forth in Exhibit B.

“Successor” shall have the meaning set forth in Section 18.1(a).

“System Software” means non-application level Software managed by Vendor in support of the Services (e.g., operating system, database software, middleware software, communications software, printing software, and utility programs).

“Systems” means the Software and the Machines, collectively, used to provide or are provided as part of the Services.

“Systems Cut‑Over” means the first point in time at which the Vendor makes the Systems available to one or more Courts and/or Judicial Council in a production environment using current data (not prototype data).

“Term” shall have the meaning set forth in Section 17.1(a).

“Termination Assistance Period” means, at the Judicial Council’s request and option, the period commencing upon the date of expiration or earlier termination of this Agreement, in whole or in part, and expiring up to six (6) months thereafter, and as such period may be extended by the Judicial Council in accordance with Section 18.1(a).

“Termination Date” shall have the meaning set forth in Section 17.2(a).

“Termination Notice” shall have the meaning set forth in Section 17.2(a).

“Third Party” means a person or entity other than the Parties.

“Transition Plan” shall have the meaning set forth in Exhibit A.

“Transition Services” shall have the meaning set forth in Section 3.1 (a).

“Trouble Ticket” means a unique logical electronic record that Vendor will create, update, maintain and archive for each Incident. A help desk Trouble Ticket is used to record all End-User/Vendor interaction pertaining to an Incident and all Vendor-related actions, and corresponding date/time, taken to Resolve an Incident, from the time it is first reported to the help desk until Incident resolution time and closure by the help desk.

“Vendor Agent(s)” means the agents, subcontractors and other representatives of Vendor performing hereunder who are not employees of the Vendor.

“Vendor Key Employees” means the Vendor key employees listed in Exhibit K and those Project Staff members identified as key personnel.

“Vendor Machines” means those Machines leased or owned by the Vendor or the Vendor Agents that are used by (a) the Vendor to provide, or in connection with, the Services, and (b) the Vendor Agents to provide services to the Vendor or to the Judicial Council on behalf of the Vendor in connection with the Vendor’s provision of the Services.

“Vendor Materials” means all works of authorship (including software), designations, designs, know-how, technology, tools, ideas and information owned or developed prior to the provision of the Services, or developed by Vendor independently from the provision of the Services and without use of the Judicial Branch Data, Judicial Branch Works, Confidential Information or Judicial Branch Intellectual Property.

“Vendor Proprietary Software” shall have the meaning set forth in Section 20.2(b).

“Vendor Service Locations” means any location (except for a Judicial Branch Service Location) from which Vendor or Vendor Agent provides Services.

“Workaround” means a temporary solution that Vendor or Judicial Council can implement in the event of an Incident as an alternate method of providing full Service or process functionality that allows the affected System(s) and/or process(es) to deliver to Judicial Council an acceptable level of business operations functionality until a permanent Incident Resolution can be implemented. Any such Workaround must be acceptable to and approved by Judicial Council.

“Works” shall have the meaning set forth in Section 20.1.

# DESIGNATED SERVICES.

## Generally. Except as otherwise expressly provided in this Agreement, commencing on the Effective Date and continuing throughout the Term, the Vendor shall provide the following to the Judicial Council:

* + 1. The services, functions and responsibilities set forth in the Statements of Work, as such services functions and responsibilities may be Changed during the Term in accordance with this Agreement; and
		2. Any incidental services, functions or responsibilities not specifically described in this Agreement, but which are required for, and are incidental and related to, the proper performance and delivery of the services identified in (a) above ((a) and (b) collectively, the “Designated Services”).

## Provision of Technology.

* + 1. Except as otherwise provided in this Agreement and subject to Section 2.2(b), the Vendor shall (i) support all of the technologies which are identified in Exhibit N and employed by the Judicial Council as of the Effective Date, (ii) be proactive in identifying opportunities to implement Improved Technology that will improve service and support at a reduced cost, (iii) provide the Judicial Council with access to the Improved Technology for the Judicial Branch Group’s evaluation in connection with the Services, meet with the Judicial Council at least quarterly during the Term, or as agreed upon by the Judicial Council and the Vendor, to discuss any information security-related trends and directions of which the Vendor is otherwise aware that could reasonably be expected to have an impact on the Judicial Branch Group’s business or security of the Judicial Council environment and that the Vendor may disclose without violating its non-disclosure obligations owed to a third party or a third party’s proprietary rights, and (iii) jointly with the Judicial Council, identify cost efficient methods to implement those technology changes and proven methodologies selected by the Judicial Council for implementation and, upon the Judicial Council’s prior written approval, implement technology changes and proven methodologies selected by the Judicial Council in accordance with the terms and conditions hereof.
		2. As part of the Transition Plan, the Vendor shall, jointly with the Judicial Council, develop the processes and procedures for (i) performing the cost efficiency analysis, and (ii) identifying and valuing the intangible costs and benefits to be used by the Judicial Council and the Vendor in fulfilling its obligations described in Section 2.2(a) above.

## Knowledge Sharing. Upon the Judicial Council’s request, the Vendor shall meet, at least twice each Contract Year, in order to (1) explain how any or all of the Services are or will be provided; (2) explain any changes in the Services, or the provision of the Services since the last meeting pursuant to this Section; and (3) answer the Judicial Council’s questions regarding any or all of the Services.

## Stop Work Orders.

* + 1. Effect. The Judicial Council may, at any time, by written stop work order to the Vendor require the Vendor to stop all, or any part, of the Designated Services or Transition Services, or any other work called for by this Agreement for a period of up to ninety (90) days after the stop work order is delivered to the Vendor, and for any further period to which the Parties may agree. A stop work order shall be specifically identified as such and shall indicate it is issued under this Section 2.44. Upon receipt of a stop work order, the Vendor 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 Designated Services, Transition 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 the Vendor, or within any extension of that period mutually agreed to by the Parties, the Judicial Council shall either: (i) cancel the stop work order; or (ii) terminate the work covered by the stop work order as provided for in Article 17.
		2. Expiration or Cancellation. If a stop work order issued under this Section 2.44 is canceled by the Judicial Council or the period of the stop work order or any extension thereof expires, the Vendor shall resume the Services or other work covered by such stop work order. The Judicial Council shall make an equitable adjustment in the delivery schedule, and this Agreement shall be modified, in writing, accordingly, if:

#### The stop work order results in a material increase in the time required for the performance of any part of this Agreement; and

#### The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Judicial Council decides the facts justify the action, the Judicial Council may receive and act upon a proposal submitted at any time before final payment under this Agreement.

## Alternative Sourcing. The Judicial Council will have the right, at its sole discretion at any time, to perform itself or to contract with third parties to perform any part of the Services, or any service outside the scope of Services, including systems operations and related services to augment or supplement the Services. The Vendor shall cooperate with the Judicial Council and with third parties retained by the Judicial Council to perform information technology or other services, at no additional cost, which cooperation will include, without limitation, providing such information regarding the operating environment, system constraints and other operating parameters as a person with reasonable commercial skills and expertise would find reasonably necessary for the Judicial Council or a third party to perform its work.

## Compliance and Changes in Law and Regulations.

* + 1. The Vendor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by Applicable Laws. The Vendor 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. The Vendor will conform the Services to any changes in Applicable Laws.

## The Judicial Branch Group.  The Parties acknowledge that Judicial Council provides branch wide IT support to the Courts and other judicial branch entities. To the extent requested by Judicial Council, Vendor will, at no additional fees: (i) provide Services and support directly to the Judicial Branch Group or other public entity as necessary, and (ii) abide by policies and procedures set by such Judicial Branch Group or public entity, including but not limited to safety and security procedures set out in Section 7.1. To the extent that the Services involve or require work relating to Court Systems or Judicial Branch Data, such work will be deemed to be included in the Services at no extra fees, and will not require a Service Change Order.

## Reports. The Vendor shall furnish reports to the Judicial Council in the manner, format, and frequency set forth in Exhibit M or as otherwise reasonably requested by the Judicial Council from time to time. In addition to reports relating to the Vendor’s performance of the Services in accordance with the Designated Service Levels and reports relating to amounts invoiced to the Judicial Council, the Vendor’s reports shall include, among other things, reporting on unauthorized System access incidents, reports regarding cost management, Project Staff matters and any other pertinent data requested by the Judicial Council. The Vendor shall promptly (but not later than two (2) calendar days after gaining knowledge thereof) inform the Judicial Council of any deficiencies, omissions or irregularities in the Vendor’s performance of the Services in accordance with the Designated Services Levels that come to the Vendor’s attention. The Vendor shall furnish the Judicial Council with all existing and future research and development resources, such as published materials, and industry studies conducted for or by the Vendor, that pertain to the Services and that might assist the Judicial Council in setting its information technology policies or requirements. The Vendor Key Employees also shall advise the Judicial Council of all other matters of a material nature that he or she believes would be helpful to the Judicial Council in setting or revising its information technology policies or requirements.

# TRANSITION SERVICES

## Transition Services, as defined in Section 3.1 (a), shall be performed in accordance with provisions below.

* + 1. The Vendor shall perform all functions and services necessary to promptly transition the Judicial Branch Group’s information technology operations and capabilities to the Designated Services (the “Transition Services”), with the goal that such transition be seamless, and manage and maintain all processing facilities before and after transition. The Transition Services shall be performed in accordance with the transition and implementation plan set forth in Exhibit A attached hereto (“Transition Plan”) and with minimal impact on the Judicial Branch Group’s ongoing business operations.
		2. In accordance with the terms set forth in the Transition Plan, Vendor shall accomplish the transparent, seamless, orderly and uninterrupted transition from the manner in which the Judicial Council received all services prior to the Effective Date to the manner in which the Services will be provided as described herein.

# ACCEPTANCE

The Judicial Council shall have the right to review and accept or reject all Services and Deliverables to be provided by the Vendor to the Judicial Council under this Agreement, pursuant to the Statement of Work. All Services and Deliverables are subject to written acceptance by the Judicial Council. The Judicial Council may reject any Service or Deliverable that: (i) fails 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 Vendor’s invoice, Services, or Deliverables. If the Judicial Council provides Vendor a notice of rejection, Vendor shall modify such rejected Service or Deliverable at no expense to the Judicial Council to correct the relevant deficiencies and shall redeliver such Services or Deliverables to the Judicial Council within ten Business Days after Vendor’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 Vendor’s receipt of the Judicial Council’s written acceptance of such corrected Service or Deliverable (each such Judicial Council written acceptance, an “Acceptance”); provided, however, that if the Judicial Council rejects any Service or Deliverable on at least two occasions, the Judicial Council may terminate that portion of this Agreement which relates to the rejected Service or Deliverable at no expense to the Judicial Council.

# SERVICE LEVELS

## Designated Service Levels. The Vendor shall perform the Designated Services in accordance with the Designated Service Levels.

## Root Cause Analysis. Upon the Vendor’s discovery of, or a receipt of a notice from the Judicial Council, with respect to the Vendor’s failure to provide the Services in accordance with the applicable Designated Service Levels, the Vendor shall, as soon as reasonably practicable, (1) perform a root cause analysis to identify the cause of such failure; (2) provide the Judicial Council with a report detailing the cause of, and procedure for correcting, such failure; (3) correct such failure; and (4) provide the Judicial Council with assurance that the Vendor has taken reasonable steps to prevent the recurrence of such failure. The correction of any such Problem shall be performed entirely at Vendor’s expense.

## Measurement and Monitoring. As set forth in the applicable Statements of Work, the Vendor shall (a) measure and report the Vendor’s performance of the Services in accordance with the Designated Service Levels; (b) promptly report to the Judicial Council any (i) known difficulties or issues that may have an adverse impact on the Services and (ii) anticipated or suspected Problems that may have more than a de minimus adverse impact on the Services (including from timing, cost and performance standpoints); and (c) implement state-of the art tools and procedures to measure and report the Vendor’s performance of the Services in accordance with the Designated Service Levels. Such tools and procedures shall be subject to audit by the Judicial Council or its designee. The Vendor shall provide the Judicial Council and its designees with website access to: (1) all real‑time raw data from such tools related to the Services (to the same extent Vendor or Vendor Agents have access to such data); (2) upon the Judicial Council’s request, all historical raw data from such tools related to the Services during the ninety (90) day period immediately preceding such request and any other historical raw data from such tools that is reasonably available; and (3) any other reports and documentation reasonably required to measure the Vendor’s performance of the Services in accordance with the Designated Service Levels. Furthermore, the Vendor shall provide the Judicial Council with such reports, documentation and other information as may be reasonably requested by the Judicial Council from time to time, and the Judicial Council shall have open access to the data underlying such reports, in order to confirm the Vendor’s compliance with the terms of this Agreement in all material respects and to verify the accuracy of the reports specified above.

## Fee Reductions. As a nonexclusive remedy, in the event of a failure to provide the Services in accordance with the applicable Designated Service Levels, the Vendor shall incur the Fee Reductions identified in and according to the schedule set forth in Exhibit F attached hereto. Nothing in this Section 5.4 shall be deemed to limit or obviate the Judicial Council’s right to terminate this Agreement pursuant to the terms of this Agreement, including Article 17, nor shall it limit any other remedies available to the Judicial Council under the law or this Agreement.

## Critical Milestones. The Parties have designated and may in the future designate certain milestones, activities, actions and/or projects under this Agreement as Critical Milestones. If the Vendor fails to meet any Critical Milestone by the date corresponding thereto, without limiting any other rights and remedies that may be available to the Judicial Council, the Judicial Council shall have the right to: (a) withhold all amounts due or to become due to the Vendor under this Agreement until such time as the Vendor achieves the Critical Milestone, or such other amounts as may be set forth in a specific Section; (b) if applicable to the Critical Milestone, the Vendor shall reduce the Fees by an amount equal to the Corrective Assessments pertaining to that Critical Milestone set forth in Exhibit F attached hereto or such other amount as may be agreed to by the Parties.

# SERVICE LOCATIONS AND OTHER RESOURCES

## Generally. The Services shall be provided to and from the (1) Judicial Branch Service Locations and Vendor Service Locations. No Services or Deliverables shall be provided from outside the continental United States. In no event may any Judicial Branch Data be stored, accessed from, or transmitted outside the continental United States, without the Judicial Council’s written permission provided in advance. The physical location of Vendor’s data center, systems, and equipment where the Judicial Branch Data is stored and accessed shall be within the continental United States. Vendor shall ensure that access to the Judicial Branch Data will be provided to the Judicial Council (and its authorized users) 24 hours per day, 365 days per year. Confidential, sensitive, or personally identifiable information shall be encrypted in accordance with the highest industry standards, applicable laws, this Agreement, and Judicial Council policies and procedures. The Judicial Council has the right from time to time to designate certain subsets of Judicial Branch Data as being subject to additional storage, access, or transmission restrictions in its sole discretion.

## Judicial Branch Service Locations. The Vendor shall use the Judicial Branch Service Locations for the sole purpose of providing the Services, and shall use the Judicial Branch Service Locations in an efficient manner. While at the Judicial Branch Service Locations, Vendor shall comply with the safety and security policies and procedures in effect at such Judicial Branch Service Location. The Vendor shall be responsible for damages to and fines imposed as a result of the Vendor’s use of the Judicial Branch Service Locations caused by the Vendor, its Vendor Agents, employees or invitees. The Vendor shall permit the Judicial Council and the Judicial Branch Agents to enter into those portions of the Judicial Branch Service Locations occupied by the Vendor staff at any time. When the Judicial Branch Service Locations are no longer required for performance of the Services, the Vendor shall return the Judicial Branch Service Locations to the Judicial Council in substantially the same condition as when the Vendor began use of the Judicial Branch Service Locations.

## Other Resources. Except where this Agreement specifically provides otherwise, the Vendor is responsible for providing or obtaining any and all facilities, assets, and resources (including personnel, facilities, equipment, Software, and Software licenses) necessary and appropriate for delivery of the Services and to meet the Vendor’s obligations under this Agreement. Equipment, Software licenses and third party service contracts to which access or use is being provided to the Vendor by the Judicial Branch Group are provided on an “as is, where is” basis, and the Judicial Branch Group is not providing the Vendor with any representations or warranties regarding such equipment, Software licenses and third party service contracts.

# SECURITY

## Safety and Security Procedures. The Vendor shall maintain and enforce, at the Vendor Service Locations, industry-standard safety and physical security policies and procedures. Vendor shall fully inform itself of and comply with all rules, policies, procedures, guidelines and practices relating to Judicial Branch Data, CLETS Data or any other data accessed through Judicial Council Systems or infrastructure operated by or on behalf of or otherwise made available by any government entity or other Third Party, including without limitation the Department of Justice and the Department of Motor Vehicles, and any and all associated technical guides (“Data Policies and Procedures”). Vendor agrees to the terms and conditions of the Private Contractor Management Control Agreement (“PCMCA”) and the CJIS Security Addendum attached hereto as Appendix G. Vendor and Vendor Agents agree to: (i) the terms and conditions of the Criminal Justice Information Services (“CJIS”) Security Policy attached as Appendix H (as may be amended or updated from time to time; and (ii) the CLETS Policies, Practices, and Procedures attached as Appendix I (as may be amended or updated from time to time. The Judicial Council and/or any entity within the Judicial Branch Group may terminate upon notice to Vendor, access to or processing of any or all of the Judicial Branch Data, CLETS Data or other data transmitted or accessed through or from the Judicial Council, the Judicial Branch Group or any Third Party.

## Data Security. Vendor shall comply with the Data Safeguards. Vendor shall implement and maintain a comprehensive information security program (“Vendor’s Information Security Program”) in accordance with the Data Safeguards. Vendor shall comply with all applicable privacy and data security laws, and other laws (including the California Rules of Court) and regulations relating to the protection, collection, use, and distribution of Judicial Branch Data, as well as privacy and data security requirements and standards set forth in the Judicial Council’s policies or procedures. In addition to the foregoing, Vendor represents and warrants that Vendor complies with, and throughout the term of this Agreement, Vendor and its performance of its obligations under this Agreement shall be in compliance with, the current NIST (National Institute of Standards and Technology) Special Publication 800-53, including without limitation any NIST 800-53 standards, guidelines, or requirements for security controls or data security protocols. The Vendor personnel and subcontractors and the Vendor Agents shall not attempt to access, and shall not allow access to the Judicial Branch Data that is not required for the performance of the Services by such personnel. The Vendor personnel and the Vendor Agents shall not be entitled to use Judicial Branch Data for their own purposes, and may only use Judicial Branch Data for the sole purpose of providing the Services. Vendor personnel and Vendor Agents shall not modify, destroy, or delete Judicial Branch Data without prior written approval by the Judicial Council. Judicial Council or Judicial Branch Group retains all right and title to their respective Judicial Branch Data, and has the exclusive right to control its use. Vendor acknowledges that unauthorized access to or use of Judicial Branch Data such as criminal record information may subject Vendor and Vendor personnel to criminal penalties under Applicable Laws.

## Data Breach. If there is a suspected or actual Data Breach, Vendor shall notify the Judicial Council in writing within two (2) hours of becoming aware of such occurrence. A “Data Breach” means any access, destruction, loss, theft, use, modification or disclosure of the Judicial Branch Data by an unauthorized party. Vendor’s notification shall identify: (i) the nature of the Data Breach; (ii) the data accessed, used or disclosed; (iii) who accessed, used, disclosed and/or received data (if known); (iv) what Vendor has done or will do to mitigate the Data Breach; and (v) corrective action Vendor has taken or will take to prevent future Data Breaches. Vendor shall promptly investigate the Data Breach and shall provide daily updates, or more frequently if required by the Judicial Council, regarding findings and actions performed by Vendor until the Data Breach has been resolved to the Judicial Council’s satisfaction, and Vendor has taken measures satisfactory to the Judicial Council to prevent future Data Breaches. Vendor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the Judicial Council. The Judicial Council and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the Judicial Council, its agents and law enforcement, including with respect to taking steps to mitigate any adverse impact or harm arising from the Data Breach. After any Data Breach, Vendor shall at its expense have an independent, industry-recognized, Judicial Council-approved third party perform an information security audit. The audit results shall be shared with the Judicial Council within seven (7) days of Vendor’s receipt of such results. Upon Vendor receiving the results of the audit, Vendor shall provide the Judicial Council with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Agreement. Security Assessments. Upon advance written notice by the Judicial Council, Vendor agrees that the Judicial Council shall have reasonable access to Vendor’s operational documentation, records, logs, and databases that relate to data security and the Vendor’s Information Security Program. Upon the Judicial Council’s request, Vendor shall, at its expense, perform, or cause to have performed an assessment of Vendor’s compliance with its privacy and data security obligations. Vendor shall provide to the Judicial Council the results, including any findings and recommendations made by Vendor’s assessors, of such assessment, and, at its expense, take any corrective actions.

## Continuing Obligations. Upon termination or expiration of the Agreement for whatever reason, or upon request by the Judicial Council, Vendor shall immediately cease to process and otherwise handle any Judicial Branch Data and shall promptly return to the Judicial Council all such Judicial Branch Data, or destroy the same, in accordance with such instructions as may be given by the Judicial Council at that time. The obligations set out in this Section 7.4 shall remain in force notwithstanding termination or expiration of this Agreement.

7.5 Data Requests. Vendor shall promptly notify the Judicial Council upon receipt of any requests which in any way might reasonably require access to the Judicial Branch Data. Vendor shall not respond to subpoenas, service of process, Public Records Act requests (or requests under California Rule of Court 10.500), and other legal requests directed at Vendor regarding this Agreement or Judicial Branch Data without first notifying and consulting with the Judicial Council. Vendor shall provide its intended responses to the Judicial Council with adequate time for the Judicial Council to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Vendor shall not respond to legal requests directed at the Judicial Branch Group unless authorized in writing to do so by the Judicial Council.

# PROJECT STAFF

## Generally. The Parties will allocate responsibilities for relationship management and will otherwise govern performance of the Services in accordance with this Section 8.

## Vendor Key Employees. Vendor Key Employees will be dedicated to providing the Services to the Judicial Council on a full‑time basis, unless otherwise specified in this Agreement. The Judicial Council reserves the right to interview and approve proposed Vendor Key Employees prior to their assignment to the Judicial Council’s account. The Vendor shall not replace or reassign a Vendor Key Employee unless the Judicial Council consents in advance in writing or such Vendor Key Employee (i) voluntarily resigns or takes a leave of absence from Vendor, (ii) is dismissed by Vendor for misconduct (i.e., fraud, drug abuse, theft) or fails to comply with Vendor’s conduct guidelines, (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.

## Vendor Agents

* + 1. The Vendor shall not assign, transfer, subcontract, or delegate any of its rights or obligations under this Agreement except as approved by the Judicial Council in writing in its sole discretion. The Judicial Council may withdraw its approval of a subcontractor if the Judicial Council determines in its reasonable judgment that the subcontractor is unable to effectively perform its responsibilities. If the Judicial Council rejects any proposed subcontractor in writing, the Vendor will assume the proposed subcontractor’s responsibilities.
		2. No subcontracting shall release the Vendor from its responsibility for performance of its obligations under this Agreement. The Vendor shall be fully responsible for the performance of the Vendor Agents hereunder, including all work and activities of the Vendor Agents providing services to the Vendor in connection with the Vendor’s provision of the Services. The Vendor shall be solely responsible for the sole point of contact with the Vendor Agents, including payment of any and all charges resulting from the cost of any subcontract between the Vendor and the Vendor Agents. The Judicial Council’s consent to any subcontracting or delegation of Vendor’s obligations will take effect only if there is a written agreement with the subcontractor, stating that the Vendor and subcontractor: (i) are jointly and severally liable to the Judicial Council for performing the duties in this Agreement; (ii) affirm the rights granted in this Agreement to the Judicial Council; (iii) make the representations and warranties made by the Vendor in this Agreement; (iv) appoint the Judicial Council an intended third party beneficiary under Vendor’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. Nothing contained in this Agreement will create or be construed as creating any contractual relationship between any Vendor Agent and the Judicial Council.

## Project Staff. The Vendor shall appoint to the Project Staff (i) individuals with suitable training and skills to perform the Services, and (ii) sufficient technical support personnel to adequately provide the Services. The personnel of the Vendor, including Vendor Agents, located on the Judicial Council’s premises may only provide services on such premises which support the Judicial Council’s operations. The Vendor shall notify the Judicial Council as soon as possible after dismissing or reassigning any member of the Project Staff whose normal work location is a Judicial Branch Service Location. The Judicial Council shall have the right at any time, at no cost to the Judicial Council, to request that the Vendor remove any of its personnel from the Project Staff, if in the Judicial Council’s good faith opinion, such personnel is unsatisfactory with respect to performance or conduct. The Vendor shall maintain backup procedures and conduct the replacement procedures for the Project Staff in such a manner so as to assure an orderly and prompt succession for any Project Staff member who is replaced. Upon the Judicial Council’s request, the Vendor shall make such procedures available to the Judicial Council. The Vendor 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.

## Conduct of Project Staff. While at the Judicial Branch Service Locations, the Vendor shall, and shall cause Vendor Agents to, (1) comply with the requests, standard rules and regulations and policies and procedures of the Judicial Branch Group regarding safety and health, security, personal and professional conduct (including the wearing of an identification badge or personal protective equipment and adhering to site regulations and general safety practices or procedures) generally applicable to such Judicial Branch Service Locations, and (2) otherwise conduct themselves in a businesslike manner. The Vendor shall (i) enter into a non-disclosure agreement containing provisions no less protective of the Confidential Information than the provisions in this Agreement, with each of the members of the Project Staff (to the extent that such agreements do not already exist), and (ii) cause the Project Staff to maintain and enforce the confidentiality provisions of this Agreement both during and after their assignment to the Judicial Council account. The Vendor further shall enter into an agreement with each of the members of the Project Staff who may create materials during performance under this Agreement which assigns, transfers and conveys to the Vendor all of such Project Staff member’s right, title and interest in and to any materials (including any Software and Developed Works) created pursuant to this Agreement, including all rights of patent, copyright, trade secret or other proprietary rights in and to such materials (to the extent that such agreements do not already exist). Vendor shall have conducted a background check, as permitted by law at Vendor’s cost and expense, on all persons granted logical or physical access to (x) Judicial Branch Data, (y) the premises or Systems of the Judicial Branch Group or those of a Judicial Branch Agent, or (z) any other Systems that store, access, process, or transmit Judicial Branch Data, and provide the results of such background check to the Judicial Council; provided that, the Judicial Council has the right to conduct itself or have conducted all or any part(s) of a background check. Vendor shall notify, in writing, the Judicial Council of all individuals who are members of the Project Staff as of the Effective Date and of all individuals who join the Project Staff at any time during the Term prior to such new Project Staff providing any Services. Vendor shall reasonably cooperate with the Judicial Branch Group in performing such background checks, and shall promptly notify the Judicial Council of any such person refusing to undergo such background checks, and shall, at the Judicial Council’s option and in the Judicial Council’s sole discretion, remove such person from the Project Staff. Vendor shall obtain, to the extent permissible under Applicable Law, all releases, waivers, or permissions required for the release of such information to the Judicial Branch Group.

# MANAGEMENT AND CONTROL

## Contract Change Management. Notwithstanding anything to the contrary stated in this Agreement, the Judicial Council shall have final decision‑making authority regarding all Service Change Requests. Service Change Orders shall require a written agreement of the Parties as specified below.

## Service Change Orders and Service Change Requests. From time to time during the term of this Agreement, the Parties may mutually agree on a change to the Services or Deliverables, which may require an extension or reduction in the schedule and/or an increase or decrease in the fees and expenses and/or the Service (each, a “Service Change Order”), including: (i) a change to the scope or functionality of the Deliverables; or (ii) a change to the scope of the Service. In the event the Parties agree on a Service Change Order, 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 Vendor, including the payment schedule, pricing and criteria for Acceptance of Designated Services and corresponding Deliverables. Service Change Requests will be prepared and reviewed as promptly as reasonably possible, but in all cases within time limitations prescribed in the SLRs. Vendor is responsible, in consultation with the Judicial Council, for preparing the Service Change Order or Service Change Request. All Service Change Orders or Service Change Requests will specify the services to be performed, the Judicial Branch Group to which the services apply if any, and the schedule for performance and Deliverables. An authorized representative of each Party shall promptly sign the mutually agreed upon Service Change Order or Service Change Request to acknowledge the impact and to indicate that Party’s agreement to the adjustments.

#### All Service Change Orders and Service Change Requests shall have the following initial key content: date of Change request; unique number of Change request; Service to which Change request relates (or generic request); type of request (Service Change Order or Service Change Request); objectives of Change request; description of Change request; and suggested named persons from the Vendor and the Judicial Council who will be responsible for the evaluation of the Change.

(ii) With respect to Service Change Orders, the following procedure will be executed:

(a) If Judicial Council determines that a Service Change Order or Service Change Request is necessary, Judicial Council will notify Vendor, and within a period of ten (10) Business Days or at an alternatively mutually agreed time, the Parties shall convene to determine the action to be taken, and the Vendor shall provide the Judicial Council with proposed pricing (in accordance with the Agreement’s Fee provisions) with respect to any Change.

(b) Service Change Orders shall be identified by a unique number and kept in a central log managed by the Vendor and accessible by the Judicial Council. Service Change Orders will be continuously updated with their progress through the contract change management process described in Exhibit K.

(c) Evaluation of Service Change Orders. Service Change Orders shall undergo an evaluation by both Parties, and the results of both evaluations shall be documented in a manner that includes the following elements at a minimum: confirmation of Change type; date of evaluation; impact/risk analysis; knowledge transfer impact; financial impact; legal review (if required); recommendation including change activities and plan; documentation requirements; suggested review team and approval level. Both Parties shall contribute to the evaluation as appropriate, and the conclusion of the evaluation shall be recorded with the original Service Change Order.

## Any dispute relating to the Vendor’s inability or unwillingness to make a change shall be resolved in accordance with Article 24.

* + 1. Notwithstanding any provision to the contrary, the Judicial Council may make the following Changes, at its discretion, without the need for mutual agreement on a Service Change Order: [ TBD\_\_\_\_\_\_\_\_\_\_\_\_.] Upon receipt of notice from the Judicial Council of such Changes, Vendor shall increase or decrease the Services in accordance with such notice.

# CONSENTS.

The Vendor shall obtain and maintain all Consents, and the Judicial Council shall cooperate as commercially reasonable with the Vendor in obtaining and maintaining the Consents.

# CONTINUED PROVISION OF SERVICES

## Force Majeure. If a Party’s performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war (declared and undeclared), riots, rebellions, revolutions or terrorism, whether foreseeable or unforeseeable, but in all events excluding nonperformance or failures of the Vendor Agents and the Vendor suppliers (each, a “Force Majeure Event”), such Party shall use its reasonable best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. To the extent a Party’s performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by a Force Majeure Event and such non-performance, hindrance or delay could not have been prevented, then the non-performing, hindered or delayed Party shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as the Force Majeure Event continues and such Party continues to use its best efforts to recommence performance pursuant to the foregoing sentence. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall immediately notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event.

## Alternate Source. If as a result of a Force Majeure Event, the Vendor does not perform a Critical Service for a period longer than the applicable period set forth in the Critical Services section of Exhibit B, and the Judicial Council procures such Critical Services from an alternate source, the Vendor shall reimburse the Judicial Council for the costs and expenses incurred by the Judicial Council in procuring such Critical Services to the extent those costs and expenses exceed those which would have been incurred by the Judicial Council if they had been procured from the Vendor and the Force Majeure Event had not occurred; provided that, the Judicial Council continues to pay all fees for those Services that the Vendor actually provides to the Judicial Branch Group. Once the Vendor is no longer prevented from performing such Critical Services as the result of such Force Majeure Event, the Vendor shall notify the Judicial Council that it is prepared to resume providing such Critical Services. If a Force Majeure Event affecting a Vendor Service Location prevents the Vendor from performing any Critical Services and the Judicial Council elects to obtain replacement services for such Critical Services, the Vendor shall reimburse to the Judicial Council the difference between the fees the Judicial Council would have paid for such Critical Services under this Agreement and the amount actually paid by the Judicial Council to the party supplying the replacement services. If the Vendor does not provide the Critical Services for more than thirty (30) days, the Judicial Council may terminate this Agreement, in whole or in part, as of a date specified by the Judicial Council in a termination notice to the Vendor. The Vendor will not have the right to any additional payments from the Judicial Council, other than fees for those Services that the Vendor actually provides to the Judicial Branch Group, as a result of any Force Majeure Event.

## Continuation of Services. A non‑performing Party shall be obligated to mitigate the impact of its non‑performance notwithstanding the Force Majeure Event.

## No Payment for Unperformed Services. In the event of a Force Majeure Event, if the Vendor fails to provide the Services in accordance with this Agreement, the Vendor’s charges to the Judicial Council shall be adjusted in a manner such that the Judicial Council is not responsible for the payment of any charges for those Services that the Vendor fails to provide.

## Allocation of Leveraged Resources. Whenever a Force Majeure Event causes the Vendor to allocate leveraged resources between or among the Vendor’s customers, the Judicial Branch Group shall receive at least the same priority as it received immediately prior to the Force Majeure Event, and no other Vendor customer having in effect, as of the commencement of the Force Majeure Event, service levels substantially comparable to the Designated Service Levels shall receive higher priority in respect of such leveraged resources.

## Disaster Recovery Services. Vendor shall at all times maintain disaster recovery and business continuity plans consistent with the highest industry standards and sufficient to meet its obligations under this Agreement (“Disaster Recovery Plan”) The Disaster Recovery Plan shall address and protect the Judicial Council’s critical information technology environment. Individual Statements of Work may contain more specific obligations with respect to disaster recovery and business continuity. If a Statement of Work includes specific disaster recovery or business continuity obligations, and in the event of disaster, Vendor is not able to reinstate the applicable Services within the specified recovery time objectives, then Judicial Council may, upon written notice to Vendor, terminate the applicable Statement of Work as of the termination date specified in the notice, without cost or penalty. The Judicial Council may (at any time, and from time to time, during the Term) identify and notify the Vendor in writing of other items that the Judicial Council reasonably deems appropriate for inclusion in the Disaster Recovery Plan. The Vendor shall revise the Disaster Recovery Plan as appropriate to reflect any changes to the Judicial Council’s information technology environment, or related requirements, and submit such revised Disaster Recovery Plan to the Judicial Council for review, comment, and approval. The occurrence of a Force Majeure Event shall not relieve the Vendor of its obligations to provide services pursuant to this Section and in accordance with the Disaster Recovery Plan, except in the event and to the extent that such Force Majeure Event, or another Force Majeure Event, materially and adversely affects or prevents the performance of such services. Except as provided in the immediately preceding sentence, and notwithstanding any other provisions related to the occurrence of a Force Majeure Event or anything else to the contrary in this Agreement, any breach or violation by the Vendor of its obligations regarding execution of the Disaster Recovery Program during a disaster shall be deemed an incurable and material breach of this Agreement by the Vendor.

# FEES

## Designated Services. In consideration of the Vendor providing the Designated Services, the Judicial Council shall pay to the Vendor the Base Fees, as adjusted to reflect ARCs and RRCs, in each case in accordance with Exhibit E.

## Other Services. The hourly services rates set forth in Exhibit E apply only to the extent the Parties agree pursuant to Services specified in a Service Change Order.

## Expenses. Except as expressly set forth in this Agreement, all expenses relating to either the Designated Services or Other Services are included in the Fees and shall not be reimbursed by the Judicial Branch Group.

## Pro‑ration. All periodic Fees or charges under this Agreement are to be computed on a calendar month basis and shall be prorated for any partial month.

## Competitive Pricing. The fees paid by the Judicial Council to the Vendor shall be at least as low as those fees charged by the Vendor to its other customers in local and state government that are receiving substantially comparable services at substantially comparable volumes over a similar period of time to the Services provided to the Judicial Council (“Government Contract”). The foregoing comparison shall take into effect total scope, volume, geography (to the extent that geography has a direct effect on the Vendor’s actual costs), service levels (when taken as a whole), technology, and assets associated with the services provided by the Vendor in each case and any taxes and transition charges included within the charges for such services. If, during the Term, the Vendor enters into a Government Contract contradicting the foregoing sentence, the Vendor shall (a) give the Judicial Council immediate notice of any such lower pricing, and (b) offer to the Judicial Council an immediate adjustment to the terms of this Agreement to reflect such lower pricing. At least once each year during the Term, upon the Judicial Council’s request an officer of the Vendor shall certify to the Judicial Council that this obligation has not been contradicted by any transaction entered into by the Vendor since the later of the (1) Effective Date and (2) date of the most recent certification provided by the Vendor pursuant to this obligation.

# PAYMENT SCHEDULE AND INVOICES

## Base Fees. Each month of the Term and Termination Assistance Period, the Vendor shall invoice the Judicial Council, care of the Accounts Payable Department at the Judicial Council, the Base Fees for the Designated Services performed in accordance this Agreement during such month, as set forth in Exhibit E. All payments herein shall be made in United States Dollars. Except as expressly set forth in Exhibit E: (i) such fees are the entire compensation for all Services under this Agreement; and (ii) all expenses relating to the Service are included in such fees and shall not be reimbursed by the Judicial Council. Notwithstanding any provision in this Agreement to the contrary, any payments to Vendor are contingent upon the timely and satisfactory performance of Vendor’s obligations under this Agreement. Vendor shall immediately refund any payment made in error.

## ARC/RRC Fees. Each month of the Term and Termination Assistance Period, the Vendor shall provide the Judicial Council with the ARC/RRC Fee Report and an invoice for payment of the Additional Resource Charges. In the event the Reduced Resource Credits are in excess of the Additional Resource Charges or a credit for any reduced Resource Credits is applicablefor such month, the Vendor shall provide the Judicial Council with a credit against the invoice in the amount of the difference. In the event the Judicial Council disapproves of any of the ARC/RRC Fees set forth in the ARC/RRC Fee Report, the Judicial Council shall provide the Vendor with a list of any ARC/RRC Fees of which the Judicial Council disapproves and the Vendor shall adjust the ARC/RRC Fee Report to reflect the changes indicated by the Judicial Council. Any disputes that arise out of the ARC/RRC Fee Report will be handled through the Dispute Resolution process set forth in Article 24.

## Right of Set Off. With respect to any amount that is payable to the Judicial Council pursuant to this Agreement, the Judicial Council may upon notice to the Vendor deduct the entire amount owed to the Vendor against the charges otherwise payable or expenses owed to the Vendor under this Agreement.

## Unused Credits. Any unused credits against future payments owed to the Judicial Council by the Vendor pursuant to this Agreement shall be paid to the Judicial Council within thirty (30) days of the earlier of the expiration or termination of this Agreement.

## Time of Payment and Detailed Invoices. The Judicial Council will not make any advance payments under this Agreement, including any payments for Services. Vendor’s invoices must include information and supporting documentation, including a workload report in the form the Judicial Council may specify from time to time. Vendor shall adhere to reasonable billing guidelines issued by the Judicial Council from time to time. The Vendor shall send invoices to the Judicial Council within fifteen (15) Business Days after the last day of each month for which Services were rendered. Payment will be made net sixty (60) calendar days after the Judicial Council’s receipt of itemized invoice amounts, subject to the Judicial Council’s right to withhold amounts disputed by the Judicial Council in good faith of which the Judicial Council notifies the Vendor that the Judicial Council disputes in good faith prior to the due date of the applicable invoice. The Vendor shall not send an invoice to the Judicial Council for a task or Deliverable that is subject to acceptance by the Judicial Council prior to acceptance of such task or Deliverable by the Judicial Council. The Vendor shall provide invoices with the level of detail reasonably requested by the Judicial Council.

# TAXES

## Unless otherwise required by law, the Judicial Council is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or on any taxes levied on employee wages. The Judicial Council shall only pay for any federal, state or local sales, service, use, or similar taxes imposed on the Judicial Council as required by Applicable Laws on the Services rendered or equipment, parts or software supplied to the Judicial Council pursuant to this Agreement. Vendor shall bear, and the Judicial Council shall have no obligation to pay or reimburse Vendor for, any and all other fees, costs, profits, taxes or expenses of any nature which Vendor incurs.

14.2 Vendor must provide notice to the Judicial Council immediately if Vendor has reason to believe it may be placed on either (i) the California Franchise Tax Board’s list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization’s list of 500 largest delinquent sales and use tax accounts. The Judicial Council may terminate this Agreement immediately “for cause” pursuant to Section 17.4 if (i) Vendor fails to provide the notice required above, or (ii) Vendor is included on either list mentioned above.

# RECORD KEEPING AND AUDIT RIGHTS

## Audits of Services. Except with respect to records and supporting documentation subject to Section 15.2 below, upon reasonable prior notice from the Judicial Council, the Vendor shall provide, and shall cause the Vendor Agents to provide, the Judicial Council, any regulatory entity, and any other Judicial Branch Agent access to and any assistance that they may require, with respect to the Service Locations for the purpose of performing audits or inspections of the Services and related operational processes and procedures which are directly pertinent to the Services, including intellectual property audits; provided, however, that no prior notice will be required for audits relating to security. If any audit by an auditor designated by the Judicial Council, a Judicial Branch Agent or a regulatory authority (i) correctly determines that the Vendor or the Vendor Agent is not in compliance with this Agreement, any applicable audit requirement or any Applicable Law, and (ii) the Vendor is so notified, the Vendor shall, and shall cause the Vendor Agents to, promptly take actions to comply as directed by the Judicial Council upon receipt of notice of such conclusion.

## Records.

* + 1. The Vendor shall maintain reasonably detailed books and records adequate to confirm the accuracy of the Fees invoiced hereunder, including Resource Measurement and RU usage. The Vendor agrees that, upon the Judicial Council’s reasonable prior notice and request, the Judicial Council or its designated representative shall have the right to audit and copy any records and supporting documentation pertaining to performance under this Agreement in accordance with California Government Code Section 77206(c) (but excluding any cost information or internal financial audit reports except to the extent necessary to confirm the accuracy of payments made under this Agreement). The Vendor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated by Applicable Law. The Vendor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Vendor agrees to include a similar right of the Judicial Council to audit records and interview staff in any subcontract related to performance of this Agreement.
		2. If, as a result of an audit hereunder, the Judicial Council correctly determines that the Vendor has overcharged the Judicial Council, it shall notify the Vendor of the amount of such overcharge along with such detail and documentation supporting the overcharge and the Vendor shall promptly (1) dispute such finding in accordance with the disputes provision of this Agreement or (2) pay to the Judicial Council the amount of the overcharge, plus Interest, calculated from the date of receipt by the Vendor of the overcharged amount until the date of payment to the Judicial Council.
		3. In addition to the Judicial Council’s rights set forth in subsection (b) above, in the event any such audit correctly reveals an overcharge in the aggregate to the Judicial Council of five percent (5%) or more for the Services provided during the time period subject to audit, the Vendor shall, at the Judicial Council’s option, issue to the Judicial Council a credit against the Fees, or reimburse the Judicial Council, in an amount equal to the reasonable cost of such audit.
		4. The Vendor shall make available promptly to the Judicial Council the results of a review or audit conducted by the Vendor, Vendor Agents or their respective contractors, agents or representatives (including internal and external auditors), relating to the Vendor’s operating practices and procedures to the extent relevant to the Services or the Judicial Council.

## Facilities. The Vendor shall provide to the Judicial Branch Group and Judicial Branch Agents, on the Vendor’s premises (or, if the audit is being performed of an Vendor Agent, Vendor Agent’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 Group or such Judicial Branch Agent may reasonably require to perform the audits described in this Article 15.

## General Data Security Audit. For the purpose of auditing Vendor’s compliance with its obligations under the Agreement, Vendor shall provide to the Judicial Council, its authorized representatives and any Auditor as the Judicial Council may appoint, on reasonable notice: (a) access to Vendor’s information processing premises and records; (b) reasonable assistance and cooperation of Vendor’s relevant staff; and (c) reasonable facilities at Vendor’s premises. In addition and without notice, the Judicial Council shall have the right to remotely access all computer logs that relate to access to or use of any Judicial Branch Data by Vendor by using computer control methods, and Vendor hereby consents to such monitoring techniques, including access to Vendor’s computer systems which may be required for such purposes. The Vendor shall, at its expense, perform, or cause to have performed, once each Contract Year, audits of the (1) data security procedures controlled by the Vendor at the Service Locations, and (2) physical security procedures controlled by the Vendor at the Service Locations. The Vendor shall provide to the Judicial Council the results, including any findings and recommendations made by the Vendor’s auditors, of such audits. The Judicial Branch Group and Judicial Branch Agents may, pursuant to Section 15.1, perform the audits described in this Section 15.4.

15.5 This Agreement is subject to examinations and audit by the California State Auditor during the Term (and the transition period), and for a period three years after final payment.

# REPRESENTATIONS AND WARRANTIES

## Duration of Representations and Warranties. Except as otherwise expressly stated in this Agreement, each Party agrees that the representations and warranties such Party makes in this Article 16 shall be true and accurate as of the Effective Date, during the Term and during the transition period, and after expiration or termination of this Agreement as set forth in Section 17.8.

## Preparation. The Vendor represents that: (i) it has had sufficient access to, and opportunity to inspect, all material components, workings, capabilities, procedures, and capacities of the Judicial Council’s networks, equipment, hardware, and Software associated with the provision of the Services and Deliverables, and the operation, support, and maintenance of the Systems, and for full and complete analysis of the Judicial Council’s requirements in connection therewith (as specified in this Agreement); (ii) it has performed sufficient due diligence investigations regarding the scope and substance of the Services, the Systems, and the Deliverables; (iii) it has received sufficient answers to all questions that it has presented to the Judicial Council regarding the scope and substance of the Services, the Systems, and the Deliverables; and (iv) it is capable in all respects of providing the Services and Deliverables, and of operating, supporting, and maintaining the Systems, in accordance with this Agreement. The Vendor hereby waives and releases any and all claims that it now has or hereafter may have against the Judicial Council based upon any inaccuracy or incompleteness of the information it has received with regard to the scope and substance of the Services, the Systems, or the Deliverables. Further, the Vendor covenants that it shall not seek any judicial rescission, cancellation, termination, reformation, or modification of this Agreement or any provision hereof, nor any adjustment in the Fees to be paid for the Services, based upon any such inaccuracy or incompleteness of information except where such information was willfully withheld or intentionally misrepresented by the Judicial Council.

## Compliance with Laws and Regulations; Consents. The Vendor represents and warrants to the Judicial Council that it shall (i) comply with all Applicable Laws, and ensure that all Vendor Agents will comply with Applicable Laws, (ii) ensure that all facilities used by the Vendor or Vendor Agents to provide the Services comply with all Applicable Laws, and (iii) obtain all Exit Consents.

## Authorization. The Vendor represents and warrants to the Judicial Council that: (i) it has full power and authority to enter into this Agreement, to grant the rights and licenses herein and to carry out the transactions contemplated by this Agreement; (ii) the execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated by this Agreement, have been duly authorized by all requisite corporate action on the part of the Vendor; (iii) the Vendor shall not and shall cause the Vendor Agent not to enter into any arrangement with any third party which could reasonably be expected to abridge any rights of the Judicial Branch Group under this Agreement; and (iv) Vendor is qualified to do business and in good standing in the State of California. The Vendor represents and warrants to the Judicial Council that its execution, delivery and performance of this Agreement will not constitute: (i) a violation of any judgment, order or decree; (ii) a material breach under any contract by which it or any of its assets material to this Agreement are bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a breach. The Vendor represents and warrants to the Judicial Council that Vendor 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 Judicial Council.

## Inducements. The Vendor represents and warrants to the Judicial Council that: (i) no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Vendor or any agent or representative of the Vendor, to any officer or employee of the Judicial Branch Group with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement; and (ii) Vendor 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 the Judicial Branch Group. For breach or violation of this Section 16.5, the Judicial Council will have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by the Judicial Branch Group in procuring on the open market any items or services which the Vendor agreed to supply will be borne and paid for by the Vendor. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Judicial Branch Group of such items or services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Judicial Council or Judicial Branch Group.

## Conflict of Interest. The Vendor represents, warrants and covenants that:

* + 1. Neither the Vendor nor any of its Affiliates, nor any employee of any of the foregoing, has, shall have, or shall acquire, any direct contractual, financial, business, or other interest, that would conflict in any material manner or degree with the Vendor’s performance of its duties and obligations under this Agreement, or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement; and the Vendor shall promptly inform the Judicial Council of any such interest that may be incompatible with the interests of the Judicial Council;
		2. The prices and other materials presented in the proposal were arrived at independently, without (for the purpose of restricting competition) consultation, communication, agreement, or otherwise conspiring with any other person who submitted a proposal; the prices quoted were not knowingly disclosed by Vendor to any other proposer; and no attempt was made by the Vendor to induce any other person to submit or not to submit a proposal for the purpose of restricting competition; and
		3. The Vendor shall require each subcontractor to certify in writing to the Vendor as to the matters in this Section 16.6 with respect to itself, its employees and their immediate family members, as applicable.

## Absence of Litigation. The Vendor represents and warrants to the Judicial Council that there is no claim, or any litigation, proceeding, arbitration, investigation or material controversy pending to which the Vendor or the Vendor Agents are a party, relating to the provision of the Services hereunder as offered by the Vendor, and which would have a material adverse effect on the Vendor’s ability to enter into this Agreement or perform its obligations hereunder and, to the best of the Vendor’s knowledge, no such claim, litigation, proceeding, arbitration, investigation or material controversy has been threatened or is contemplated.

## Financial Condition. The Vendor represents that it has, and warrants that it shall maintain, a financial condition commensurate with its obligations under this Agreement and sufficient to allow it to readily and successfully fulfill all such obligations, in accordance with this Agreement. The Vendor further warrants that, in the event the financial condition of the Vendor changes during the Term in such a manner as to materially and adversely affect the Vendor or jeopardize its ability to satisfy the warranty set forth in the immediately preceding sentence, the Vendor shall promptly notify the Judicial Council in writing, reasonably describing the nature and extent of such change.

## Financial Statements. The Vendor represents that it shall furnish, or cause to be furnished, to the Judicial Council annually, as soon as available but in any event within one hundred and eighty (180) days after the last day of each Vendor fiscal year, a copy of Vendor’s Form-10-K filed with the U.S. Securities and Exchange Commission.

## Work Standards. The Vendor represents and warrants to the Judicial Council that 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. During the Term, the Vendor shall, at its sole cost, correct any breach of this representation and warranty and will use reasonable efforts to do so as expeditiously as possible.

## Maintenance. Without limiting any other obligation of the Vendor under this Agreement, the Vendor represents and warrants under the Agreement that it will maintain equipment and software to the extent that the Vendor has maintenance responsibility for such assets so that they operate in accordance with their specifications, including (i) maintaining equipment in good operating condition, subject to normal wear and tear; (ii) undertaking repairs and preventive maintenance on equipment in accordance with the applicable equipment manufacturer’s recommendations; and (iii) performing software maintenance in accordance with the applicable Software vendor’s documentation and recommendations.

## Non‑Infringement. The Vendor represents and warrants to the Judicial Council that it will perform its responsibilities under this Agreement in a manner that (i) does not infringe, or constitute an infringement, misappropriation or violation of, any copyright or trade secret of any third party, and (ii) to the best of the Vendor’s knowledge, does not infringe any patent rights or trademarks of any third party.

## Efficiency and Cost Effectiveness. The Vendor represents and warrants to the Judicial Council that it will: (i) use its reasonable best efforts to use efficiently the resources or services necessary to provide the Services; and (ii) use its reasonable best efforts to perform the Services in the most cost efficient manner consistent with the required level of quality and performance.

## Intellectual Property. Vendor 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. Vendor has full Intellectual Property Rights and authority to perform all of its obligations under this Agreement, and Vendor is and will be either the owner of, or authorized to use for its own and the Judicial Branch Group’s benefit, all Vendor Materials, or third party Intellectual Property Rights used and to be used in connection with the Services.

## Services. The Vendor warrants that: (i) the Services shall be performed, and all Deliverables and other materials prepared and delivered, in a timely, professional, work person‑like, diligent, efficient manner and in accordance with the highest recognized professional standards and practices of quality and integrity in the industry and with the performance standards and specifications provided or required by this Agreement; and (ii) the Vendor employees (including Vendor Key Employees), Vendor Agents, and any other person or individual employed or engaged by the Vendor in connection with this Agreement, shall be fully familiar with the technology and methodologies used to perform the Services and shall have the requisite ability, expertise, knowledge, and skill, as appropriate to the duties assigned, to perform the Services, provide the Deliverables, and develop, implement, support, and maintain the Systems, in such a manner and in accordance with such standards, practices, and specifications.

## Viruses. The Vendor represents and warrants to the Judicial Council that it will employ anti‑Virus programs and policies in accordance with this Agreement, to ensure that no forms of harmful surreptitious code, including worms, viruses, time bombs, or other disabling code (“Viruses”) are introduced into the Service Locations or any Systems or Services, and to use best efforts and all necessary precautions to prevent the introduction and proliferation of any Viruses in the Judicial Branch Group’s IT Infrastructure or networks or in the Vendor systems used to provide Services. Without limiting any other right or remedy of the Judicial Council, if a Virus is found to have been introduced into any such systems, the Vendor will notify promptly the Judicial Council in writing of the introduction and at no additional charge to the Judicial Council, assist the Judicial Council in reducing the effects of such Virus, and if the Virus causes an interruption of the Services, a loss of operational efficiency or loss of data, restore operational efficiency and to the maximum extent possible, restore data or, when not possible, mitigate losses to the maximum extent possible.

## Disabling Code. The Vendor represents and warrants to the Judicial Council that it will not knowingly insert into any Systems or Services any code that would have the effect of disabling or otherwise shutting down all or any portion of the Services or Deliverables. With respect to any disabling code that may be part of any System or Services, the Vendor represents, warrants and covenants that it will not invoke such disabling code at any time without the Judicial Council’s prior written consent.

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

## Effect of Breach of Representation and Warranties. The rights and remedies of the Judicial Council provided in this Article 16 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## ISO 20000 Compliance. The Vendor has obtained appropriate certifications in order to confirm and maintain compliance with ISO 20000: 2018.

# TERM AND TERMINATION

## Term.

* + 1. Initial Term. The period during which the Vendor shall be obligated to provide the Services under this Agreement (the “Term”) shall commence on the Effective Date and end at 11:59PM on \_\_\_\_\_\_\_\_\_\_\_\_\_(or, in the event of any renewal of the Term, pursuant to Section 17.1(b), the last day of the last of such renewals or extensions); or (ii) the applicable Termination Date, in the event of a termination pursuant to Sections 17.2 through 17.6 (in each case, the “Expiration Date”).
		2. Term Renewals. The Judicial Council may, in its sole discretion, renew the Term for three (3) additional successive periods of twelve (12) months (as designated by the Judicial Council, in its sole discretion, by providing written notice delivered to the Vendor at least sixty (60) days before the end of then-current Term (as such Term may have been renewed or extended, in accordance herewith). Any renewal of the Term shall begin on [\_\_\_\_\_\_\_\_\_\_\_\_]of such renewal.

## Termination by the Judicial Council for Convenience.

* + 1. In accordance with this Section 17.2, the Judicial Council shall have the right to terminate for its convenience, at any time and for any reason or no reason, and without liability or obligation to Vendor, the Agreement, its Term, or at Judicial Council’s option, all or any portion of the Services. Any such termination shall be effected by the Judicial Council sending to the Vendor a written notice of termination specifying the extent of the Services being terminated and the intended date (the “Termination Date”) upon which, at 11:59 p.m., such termination shall be effective (any such notice, a “Termination Notice”). The Termination Date specified in any such Termination Notice sent by the Judicial Council pursuant to this Section 17.2(a) shall be at least thirty (30) days after the date of such Termination Notice.
		2. After receipt of a Termination Notice, and except as otherwise directed by the Judicial Council, the Vendor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this Section 17.2. The Vendor shall (i) stop work as specified in the Termination Notice, (ii) place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of this Agreement, (iii) make commercially reasonable efforts to terminate all subcontracts to the extent they related to the work terminated, and (iv) make commercially reasonable efforts to settle all outstanding liabilities and termination settlement proposals arising from the termination of the subcontracts or portion thereof, the approval or ratification of which will be final for purposes of this Section 17.2; provided that, if the Vendor does not terminate subcontracts to the extent they related to the work terminated or the Vendor does not settle all outstanding liabilities and termination settlement proposals arising from the termination of such subcontracts or portion thereof, the Vendor shall be fully responsible for all costs and expenses related to the non-terminated portions of such subcontract and any unsettled outstanding liabilities and termination settlement proposals arising from the termination of such subcontracts or portion thereof.

## Termination by the Judicial Council for Change of Control. In the event of a Change of Control of the Vendor resulting from a single transaction or a series of related transactions, the Judicial Council shall have the right to terminate: (i) the Term of this Agreement with regard to the Services, or (ii) any portion the Services then being provided by the Vendor by sending to the Vendor a Termination Notice at least thirty (30) days before the Termination Date specified therein.

## Termination by the Judicial Council for Breach.

(a) Notwithstanding anything to the contrary, the Judicial Council shall have the right to terminate for cause: (i) the Agreement; (ii) the Term of this Agreement with regard to the Services, or (iii) any portion the Services then being provided by the Vendor by delivery of a Termination Notice to the Vendor, if the Vendor is in Default. Notwithstanding the foregoing and subject to the terms and conditions of Article 7 of this Agreement, the Judicial Council shall have the right to terminate this Agreement by written notice (with no right of Vendor to cure), which termination shall become effective on the date specified in the Judicial Council’s notice of termination, if Vendor materially breaches any of the terms or conditions of Article 7 of this Agreement. Any such termination shall not constitute the Judicial Council’s exclusive remedy for such material breach, nor shall such a termination cause the Judicial Council to be deemed to have waived any of its rights accruing hereunder prior to such material breach. If Vendor is in Default, the Judicial Council reserves the right to do any of the following: (i) offset the reasonable cost of all damages caused to the Judicial Council against any outstanding invoices or amounts owed to the Vendor or to make a claim against the Vendor therefor; and (ii) require Vendor to enter into nonbinding mediation.

(b) If the Judicial Council terminates this Agreement or any Statement of Work in whole or in part due to Vendor’s Default, the Judicial Council may acquire from third parties, under the terms and in the manner the Judicial Council considers appropriate, goods or services equivalent to those terminated, and Vendor shall be liable to the Judicial Council 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 Group for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Judicial Council or Judicial Branch Group. Vendor shall continue the Services not terminated hereunder.

## Termination by the Judicial Council for Force Majeure Events. In the event that the Vendor experiences a Force Majeure Event that causes a delay or interruption in its performance of a significant or substantial portion of the Services that exceeds thirty (30) consecutive calendar days in duration, the Judicial Council may terminate the delayed or interrupted Services or (in the event said Services represent a material portion of all of the Services) the Judicial Council may terminate the Agreement or its Term, by sending, in either case, a Termination Notice to the Vendor, specifying whether such termination is a partial or a total termination.

## Termination by the Judicial Council for Non‑Appropriation of Funds. The Vendor acknowledges that funding for this Agreement beyond the current appropriation year is conditioned upon appropriation by the California Legislature of sufficient funds to support the activities described in this Agreement. Without limiting the foregoing, the Judicial Council may terminate this Agreement (or any portion of the Services) without prejudice to any right or remedy of the Judicial Branch Group for lack of appropriation of funds. If expected or actual funding is withdrawn, reallocated, reduced or limited in any way prior to the expiration or other termination of this Agreement, the Judicial Council may terminate this Agreement in whole or in part by written notice to the Vendor. Such termination shall be in addition to the Judicial Council’s rights to terminate for convenience or cause.

## Effect of Ending of Term. The expiration or termination of the Term shall not constitute a termination of this Agreement, and all terms and conditions of this Agreement shall continue in force and effect until all other duties and obligations of the Parties (including Vendor’s Termination Assistance obligations) have been fully performed, discharged, or excused. In the event the Judicial Council elects to terminate all or any particular portion of the Services pursuant to the terms of this Article 17: (i) the Vendor shall perform its Termination Assistance Services to the extent applicable to the portion of the Services being terminated, and (ii) the Vendor shall be entitled to the unpaid Fees for Services actually rendered in accordance with this Agreement up to and including the applicable Termination Date. If this Agreement is terminated by the Judicial Council, the Vendor shall: (i) transfer title and deliver to the Judicial Council, as directed by the Judicial Council, any partially-completed or completed Deliverables and related work product and materials that were made for the Judicial Council; (ii) return, or destroy at Judicial Council’s option, Confidential Information, Judicial Branch Data, Judicial Branch Intellectual Property, and all portions thereof in Vendor or Vendor Agent’s possession, custody, or control. In the event of any termination of this Agreement or a Statement of Work, the Judicial Council shall not be liable to Vendor for compensation or damages incurred as a result of such termination; provided that if the Judicial Council’s termination is not based on a Default, Judicial Council shall pay any fees due under this Agreement for Deliverables completed and accepted as of the date of the Judicial Council’s termination notice.

## 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. Except as otherwise specifically set forth in this Agreement, rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, whether in whole or in part, including: Articles 1 (Definitions), 10 (Consents), 16 (Representations and Warranties), 17 (Term and Termination), 18 (Termination Assistance Services), 19 (Data, Communications and Records), 20 (Proprietary Rights), 21 (Confidentiality), 22 (Indemnities), 24 (Dispute Resolution), and 25 (Miscellaneous Provisions), and Sections 15.1 (Audit of Services), 15.2 (Records) and Section 23.2(d) (Professional Liability Insurance).

# TERMINATION ASSISTANCE SERVICES

## Termination Assistance Services.

* + 1. During the Termination Assistance Period, the Vendor shall (i) provide to the Judicial Branch Group or to its designee (collectively, “Successor”), free of charge, all assistance as reasonably necessary to allow the Designated Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Designated Services and Transition Services to the Successor, and (ii) shall continue to perform the designated Services to the extent required by the Judicial Council (collectively, the “Termination Assistance Services”). Termination Assistance Services may include, but not be limited to, consulting services, data center planning, telecommunications planning, communication of all information about configuration of software, networks, data center operations and other systems or services to the Successor, compiling listings and documentation, transition databases, testing and provision of hardware and other equipment to the extent practicable. As part of the Termination Assistance Services, the Vendor shall: (a) provide such information and assistance relating to the number and function of each of the Vendor’s personnel and the Vendor Agents who are employed or contracted by the Vendor to perform the Designated Services and Transition Services under this Agreement, and the Vendor shall make such information available to potential Successors as designated by the Judicial Council; (b) not make any material changes to the level of Designated Services and Transition Services, or number of personnel assigned to perform functions for the Judicial Council under this Agreement; and (c) not change the level of Designated Services and Transition Services, or reassign the Vendor’s employees or Vendor Agents away from performance of functions under this Agreement. The Termination Assistance Services will be provided to the Judicial Council by the Vendor regardless of the reason for termination or expiration. At the Judicial Council’s option and election, the Judicial Council may extend the Termination Assistance Period for an additional six (6) month period upon notice to the Vendor at least thirty (30) days prior to the expiration of the Termination Assistance Period’s initial six (6) month period at the same rates charged immediately before the start of the Termination Assistance Period.
		2. During the Termination Assistance Period, the Vendor shall provide to the Judicial Council full, complete, detailed, and sufficient information (including all information then being utilized by the Vendor with respect to programs, tools, utilities and other resources used to provide the Services) and knowledge transfer with respect to all such information in order to enable the Judicial Council or the Successor to fully assume, become self‑reliant with respect to, and continue without interruption, the provision of the Services.
		3. The Judicial Council or the Successor shall have the right to extend offers of employment to all Vendor personnel assigned to or working on the Judicial Council account. The Vendor will provide reasonable access to these personnel and will not interfere with Successor’s efforts to hire them.

## Exit Rights. On the End Date, or earlier upon the Judicial Council’s request, the Vendor shall obtain all Exit Consents from third parties and assign, and cause the Vendor Agents to assign, any contracts for maintenance or support services provided by third parties to the Vendor and used by the Vendor to provide the Services. Nothing in this Section 18.2 shall be deemed to limit a Party’s obligations pursuant to Article 10.

# DATA, COMMUNICATIONS AND RECORDS

## Ownership of Judicial Branch Data. As between the Judicial Council and the vendor, all the Judicial Branch Data is and will remain the property of the Judicial Branch Group members or their respective contractors and agents, as applicable. The Judicial Branch Group members shall have and retain all right, title and interest, including worldwide ownership of Intellectual Property Rights, in and to the Judicial Branch Data and all copies made from it. Unless the Judicial Council approves in advance (in its sole discretion), the Judicial Branch Data shall not be (1) used by the Vendor or Vendor Agents other than as necessary to provide the Services, or (2) disclosed, sold, assigned, leased or otherwise provided to third parties by the Vendor or Vendor Agents. The Judicial Branch Data may not be commercially exploited by or on behalf of the Vendor or Vendor Agents. The Vendor hereby irrevocably assigns, transfers and conveys to the Judicial Council, and shall cause Vendor Agents to irrevocably assign, transfer and convey to the Judicial Council, without further consideration all of its right, title and interest in and to the Judicial Branch Data, including all Intellectual Property Rights in and to such materials. Upon reasonable request by the Judicial Council, the Vendor and Vendor Agents shall execute and deliver any financing statements or other documents that may be necessary or desirable under any Applicable Law to preserve, or enable the Judicial Council to enforce, its rights hereunder with respect to the Judicial Branch Data.

## Correction of Errors. At the Vendor’s expense, the Vendor shall promptly correct any errors or inaccuracies in the Judicial Branch Data and the reports delivered to the Judicial Branch Group under this Agreement, to the extent such errors or inaccuracies were caused by the Vendor or Vendor Agents. At the Judicial Council’s request and expense, the Vendor shall promptly correct any other errors or inaccuracies in the Judicial Branch Data or such reports in accordance with applicable Judicial Branch Group policies and procedures.

## Return of Data. From time to time and upon the Judicial Council’s request, the Judicial Branch Data will be returned to the Judicial Branch Group in a form acceptable to the Judicial Branch Group, or if the Judicial Branch Group so elects, will be destroyed; provided that if the Vendor’s ability to perform the Services as provided herein are adversely affected thereby, the Vendor shall be excused from its performance with respect thereto only to the extent of such adverse effect.

# PROPRIETARY RIGHTS

## Judicial Council Works. As between the Vendor and the Judicial Council, the Judicial Council retains all its rights, title and interest in and to, all inventions, discoveries, literary works or other works of authorship (“Works”) made, conceived, or reduced to practice by it as of the Effective Date, including all worldwide Intellectual Property Rights in such Works (“Judicial Council Works”).

## Vendor Materials

* + 1. As between the Vendor and the Judicial Council, the Vendor retains all its rights, title and interest in and to, all Vendor Materials . To the extent that the Services or Deliverables include Vendor Materials, Vendor grants to the Judicial Branch Group, without additional charge, a perpetual, irrevocable, royalty-free, license to use the Vendor Materials for California judicial branch business and operations.
		2. Without limiting any other provision of this Agreement, the Judicial Council shall have the right to approve in writing the installation of any software owned by Vendor (“Vendor Proprietary Software”) prior to the Vendor’s installation of such Vendor Proprietary Software into the Systems.
		3. Upon installation of any Vendor Proprietary Software to provide the Services, the Vendor grants to the Judicial Branch Group, together with their respective subcontractors and consultants , rights of access to, and use of, such Vendor Proprietary Software during the Term of this Agreement and the Termination Assistance Period as reasonably necessary to receive the Services. The Judicial Branch Group will not be bound by and does not accept any “shrink-wrap,” “click-wrap,” or “click-thru” terms or conditions or any other terms or conditions, express or implied, that are contained in or that may accompany the Vendor Proprietary Software or Vendor Third Party Software.

## Third Party Works. The Judicial Council shall have the right to approve in writing the installation of any third party software licensed by the Vendor (“Vendor Third Party Software”) into the Systems prior to the Vendor’s installation of such Vendor Third Party Software to provide the Services. Prior to installation of any Vendor Third Party Software, the Vendor shall obtain the right to grant the Judicial Branch Group, together with their respective subcontractors and consultants, without additional charge, rights of access to, and use of, such Vendor Third Party Software during the Term of this Agreement and the Termination Assistance Period as reasonably necessary to receive the Services.

## Rights in Developed Works. The Vendor hereby irrevocably assigns, transfers and conveys to the Judicial Council without further consideration all worldwide right, title and interest in (including all Intellectual Property Rights) and to the content of all reports, documentation and Deliverables, created by or on behalf of the Vendor or the Vendor Agents for the Judicial Council pursuant to this Agreement (“Developed Works”). The Vendor further agrees to execute any documents or take any other actions as may be reasonably necessary, or as the Judicial Council may request, to perfect the Judicial Council’s or its designee’s ownership of any Developed Works and to obtain and enforce intellectual property rights in or relating to Developed Works. The Vendor may use Developed Works solely to provide the Services during the Term of this Agreement and, if applicable, the Termination Assistance Period. The Vendor hereby grants to the Judicial Council, without additional charge, a perpetual, irrevocable, fully paid‑up, non‑exclusive license, with the right to grant and authorize the granting of sublicenses to subcontractors and consultants for the conduct of the Judicial Branch Group’s business, to use, copy, maintain, modify, enhance, and create derivative works of the Deliverables not owned by the Judicial Council.

## Notice of Development. The Vendor shall promptly notify the Judicial Council upon the completion of the development, creation or reduction to practice of any and all Developed Works and submit to the Judicial Council any patent disclosure statements applicable to the Developed Works.

## Rights Upon Termination or Expiration. The Vendor hereby agrees upon expiration or any termination of this Agreement to (i) provide the Judicial Council with a copy of all Judicial Branch Data contained within the Vendor Proprietary Software and Vendor Third Party Software in a format generally used in the industry for such data, (ii) transition all Judicial Branch Data to either the Judicial Council or to a third party designated by the Judicial Council, and (iii) delete or destroy all Judicial Branch Data contained within the Vendor Proprietary Software and Vendor Third Party Software and certify in writing by an authorized representative of the Vendor that all such Judicial Branch Data has been deleted or destroyed. The Vendor further agrees to provide the Termination Assistance Services set forth in Article 18.

## Consents. Nothing in this Article shall be deemed to limit a Party’s obligations pursuant to Article 10.

# CONFIDENTIALITY

During the Term and at all times thereafter, Vendor 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 Judicial Council’s express prior written consent on a case-by-case basis. Vendor will disclose Confidential Information only to Project Staff (including Vendor Agents) with a need to know in order to provide the Services hereunder and who have executed a confidentiality agreement with Vendor at least as protective as the provisions of this Article 21. The provisions of this Article 21 shall survive beyond the expiration or termination of this Agreement. Vendor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Vendor protects its own confidential or proprietary information of a similar nature, and with no less than reasonable care and industry-standard care. The Judicial Branch Group owns and retains all right, title and interest in their respective Confidential Information. Vendor will notify the Judicial Council promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Judicial Council to protect such Confidential Information. Notwithstanding any provision to the contrary, Vendor will keep all Personal Information confidential, unless otherwise authorized by the Judicial Council in writing. The Vendor shall require that its employees, agents and subcontractors comply with the confidentiality restrictions of this Agreement. Vendor will not remove any Confidential Information from Judicial Branch Entities’ facilities or premises without the Judicial Council’s express prior written consent. Upon the Judicial Council’s request and upon any termination or expiration of this Agreement, Vendor will promptly (a) return to the Judicial Council or, if so directed by the Judicial Council, destroy all Confidential Information (in every form and medium), and (b) certify to the Judicial Council in writing that Vendor has fully complied with the foregoing obligations. In the event of unauthorized disclosure, access, or loss of Confidential Information, Vendor shall immediately notify the Judicial Council in writing. Vendor acknowledges that there can be no adequate remedy at law for any breach of Vendor’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 Judicial Council shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

# INDEMNITIES

## Indemnity by the Vendor. The Vendor shall indemnify, defend (with counsel satisfactory to Judicial Council), and save harmless the Judicial Council and the Judicial Branch Group and their respective officers, agents, employees, and contractors from any and all claims, losses, costs, liabilities, and damages :, including reasonable attorneys’ fees, founded upon or that arise out of in connection with:(i) Vendor’s provision of, or failure to provide the Services under this Agreement; (ii) any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement; (iii) Vendor’s breach under this Agreement; ; (iv) Vendor or its employees or Vendor Agents of violating any Applicable Law; or (v) a breach of Vendor’s representations, warranties, or certifications with respect to itself and Vendor Agents.

## Intellectual Property Indemnity.

* + 1. The Vendor shall indemnify, defend (with counsel satisfactory to the Judicial Council), and save harmless the Judicial Council and the Judicial Branch Group and their respective officers, agents and employees from any and all third party claims, losses, damages, liabilities, and costs, including reasonable attorneys’ fees, to the extent they arise out of any actual or alleged infringement or misappropriation of any Intellectual Property Rights by (including use of) the Vendor Proprietary Software, Third Party Software, Services, Systems, Developed Works, Deliverables or other subject matter created or provided by the Vendor or Vendor Agents under this Agreement (collectively, the “Covered Items”).
		2. If any Covered Items are held to, or the Judicial Council or the Vendor reasonably believe they may, infringe a third party Intellectual Property Right, then the Vendor shall at the Judicial Council’s request and at Vendor’s expense take the following actions in the listed order of preference: (1) obtain for the Judicial Branch Group (including their respective subcontractors) the right to continue to use such Covered Items as provided in this Agreement; (2) replace or modify such Covered Items so as to make them non‑infringing, provided that the replacement materials or modified Covered Items provide functionality substantially the same as the unmodified Covered Items; or (3) if it is not possible for Vendor to perform under subsection (1) or (2) above, treat such Covered Items under Section 11.2 as if such Covered Items were Critical Services.

## Bodily Injury and Tangible Property Damage by the Vendor. The Vendor will indemnify, defend (with counsel satisfactory to the Judicial Council) and save harmless the Judicial Council and the Judicial Branch Group and their respective officers, agents and employees from any and all claims, losses, costs, damages, and liabilities, including reasonable attorneys’ fees, on account of bodily injuries, death, or damage to tangible personal or real property in any way incident to, or in connection with, or arising out of the negligence of the Vendor or Vendor Agents.

## Control of Defense and Settlement.

* + 1. Any defense counsel retained by the Vendor to defend the Judicial Council and the Judicial Branch Group and their respective officers, agents, employees, and contractors in any claim, action, suit or proceeding covered under the Vendor’s indemnity obligations (“Claim” or “Claims”) shall be subject to the prior written approval of the Judicial Council. The Vendor shall keep the Judicial Council informed of any Claims and shall provide periodic written reports to the Judicial Council of any Significant Developments. “Significant Developments” include all settlement offers with plaintiffs or with other parties joined by way of cross-complaint, all situations which contemplate the dismissal of any parties, and all such other circumstances which may occur that reasonably warrant assessment by the Judicial Council of its liability exposures. The Judicial Council shall provide the Vendor with prompt notice of any Claim for which indemnification will be required; provided that failure to provide prompt notice with respect to a Claim shall not relieve the Vendor of its obligations under this Article 22 except to the extent failure to notify prejudices the Vendor’s ability to defend and/or settle the Claim.
		2. The Vendor shall control the defense and/or settlement of each Claim; provided that (i) the Vendor 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 Judicial Council’s prior written consent, which consent shall not be unreasonably withheld; and (ii) the Judicial Council shall have the right, at its option and expense, to participate in the defense and/or settlement of such Claim through counsel of its own choosing.

# INSURANCE

## General Requirements.

## By requiring the minimum insurance set forth in this Agreement, the Judicial Council shall not be deemed or construed to have assessed the risks that may be applicable to Vendor under this Agreement. Vendor shall assess its own risks and if it deems appropriate or prudent, maintain higher limits or broader coverage.

## The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Vendor; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to the Judicial Council in compliance with the Insurance requirements set forth in this Agreement. The Judicial Council may, in its sole discretion, accept self-insurance or risk-pool coverage as a substitute for any of the required insurance policies under this Agreement. No representation is made by the Judicial Council that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Vendor under this Agreement.

## Vendor shall obtain and maintain the required insurance for the duration of this Agreement with an insurance company or companies acceptable to the Judicial Council, in its sole discretion, and that are rated “A-VII” or higher by A. M. Best’s key rating guide and are authorized to do business in the state of California.

## For all insurance policies required under this Agreement, no deductible shall exceed five (5) percent of the minimum limit of insurance required under this Agreement unless authorized in writing by the Judicial Council. Any Vendor deductible must be clearly stated on the appropriate certificate of insurance.

Self-Insured retentions (SIR) must be declared to and approved in writing by the Judicial Council. The Judicial Council may require the Vendor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Judicial Council. Any and all deductibles and SIRs shall be the sole responsibility of Vendor or subcontractor who procured such insurance and shall not apply to the indemnified parties. Judicial Council may deduct from any amounts otherwise due Vendor to fund the SIR. Policies shall NOT contain any SIR provisions that limit the satisfaction of the SIR to the named insured. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR. Judicial Council reserves the right to obtain a copy of any policies and endorsements for verification.

## Vendor is responsible for and may not recover from the State of California, Judicial Council, or the Judicial Branch Group any deductible or self-insured retention that is connected to the insurance required under this Agreement. If self-insured, Vendor warrants that it will maintain funds to cover losses required to be insured against by Vendor under the terms of this Agreement.

## Vendor, prior to commencement of the Services, shall provide Judicial Council with certificates of insurance and signed insurance policy endorsements, on forms acceptable to Judicial Council, as evidence that the required insurance is in full force and effect. The insurance required under this Agreement, and any excess liability or umbrella liability insurance, that Vendor maintains in compliance with the terms of this Section 23.1 must be endorsed to include the State of California; Judicial Council of California; the specific Judicial Branch Group entities; and their respective elected and appointed officials, judicial officers, officers, employees, and agents as additional insureds. No payments will be made to Vendor until all required current and complete certificates of insurance and signed insurance policy endorsements are properly endorsed and on file with the Judicial Council.

## The insurance required under this Agreement, including all required additional insured coverages, must be endorsed to be primary and non-contributory to any insurance or self-insurance maintained by the State of California, Judicial Council, or the Judicial Branch Group. Vendor’s liabilities under this Agreement shall not be limited in any manner to the insurance coverage required.

## Failure to provide the documentation as required prior to the commencement of Services shall not constitute or be construed as a waiver of the obligation to provide such documentation.

## The Certificates of Insurance must be addressed and mailed to:

[Insert Name]

 Contract Specialist, Branch Accounting and Procurement

 Contract Number [ *insert contract number here*]

 Judicial Council of California

 455 Golden Gate Avenue

 San Francisco, CA 94012

## All insurance policies required under this Agreement must remain in force for the entire duration of this Agreement. If the insurance expires during the Term, Vendor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsement(s), or Vendor will be in breach of this Agreement, and the Judicial Council may direct the Vendor to stop work or may take other remedial action. Vendor must provide renewal insurance certificates and signed policy endorsements to Judicial Council on or before the expiration date of the previous insurance certificates and signed policy endorsements. Any new insurance procured by Vendor must conform to the requirements of this Agreement.

## In the event Vendor fails to keep the specified insurance coverage in force at all times required under this Agreement, Judicial Council may, in addition to and without limiting any other remedies available to it, (i) order the Vendor to stop work, or (ii) terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.

## Vendor, and each insurer providing insurance required under this Agreement, expressly waives all rights of recovery and subrogation rights it may have against the State of California, Judicial Council, the Judicial Branch Group, and their respective elected and appointed officials, judicial officers, officers, employees, and agents for direct physical loss or damage arising out of the performance of Services, and for any liability arising out of or in connection with the Service performed by Vendor under this Agreement or arising out of or in connection with Vendor’s breach of this Agreement. This provision does not apply to professional liability insurance policies.

## Vendor shall provide the Judicial Council with written notice within **TEN** **(10)** calendar days of becoming aware of a material change or cancellation of the insurance policies required under this Agreement. In the event of expiration or cancellation of any insurance policy, Vendor shall **immediately** notify the Judicial Council.

## Judicial Council reserves the right to request certified copies of any of the insurance policies required under this Agreement, which must be provided by Vendor within **ten (10)** business days following the request by Judicial Council.

## Vendor must require insurance from its Vendor Agents in substantially the same form as required of the Vendor herein and with limits of liability that are sufficient to protect the interests of the Vendor, State of California, the Judicial Council, and the Judicial Branch Group in which the project is located.

## Individual Policy Requirements. The Vendor shall maintain the following insurance:

* + 1. Commercial General Liability Insurance, which shall be written on an occurrence form with limits of not less than five million dollars ($5,000,000) per occurrence for bodily injury and property damage and five million dollars ($5,000,000) annual aggregate. The policy shall include coverage for liabilities arising out of or in connection with premises, operations, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom a claim is made or suit is brought. The products and completed liability shall extend for not less than three (3) years past the completion of the Services or the termination of this Agreement, whichever occurs first;
		2. If Vendor has employees, it shall maintain workers’ compensation insurance as required by law. Employer’s liability limits shall be not less than one million dollars ($1,000,000) for each accident, one million dollars ($1,000,000) as the aggregate disease policy limit, and one million dollars ($1,000,000) as the disease limit for each employee;
		3. Commercial Automobile Liability Insurance which shall have limits of not less than one million dollars ($1,000,000) per accident. This insurance must cover liability arising out of or in connection with the operation, use, loading, or unloading of a motor vehicle assigned to or used in connection with the Service including, without limitation, owned, hired, and non-owned motor vehicles; and
		4. Professional Liability Insurance which shall include coverage for any negligent act, error, or omission committed or alleged to have been committed which arises out of rendering or failure to render the Services provided under the terms of this Agreement. The policy shall provide limits of not less than two million dollars ($2,000,000) per claim or per occurrence and two million dollars ($2,000,000) annual aggregate. If the policy is written on a “claims made” form, Vendor shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than five (5) years from the date of completion of the Services which is the subject of this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that Service commences pursuant to the Agreement.

(e) Cyber Liability Insurance, with limits not less than five million dollars ($5,000,000) per occurrence or claim, five million dollars ($5,000,000) annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Vendor in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expense.

(f) Technology professional liability errors and omissions insurance appropriate to the Vendor profession and work hereunder, with limits not less than five million dollars ($5,000,000) per occurrence and five million dollars ($5,000,000) annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by the Vendor pursuant to this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties, as well as credit monitoring expenses.

The technology professional liability errors and omissions insurance policy shall include, or be endorsed to include, ***property damage liability coverage*** for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Judicial Council in the care, custody, or control of the Vendor. If not covered under Vendor’s technology professional liability errors and omissions insurance, such “property” coverage of the Judicial Council must be endorsed onto the Vendor’s Cyber Liability Policy.

(g) Commercial Crime Insurance is required if Vendor handles or has regular access to a Judicial Branch Group’s funds or property of significant value to the Judicial Branch Group. This policy must cover dishonest acts including loss due to disappearance or destruction of money, securities, and property; forgery and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be one million dollars $1,000,000.

## Umbrella Policies. Vendor may satisfy basic coverage limits through any combination of primary, excess, or umbrella insurance.

# DISPUTE RESOLUTION

## Dispute Resolution Process. The parties agree to work in good faith to reach a mutually satisfactory resolution of any dispute arising from this Agreement. The following process will apply to facilitate resolution of all disputes:

* + 1. Dispute process: The parties agree to begin the dispute resolution process as early as practicable. Within five (5) days of a request by either party, the Judicial Branch Project Manager and the Vendor ITSM Service Delivery Manager, or other authorized representative as the parties’ designees, will agree to meet to address the dispute arising from this Agreement. If the authorized representatives are not able to resolve the dispute, they shall reduce the dispute to a written statement and submit the statement to their respective superiors. The respective superiors of each party will agree to meet at a mutually acceptable time and place within twenty (20) days of the unresolved meeting by the authorized representatives. If an agreement is reached by the respective superiors, the parties will take such steps as necessary to implement the resolution. If an agreement is not reached within twenty (20) days of the respective superiors meeting, the parties reserve the rights to pursue any legal remedy available to the aggrieved party.
		2. Notwithstanding the existence of any dispute, Vendor will continue to provide Services, and the Judicial Council will continue to make payments on Services not subject to a dispute under this Agreement

# MISCELLANEOUS PROVISIONS

## References. In this Agreement and the Exhibits: The Exhibits shall be incorporated into and deemed part of this Agreement and all references to this Agreement shall include the Exhibits and all Appendices;

* + 1. References to any Applicable Law means references to such Applicable Law in changed or supplemented form or to a newly adopted Applicable Law replacing a previous Applicable Law; and
		2. References to and mentions of the word “including” or the phrase “e.g.” means “including, without limitation.”

## General Legal Compliance. Parties shall at all times perform their obligations hereunder in compliance in all material respects with all applicable federal, state, and local laws and regulations of all applicable domestic jurisdictions, and in such a manner as not to cause the other Party to be in violation of any Applicable Laws or regulations including, without limitation, any applicable requirements of any federal, state, and local authority regulating health, safety, employment, civil rights, the environment, hazardous materials, privacy, confidentiality, security, exportation, or telecommunication, and all applicable laws and regulations relating to the collection, dissemination, transfer, storage and use of data, specifically including, without limitation, the privacy and security of confidential, personal, sensitive or other protected data.

## Headings. The Article and Section headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

## Interpretation of Documents. In the event of a conflict between this Agreement and the terms of any of the Exhibits or Appendices, the terms of this Agreement shall prevail.

## Assignment of Antitrust Actions. The following provisions of California Government Code Sections 4552, 4553, and 4554 (Statutes of 1978, Ch. 414) will be applicable to the Vendor:

* + 1. In submitting a bid to the State of California, the supplier offers and agrees that if the bid is accepted, it will assign to the State of California 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. 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, material or services by the supplier for sale to the State of California pursuant to the solicitation. Such assignment will be made and become effective at the time the State of California tenders final payment to the supplier;
		2. If the State of California receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor will be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State of California any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State of California as part of the bid price, less the expenses incurred in obtaining that portion of the recovery;
		3. Upon demand in writing by the assignor, the assignee will, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

25.6 Drug-Free Workplace Certification. By signing this Agreement, the Vendor certifies under penalty of perjury under the laws of the State of California that the Vendor shall comply with the requirements of the Drug‑Free Workplace Act of 1990 (California Government Code Section 8350 *et seq*.) Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of this Agreement or both and the Vendor may be ineligible for award of any future Judicial Council contracts if the Judicial Council determines that any of the following has occurred: 1) the Vendor has made false certification, or 2) the Vendor violates the certification by failing to carry out the requirements of the Drug‑Free Workplace Act of 1990.

## Forced, Convict and Indentured Labor. By signing this Agreement, the Vendor shall certify that no foreign‑made equipment, materials, or supplies furnished to the Judicial Council pursuant to this Agreement will be produced in whole or in part by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. By signing this Agreement the Vendor agrees to comply with the requirements of Public Contract Code Section 6108. Vendor agrees to cooperate fully in providing reasonable access to Vendor’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 Vendor’s compliance with the requirements under this section and shall provide the same rights of access to the Judicial Council.

## Child Support Compliance Act.

* + 1. For any contract in excess of $100,000.00, the Vendor acknowledges in accordance with Public Contract Code Section 7110, that: The Vendor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relation to child and family support enforcement, including 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 California Family Code; and
		2. The Vendor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

## HIPAA Compliance. The Vendor agrees to comply with all requirements that are now or will become applicable to it in its role as the service provider under this Agreement pursuant to regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (as the same may have been and/or may be amended from time‑to‑time, (“HIPAA”).

## California Personal Information Statute. The Vendor acknowledges that the Confidential Information may include personal information pertaining to California residents. The Vendor shall comply with the requirements of California Civil Code §1798.82 et. seq., or any similar federal or state statute that may be enacted (the “California Statute”) to the extent such requirements are applicable to the Vendor as an information technology service provider. The Vendor shall also cooperatively work with the Judicial Council with respect to its compliance with such requirements that are applicable to the Judicial Branch Group, including the encryption of all personally‑identifiable Confidential Information.

## Transborder Data Flows. The Vendor shall not transfer any Judicial Branch Data across a country border unless the Vendor obtains the Judicial Council’s prior written consent.

## Vendor as a Data Processor. The Vendor understands and acknowledges that, to the extent that performance of its obligations hereunder involves or necessitates the processing of personal data, the Vendor shall comply promptly with instructions and directions received by the Vendor from the Judicial Council with respect to the processing of personal data.

## Permits and Licenses. The Vendor shall obtain and maintain, at its own expense, all approvals, permissions, permits, licenses, and other forms of documentation required in order for the Parties to comply with all existing state or federal statutes, ordinances, regulations, and other laws that are applicable to the Vendor’s performance of Services hereunder. The Judicial Council reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of performance of any Services hereunder, and the Vendor shall promptly comply and cooperate with any such request. Vendor will be responsible for any fines and penalties arising from its noncompliance with any Applicable Law.

## Nondiscrimination Clause. During the performance of this Agreement the Vendor represents and warrants to the Judicial Council, the Vendor and the Vendor Agents shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex (including gender and gender identity), sexual orientation, race, color, ancestry, religious creed, national origin, disability (mental or physical) (including HIV and AIDS), medical condition (including cancer and genetic characteristics), age (over 40), marital or domestic partner status, or request for family care leave. The Vendor and the Vendor Agents shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Vendor and the Vendor Agents shall comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12990 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code Section 12990 (a f) set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations is incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Vendor and the Vendor Agents shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other contract. The Vendor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

## Americans with Disabilities Act. The Vendor represents and warrants to the Judicial Council that it complies with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) (“ADA”) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

## Union Organizing. The Vendor acknowledges the applicability of California Government Code Section 16645 through Section 16649 to this Agreement: The Vendor shall not assist, promote or deter union organizing by employees performing work on a Judicial Council service contract, including a public works contract.

* + 1. No Judicial Council funds received under this Agreement will be used to assist, promote or deter union organizing.
		2. The Vendor shall not, for any business conducted under this Agreement, use any Judicial Branch Group property to hold meeting with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the Judicial Branch Group property is equally available to the general public for holding meetings.
		3. If the Vendor incurs costs, or makes expenditures to assist, promote or deter union organizing, the Vendor shall maintain records sufficient to show that no reimbursement from the Judicial Council funds has been sought for these costs, and the Vendor shall provide those records to the State of California Attorney General upon request.

## Disabled Veteran Business Participation Review. This section is applicable if Vendor received a disabled veteran business enterprise (“DVBE”) incentive in connection with this Agreement. Vendor’s failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Vendor used DVBE subcontractor(s) in connection with this Agreement: (i) Vendor must use the DVBE subcontractors identified in its bid or proposal, unless the Judicial Council approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Vendor must complete and return to the Judicial Council a post-contract certification form[[1]](#footnote-2) promptly upon completion of the awarded contract, and by no later than the date of submission of Vendor’s final invoice to the Judicial Council. If the Vendor fails to do so, the Judicial Council will withhold $10,000 from the final payment, or withhold the full payment if it is less than $10,000, until the Vendor submits a complete and accurate post-contract certification form. The Judicial Council shall allow the Vendor to cure the deficiency after written notice of the Vendor’s failure to complete and submit an accurate post-contract certification form. Notwithstanding the foregoing and any other law, if after at least 15 calendar days, but no more than 30 calendar days, from the date of the written notice the Vendor refuses to comply with these certification requirements, the Judicial Council shall permanently deduct $10,000 from the final payment, or the full payment if less than $10,000. The post-contract certification form shall include: (1) the total amount of money Vendor received under the Agreement; (2) the total amount of money and the percentage of work Vendor committed to provide to each DVBE subcontractor; (3) the name and address of each DVBE subcontractor to which Vendor subcontracted work in connection with the Agreement; (4) the amount of money each DVBE subcontractor actually received from Vendor in connection with the Agreement, and the corresponding percentage this payment comprises of the total amount of money Vendor received under the Agreement; and (5) that all payments under the Agreement have been made to the applicable DVBE subcontractors. Upon request by the Judicial Council, Vendor shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Vendor will comply with all rules, regulations, ordinances and statutes that govern the DVBE program, including, without limitation, Military and Veterans Code section 999.5.

##  Economic Sanctions. Vendor certifies that Vendor is: (i) in compliance with economic sanctions imposed pursuant to applicable laws by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law (collectively, “Economic Sanctions”); and (ii) not a target of Economic Sanctions. The Judicial Council may, at its sole discretion, suspend and/or terminate this Agreement upon written notice to Vendor if Vendor is not in compliance with economic sanctions or is a target of Economic Sanctions.

## National Labor Relations Board. Vendor represents and warrants to Judicial Council no more than one, final unappealable finding of contempt of court by a federal court has been issued against Vendor within the immediately preceding two-year period because of Vendor’s failure to comply with an order of a federal court requiring Vendor to comply with an order of the National Labor Relations Board. Vendor swears under penalty of perjury that this representation is true.

## Iran Contracting Act. Vendor represents and warrants to Judicial Council Vendor 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 Public Contract Code Section 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.

## Domestic Partners, Child and Family Support. Vendor represents and warrants to Judicial Council that Vendor is in compliance with: (i) Public Contract Code Section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees; and (ii) Public Contract Code section 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee’s or dependent’s actual or perceived gender identity. Vendor 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*.* Vendor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

## Agreements for Furnishing Equipment, Materials, Supplies, or for Laundering Services. Vendor represents and warrants to Judicial Council that: no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Judicial Branch Group 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. Vendor further declares under penalty of perjury that it 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 Public Contract Code Section 6108. Subject to the terms of Article 17 of this Agreement, Vendor cooperates fully in providing reasonable access to Vendor’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 Vendor’s compliance with the requirements under this section and shall provide, pursuant to Article 17 of this Agreement rights of access to the Judicial Council.

## Agreements for the Purchase of Goods, and Recycling. Pursuant to Business and Professions Code section 17044, Vendor shall not sell or use any article or product as a “loss leader” as defined in Business and Professions Code section 17030. 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. Vendor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. Upon request, Vendor 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.

## Federally Funded Agreements. If this Agreement is funded in whole or in part by the federal government, then:

* + 1. 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.
		2. This Agreement is valid and enforceable only if sufficient funds are made available to the Judicial Council 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.
		3. 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.
		4. The Parties may amend the Agreement to reflect any reduction in funds.

## Small Business Preference Contract Clause. This section is applicable if Vendor received a small business preference in connection with this Agreement. Vendor’s failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Vendor must within sixty (60) days of receiving final payment under this Agreement report to the Judicial Council the actual percentage of small/micro business participation that was achieved. If Vendor is a nonprofit veteran service agency (“NVSA”), Vendor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

## Assignment. The Agreement will not be assignable by either Party in whole or in part (whether by operation of law or otherwise) without the written consent of the other Party (except to an Affiliate of such Party); provided that the Judicial Council may, without the Vendor’s consent, assign this Agreement or any of its rights or delegate any of its duties under this Agreement to any state or local government entity or agency in California. Any assignment made in contravention of the foregoing shall be void and of no effect. The Agreement will be binding on the Parties and their permitted successors and assigns.

## 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 set forth below:

|  |  |
| --- | --- |
| If to Vendor: | If to the Judicial Council: |
|  | Judicial Council of CaliforniaAttention: Manager, ContractsBranch Accounting and Procurement455 Golden Gate Ave.San Francisco, CA 94102With a copy to:Judicial Council of California Attention: Director, Information Technology office455 Golden Gate Ave.San Francisco, CA 94102 |

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.

## Independent Contractors. The Vendor and the Vendor Agents in the performance of this Agreement shall act in an independent capacity and not as officers or employees or agents of the Judicial Branch Group. 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 venture, 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 enter into any agreement, nor to assume any liability, on behalf of the other Party, nor to bind or commit the other Party in any manner, except as expressly provided herein. Vendor Agents and any subcontractors performing services for Vendor Agents who provide Services pursuant to this Agreement, or who at any time are located or provide Services on the Judicial Council’s premises, shall remain the respective employees of the Vendor or the Vendor’s subcontractors, as applicable, and the Vendor and its subcontractors shall have the sole responsibility for all such employees, including without limitation responsibility for payment of all compensation to them, the provision of employee benefits to them, and responsibility for injury to them in the course of their employment. Vendor and its subcontractors shall be responsible for all aspects of labor relations with such employees, including their hiring, supervision, evaluation, discipline, firing, wages, benefits, overtime, and job and shift assignments, and all other terms and conditions of their employment, and the Judicial Council shall have no responsibility whatsoever for any of the foregoing.

## Consents and Approvals. All consents and approvals to be given by either Party under this Agreement shall not be unreasonably withheld or delayed, and such consents and approvals will not be construed as relieving a Party of its obligations or as a waiver of its rights under this Agreement.

## Severability. The provisions of this Agreement shall be effective in all cases unless otherwise prohibited by Applicable Law. The provisions of this Agreement are separate and severable. The invalidity of any Article, Section, provision, paragraph, sentence or portion of this Agreement shall not affect the validity of the remainder of this Agreement.

## Waiver of Rights. Any action or inaction by either Party or the failure of either Party on any occasion, to enforce any right or provision of this Agreement, will not be construed to be a waiver by such Party of its rights under this Agreement and will not prevent such Party from enforcing such provision or right on any future occasion. Except as set forth herein, the rights and remedies of each Party under this Agreement will be cumulative and in addition to any other rights or remedies that such Party may have at law or in equity.

## Publicity. Unless otherwise exempted, the Vendor shall in no event issue or publish a press release, article, brochure, or any other form of publication, promotional materials, or advertisements pertaining to this Agreement, or in any way use any logo, trademark, or other symbol of the Judicial Council, without prior written approval of the Judicial Council.

## Third Party Beneficiaries. The Courts shall be deemed a direct and intended third party beneficiary under this Agreement. Other than the Courts, 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.

## Governing Law and Venue. The 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 and the state and federal district courts located in San Francisco, California will have exclusive jurisdiction over any legal action concerning or relating to this Agreement.

## Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

## Amendments. Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed by the authorized representatives of the Parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the Parties. Except as expressly provided herein, this Agreement may not be modified or amended except by written document duly executed by authorized representatives of both of the Parties hereto.

## Entire Agreement. This Agreement, the Standard Agreement form (STD.2) attached hereto and the Exhibits to this Agreement constitute the entire agreement and final understanding of the Parties with respect to the subject matter hereof and supersedes and terminates any and all prior and/or contemporaneous negotiations, representations, understandings, discussions, offers and/or agreements between the Parties, whether written or verbal, express or implied, relating in any way to the subject matter hereof. Notwithstanding the foregoing, neither the Judicial Council nor the Vendor shall be relieved of any of its respective obligations with respect to any information subject to the terms of any confidentiality agreement entered into by the Judicial Council and the Vendor prior to the Effective Date.

## Counterparts. 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.

## 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.

25.40 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) the Information Technology Services Agreement (Agreement), (ii) the Coversheet; (iii) in no particular order within this subsection: Exhibit A (Transition Plan), Exhibit C (Scope of Work), Exhibit D (Unruh Civil Rights Act and FEHA Certification), Exhibit E (Fees), Exhibit F (Service Level Requirements and Fee Reductions), Exhibit K (Relationship Management and Contract Change Management), Exhibit L (Termination Assistance Plan), Exhibit M (Reports), Exhibit N (Resource Inventory); (iv) Exhibit B (Statement of Work); (v) Exhibit G (Private Contractor Management Control Agreement and CJIS Security Addendum), Exhibit H (CJIS Security Policy), Exhibit I (CLETS Policies, Practices, and Procedures) and (vi) any other exhibits to the Agreement. [additional appendices/exhibits to be determined/referenced]

1. The form is located at https://www.courts.ca.gov/documents/JBCM-Post-Contract-Certification-Form.docx [↑](#footnote-ref-2)