

**STANDARD AGREEMENT**



AGREEMENT NUMBER <b>[Agreement number]</b>
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- In this Agreement, the term “Contractor” refers to **[Contractor name]**, and the term “Judicial Council” refers to the **JUDICIAL COUNCIL OF CALIFORNIA**.
- This Agreement is effective as of **May 15, 2018** (“Effective Date”).
- The maximum amount the Judicial Council may pay Contractor under this Agreement is \$**[Dollar amount]** (the “Contract Amount”).
- The purpose or title of this Agreement is **Design and Upgrade of Television Studio**.

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

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

- Appendix A – Statement of Work
- Appendix B – Pricing and Payment
- Appendix C – General Terms and Conditions
- Appendix D – Defined Terms
- Appendix E – The Licensed Software
- Appendix F – Unruh Civil Rights Act and FEHA Certification

JUDICIAL COUNCIL’S SIGNATURE	CONTRACTOR’S SIGNATURE
<b>JUDICIAL COUNCIL OF CALIFORNIA</b>	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized)</i> <b>[Contractor name]</b>
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING <b>[Name and title]</b>	PRINTED NAME AND TITLE OF PERSON SIGNING <b>[Name and title]</b>
DATE EXECUTED	DATE EXECUTED
ADDRESS <b>Branch Accounting &amp; Procurement/ Administrative Division 455 Golden Gate Avenue San Francisco, CA 94102</b>	ADDRESS <b>[Address]</b>

RFP Title: Design and Upgrade of Television Studio

RFP Number: CJER-18-44-RB

### **APPENDIX A: Statement of Work**

This Statement of Work is subject to the Agreement between Contractor and the Judicial Council. By executing this Statement of Work, the Parties agree to be bound by the terms and conditions set out in the Agreement with respect to the Work to be provided under this Statement of Work.

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

The term of this Statement of Work will commence on May 15, 2018 (the "SOW Effective Date") and will continue until June 30, 2019 *OR* all Work has been provided by Contractor and accepted by the Judicial Council unless terminated earlier pursuant to the Agreement. Expiration or termination of the Agreement will not serve to terminate this Statement of Work. All applicable terms and conditions of the Agreement will continue to apply to this Statement of Work until the expiration or termination of this Statement of Work.

#### **2. Judicial Council's Requirements and Description of the Work.**

The Contractor will design and upgrade the Judicial Council's standard definition video studio to a 3G-SDI high definition video studio and integrate it with existing infrastructure. The upgrade to the studio should include the following but not necessarily be limited to: 3 3G-SDI high definition studio cameras complete with lenses with servo controller kit, teleprompters, HD viewfinders with tally lights, pedestals, camera control units and control panels. The video switcher, waveform/vectorscope monitors, teleprompting computer, closed-captioning encoder, character generator and Clear-Com system will need to be replaced. The new equipment will need to be integrated with the existing hard drive recorders and other equipment. The upgraded studio will need to be consistent with current industry standards and provide for video production with a minimum resolution of 1080p.

#### **SCOPE OF WORK**

A. The contractor will provide Design and Integration Services, which includes design, assessment, procurement, assembly, installation, integration, testing, removal of obsolete cables and equipment, and project management.

B. Provide all labor, materials, transportation and equipment to complete the design and installation resulting in a 3G-SDI high definition television studio.

#### **WORK TO BE PERFORMED**

A. Design a plan to upgrade the existing SD video studio to 3G-SDI high definition video. The plan should identify options using the existing triax infrastructure and/or other cabling options such as fiber. The plan should include upgrading the studio cameras packages, switcher, waveform/vectorscope monitors, character generator, Clear-Com system, teleprompting computer, closed-captioning encoder and all necessary components to make the studio fully functional.

B. Replace the three SD studio cameras with three 3G-SDI high definition studio camera packages, which should include camera body, lens with servo controller kit, teleprompters, and HD viewfinders with tally light, pedestals, camera control units and control panels. Equipment can be substituted with similar features.

##### **1. Camera Body features:**

- Professional broadcast quality camera
- Records at a minimum of 1080p
- Digital Triax or fiber compatibility
- Low light sensitivity
- Shutter speed range: 1/60, 1/125, 1/250, 1/500, 1/1000, 1/2000
- Inputs/outputs: two XLR audio inputs, return control input, prompter output, 3G-SDI output, Triax output or fiber output, intercom output, viewfinder output
- Similar features to or exceeding Sony model #HSC-100R

##### **2. HD Lens features:**

- Adequate lens for a 25' x 25' room
- Aperture: f/1.8
- Servo Zoom
- Servo/Manual Focus

##### **3. Viewfinder features:**

- Minimum HD resolution: 960 x 540
- Minimum screen size: 7"
- Tally light

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- Lens hood
  - Adjustable positioning
4. Pedestal features:
    - Load Capacity: 75 lbs.
    - Minimum height: 28"
    - Maximum height: 61"
    - Locking dolly wheels
  5. Fluid head features:
    - Counter balance system
    - Quick release plate
    - Tilt drag: minimum of five steps
    - Tilt range: +90° to -60°
    - Tilt lock
    - Pan range: 360°
    - Pan lock
  6. Camera control unit features:
    - Intercom connections
    - Tally connections
    - Return Video inputs
    - Reference inputs
    - Monitor outputs
    - Triax or fiber connections
  7. Control panel features:
    - White and black balance control
    - Iris control
    - Master black control
    - Shutter control
    - Master gain control
    - Assignable buttons
- C. Replace waveform/vectorscope monitors. Equipment can be substituted with similar features.
1. Waveform/vectorscope features:
    - Video formats 1080p/1080i/720p
    - Capable of supporting various frame rates
    - Inputs: HD-SDI and 3G-SDI
    - Outputs: HD-SDI, 3G-SDI, and embedded audio from SDI
    - Monitor included
- D. Replace video switcher to a 3G-SDI high definition switcher. Equipment can be substituted with similar features.
1. Video Switcher features:
    - Minimum of 12 HD inputs: 3G-SDI/HD-SDI
    - Capable of supporting various frame rates
    - Character Generator
    - Control Panel
    - Tally Relay
    - Multiview outputs
    - HD outputs: 3G-SDI/HD-SDI
    - 2 M/E buses
    - Keyers with DVE
    - Multiple transitions and effects
    - Still Stores
- E. Replace all system-required components to make the studio fully functional. Components should include but not limited to:
1. Distribution Amps
  2. Converters
  3. Power conditioner
  4. 3G-SDI audio embedder/dis-embedder
  5. Test signal generator
  6. Master Clock with remote time display

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- F. Replace teleprompting system, which includes hardware, software with licensing, and associated components. Equipment can be substituted with similar features.
1. Teleprompter system features:
    - Should include: software, hood, mounting hardware, mirror, and screen
    - Minimum screen size: 17"
    - Viewing distance: 2' to 40'
    - Inputs: HD-SDI or HDMI
    - Tripod/pedestal mountable
    - Software should import Word documents and have editing functions
- G. Replace the closed-captioning encoder. Equipment can be substituted with similar features.
1. Closed-captioning encoder features:
    - 3G-SDI/HD-SDI compatibility
    - Integrated telephone modem for remote operation
- H. Replace current Clear-Com system. Equipment can be substituted with similar features.
1. Clear-Com system features:
    - Base station with two channels intercom
    - Loud speaker station
    - 8 headsets
    - 6 belt packs
- I. Integrate new switcher and cameras with multi-viewer monitors, which should display all camera sources, additional video inputs, teleprompter, CG graphics, preview, and program.
- J. Integrate 3G-SDI high definition video signal to existing hard drive recorders and other equipment.
- K. De-install all obsolete equipment and remove all obsolete cabling.
- L. Install and test new and integrated equipment including careful cable management.
- M. Test old triax infrastructure with the new studio cameras and ensure it is fully functional, if the plan is to continue to use triax cabling.
- N. Ground components and re-terminate cable or cable fittings.
- O. Manage cables and label all cables clearly.
- P. Create documentation and drawings for signal path routes and as built diagrams.

**3. Schedule and Date(s) of Delivery.**

DELIVERABLES

A. Deliverable #1: Complete Design

Key Activities:

1. Schedule kick-off meeting with team to develop:
  - Review and confirm Work to Be Performed
  - Identify roles and responsibilities of team members and stakeholders
  - Review and confirm sequencing of tasks
  - Prepare project timeline/design
  - Submit a draft project plan, including confirmed scope of Work to Be Performed, sequence of tasks for project, and project timeline for approval
  - Develop and submit final project timeline for completion of Work to Be Performed
  - Develop and submit final Integration Services Plan

B. Deliverable #2: Procure Goods

Key Activities:

- Receive Judicial Council approval of final list of equipment and components to be purchased
- Purchase equipment
- Receive equipment

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- Pre-install testing and configuring
- Provide a list of equipment purchased, received, status of pre-installation testing and configuring.
- Provide an Excel spreadsheet with the product description, manufacturer, model, serial number, quantity, and unit price.

C. Deliverable #3: Perform Integration Services

Key Activities:

- Perform integration services onsite at the Judicial Council in San Francisco
- Deliver, assemble, install, test and integrate equipment and services into studio and control room
- De-install obsolete equipment
- Provide documentation of signal path and as built diagrams using PDF's and AutoCAD versions.
- Perform acceptance testing with Judicial Council staff member.
- Provide 4 hours of training with Judicial Council staff members.

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

**JUDICIAL COUNCIL OF CALIFORNIA**

**[NAME OF CONTRACTOR]**

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

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

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

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

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

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

**APPENDIX B: Pricing and Payment**

1. **Fees.** In consideration of and subject to the satisfactory performance and delivery by Contractor of the Work, the Judicial Council shall pay to Contractor the fees as set forth in this Appendix B. Except as expressly set forth in this Appendix B: (i) such fees are the entire compensation for all Work under this Agreement; and (ii) all expenses relating to the Work are included in such fees and shall not be reimbursed by the Judicial Council. The maximum amount payable to Contractor under this Agreement will not exceed the Contract Amount. The Contract Amount may be changed only by amendment to this Agreement. Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement. Contractor shall immediately refund any payment made in error. The Judicial Council shall have the right at any time to set off any amount owing from Contractor to the Judicial Council against any amount payable by the Judicial Council to Contractor under this Agreement. Invoicing and payment should not exceed amount of fees, prices, and costs of \$320,000.00. Payment frequency/milestones; progress payments, description of the fees for the Work, including, as applicable, services, goods, etc. are as follows:

Progress Payment Schedule

Deliverable No.	Description	Amount
1	Complete design plan	TBD
2	Procure Goods	TBD
3	Perform integration services	TBD

2. **Invoicing and Payment.**

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

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

4. **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 Contractor or on any taxes levied on employee wages. The Judicial Council shall only pay for any state or local sales, service, use, or similar taxes imposed on the Work rendered or equipment, parts or software supplied to the Judicial Council pursuant to this Agreement.

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

## **APPENDIX C: General Terms and Conditions**

### **1. Work**

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

#### 1.2 **Stop Work Orders.**

(a) **Effect.** The Judicial Council may, at any time, by written stop work order to Contractor, require Contractor to stop all, or any part, of the Work for a period of up to ninety (90) days after the stop work order is delivered to Contractor, and for any further period to which the Parties may agree. Upon receipt of a stop work order, Contractor shall promptly comply with the terms of the stop work order and take all reasonable steps to end the incurrence of any costs, expenses or liabilities allocable to the Work covered by the stop work order during the period of work stoppage. The Judicial Council shall not be liable to Contractor for loss of profits arising out of such stop work order. Within ninety (90) days after a stop work order is delivered to Contractor, or within any extension of that period mutually agreed to by the Parties, the Judicial Council shall either: (i) cancel the stop work order; or (ii) terminate the Work covered by the stop work order.

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

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

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

#### 1.6 **Project Staff.**

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

(b) **Contractor Key Personnel.** The Judicial Council reserves the right to interview and approve proposed Contractor Key Personnel prior to their assignment to the Judicial Council. Contractor shall not replace or reassign any Contractor Key Personnel unless the Judicial Council consents in advance in writing or such Contractor Key Personnel (i) voluntarily resigns or takes a leave of absence from Contractor, (ii) has his/her employment, professional or other for-hire relationship terminated by Contractor, (iii) fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) dies or is unable to work due to his or her disability. If Contractor needs to replace a Contractor Key Personnel for

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any of the foregoing reasons, Contractor shall (1) notify the Judicial Council promptly, (2) provide resumes for proposed replacement Contractor Key Personnel within two (2) Business Days after so notifying the Judicial Council, and (3) be responsible for all costs and expenses associated with any replacement of any Contractor Key Personnel member (including, without limitation, any costs and expenses associated with training, project orientation or knowledge transfer reasonably required for replacement personnel to provide the applicable Work).

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

(d) Project Staff. Contractor shall appoint to the Project Staff: (i) individuals with suitable training and skills to provide the Work, and (ii) sufficient staffing to adequately provide the Work. Contractor shall make commercially reasonable efforts consistent with sound business practices to honor the specific request of the Judicial Council with regard to assignment of its employees. The Judicial Council may require Contractor to remove any personnel from the Project Staff that interact with any personnel of the Judicial Branch Entities or Judicial Council Contractors (including, without limitation, the Contractor Project Manager) upon providing to Contractor a reason (permitted by law) for such removal. Contractor may, with the Judicial Council's consent, continue to retain such member of the Project Staff in a role that does not interact with any personnel of the Judicial Branch Entities or Judicial Council Contractors. The Contractor Project Manager and the Judicial Council Project Manager shall work together to mitigate any impact on the schedule as set forth in a Statement of Work caused by any replacement of a Project Staff member. Contractor shall be responsible for all costs and expenses associated with any Project Staff replacement. Contractor shall assure an orderly and prompt succession for any Project Staff member who is replaced. If the Contract Amount is over \$200,000 (excluding Consulting Services), then Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

(e) Conduct of Project Staff.

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

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

(iii) Contractor shall cooperate with the Judicial Council if the Judicial Council wishes to perform any background checks on Contractor's employees or contractors by obtaining, at no additional cost, all releases, waivers, and permissions the Judicial Council may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Judicial Council of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Judicial Council and performed by Contractor. Contractor shall remove from the Project Staff any person refusing to undergo such background checks and any other person whose background check results are unacceptable to Contractor or that, after disclosure to the Judicial Council, the Judicial Council advises are unacceptable to the Judicial Council or the Judicial Branch Entities.

1.7 Licenses and Approvals. Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by Applicable Laws to provide the Work. Contractor will be responsible for all fees and taxes



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associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any Applicable Law.

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

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

2.1 Delivery. Contractor shall deliver to the Judicial Council the Deliverables in accordance with this Agreement, including the Statement of Work. Unless otherwise specified by the Judicial Council, Contractor will deliver all equipment purchased by the Judicial Council "Free on Board Destination Freight Prepaid" to the Judicial Council at the address and location specified by the Judicial Council. Title to all equipment purchased by the Judicial Council vests in the Judicial Council upon payment of the applicable purchase price. Contractor will bear the risk of loss for any Work being delivered until received by the Judicial Council at the proper location.

2.2 Acceptance. All Work is subject to written acceptance by the Judicial Council. The Judicial Council may reject any Work 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 Contractor's invoice or Work. If the Judicial Council provides Contractor a notice of rejection for any Work, Contractor shall modify such rejected Work at no expense to the Judicial Council to correct the relevant deficiencies and shall redeliver such Work to the Judicial Council within ten Business Days after Contractor's receipt of such notice of rejection, unless otherwise agreed in writing by the Parties. Thereafter, the Parties shall repeat the process set forth in this Section until Contractor's receipt of the Judicial Council's written acceptance of such corrected Work (each such Judicial Council written acceptance, an "Acceptance"); provided, however, that if the Judicial Council rejects any Work on at least two occasions, the Judicial Council may terminate that portion of this Agreement which relates to the rejected Work at no expense to the Judicial Council.

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

## **3 Representations and Warranties.** Contractor represents and warrants to the Judicial Council as follows:

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

3.2 No Gratuities or Conflict of Interest. Contractor: (i) has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement; and (ii) has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.

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

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

3.5 No Interference. To the best of Contractor's knowledge, this Agreement does not create a material conflict

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of interest or breach under any of Contractor's other contracts.

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

3.7 No Harassment / Nondiscrimination. Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring. Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.

3.8 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination. If the Contract Amount is \$100,000 or more, Contractor is in compliance with: (i) Public Contract Code section 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) 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.

3.9 National Labor Relations Board Orders. No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3.10 Child Support Compliance Act. If the Contract Amount is \$100,000 or more: (i) Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and (ii) Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

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

3.12 Work. (i) the Work 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 Work; (ii) Contractor will use efficiently the resources or services necessary to provide the Work; and provide the Work in the most cost efficient manner consistent with the required level of quality and performance; (iii) the Work will be provided free and clear of all liens, claims, and encumbrances; (iv) all Work will be free from all defects in materials and workmanship, and will be in accordance with Specifications, Documentation, Applicable Laws, and other requirements of this Agreement; and (v) all equipment purchased by the Judicial Council from Contractor will be new. In the event any Work does not conform to the foregoing provisions of this Section 3.12, Contractor shall promptly correct all nonconformities.

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

3.14 Four-Digit Date Compliance. Contractor will provide only Four-Digit Date Compliant Work to the Judicial

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Council. "Four-Digit Date Compliant" Work can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries.

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

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

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

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

4.2 Rights in Developed Materials. Notwithstanding any provision to the contrary, upon their creation the Developed Materials (and all Intellectual Property Rights therein) will be the sole and exclusive property of the Judicial Council. Contractor (for itself, Project Staff and Subcontractors) hereby irrevocably assigns, transfers and conveys to the Judicial Council without further consideration all worldwide right, title and interest in and to the Developed Materials, including all Intellectual Property Rights therein. Contractor further agrees to execute, and shall cause Project Staff and Subcontractors to execute, any documents or take any other actions as may be reasonably necessary or convenient to perfect the Judicial Council's or its designee's ownership of any Developed Materials and to obtain and enforce Intellectual Property Rights in or relating to Developed Materials. Contractor shall promptly notify the Judicial Council upon the completion of the development, creation or reduction to practice of all Developed Materials.

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

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

#### **5 Confidentiality.**

5.1 General Obligations. During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any Third Party without obtaining the Judicial Council's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to Project Staff (including Subcontractors) with a need to know in order to provide the Work hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this Section 5. The provisions of this Section 5 shall survive beyond the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than reasonable care and industry-standard care. The Judicial Council owns all right, title and interest in the Confidential Information. Contractor 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, Contractor will keep all Personal Information confidential, unless otherwise authorized by the Judicial Council in writing.

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5.2 Removal; Return. Contractor 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, Contractor 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 Contractor has fully complied with the foregoing obligations.

5.3 Breach of Confidentiality. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations hereunder, that any such breach will likely result in irreparable harm, and therefore, that upon any breach or threatened breach of the confidentiality obligations, the Judicial Council shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

## 6 Indemnification.

6.1 General Indemnity. Contractor shall indemnify, defend (with counsel satisfactory to the Judicial Council), and hold harmless Judicial Branch Entities and Judicial Branch Personnel against all Claims founded upon or that arise out of or in connection with: (i) Contractor's provision of, or failure to provide, the Work (ii) any other breach by Contractor under this Agreement; or (iii) Third Party Claims relating to infringement or misappropriation of any Intellectual Property Right by Contractor or the Work, including software, services, systems, equipment, or other materials provided by Contractor or Subcontractors to Judicial Branch Entities (collectively, the "Covered Items"). Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Judicial Council's prior written consent, which consent shall not be unreasonably withheld; and the Judicial Council shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

6.2 Certain Remedies. If any Covered Item provided under this Agreement becomes, or in Contractor's or the Judicial Council's reasonable opinion is likely to become, the subject of any Claim arising from or alleging infringement, misappropriation or other violation of, or in the event of any adjudication that such Covered Item infringes, misappropriates or otherwise violates any Intellectual Property Right of a Third Party, Contractor at its own expense shall take the following actions in the listed order of preference: (a) secure for the Judicial Branch Entities the right to continue using the applicable Covered Item; or (b) if commercially reasonable efforts are unavailing, replace or modify the infringing Covered Item to make it noninfringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Covered Item.

## 7 Insurance.

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

(a) Workers Compensation and Employer's Liability. The policy is required only if Contractor has employees. It must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;

(b) Commercial General Liability. The policy must be written on an occurrence form with limits of not less than \$1 million per occurrence, and a \$1 million annual aggregate. Each policy must include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed in a contract.; and

(c) Professional Liability. **[SECTION 7.1(c) INSTRUCTIONS: If Contractor does not, however, actually maintain a policy with limits of \$1 million or more per claim and the Judicial Council determines the risk of a lower limit is commercially reasonable under the circumstances, the minimum limit may be the limit Contractor actually maintains]** The policy must cover Contractor's acts, errors and omissions committed or alleged to have been committed which arise out of rendering or failure to render services provided under this Agreement. The policy shall provide limits of not less than \$1 million per occurrence and annual aggregate.

(d) Commercial Automobile Liability. If an automobile is used in providing the Work, automobile liability insurance with limits of not less than \$1 million per accident. Such insurance must cover liability arising out of the operation of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with providing the Work.

(e) Commercial Crime Insurance. If Contractor handles or has regular access to the Judicial Council's

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funds or property of significant value to the Judicial Council, this policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$650,000.00.

7.2 “Claims Made” Coverage. If any required insurance is written on a “claims made” form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the Judicial Council’s acceptance of all Work provided under this Agreement. The retroactive date or “prior acts inclusion date” of any “claims made” policy must be no later than the date that Work commences under this Agreement.

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

7.4 Aggregate Limits of Liability. The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

7.5 Deductibles and Self-Insured Retentions. Contractor is responsible for and may not recover from the Judicial Council, including Judicial Branch Personnel, any deductible or self-insured retention that is connected to the insurance required under this Section 7.

7.6 Additional Insured Status. With respect to commercial general liability, automobile liability insurance, and, if applicable, umbrella policy, the policies must be endorsed to name the Judicial Branch Entities and Judicial Branch Personnel as additional insureds with respect to liabilities arising out of the performance of the Agreement.

7.7 Certificates of Insurance. Before Contractor begins providing Work, Contractor shall give the Judicial Council certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 or more days’ prior written notice to the Judicial Council. Any replacement certificates of insurance are subject to the approval of the Judicial Council, and, without prejudice to the Judicial Council, Contractor shall not provide Work before the Judicial Council approves the certificates.

7.8 Qualifying Insurers. For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.

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

(a) Insurance Primary; Waiver of Recovery. With respect to commercial general liability and automobile liability insurance, the policies must be endorsed to be primary and noncontributory with any insurance or self-insurance programs maintained by Judicial Branch Entities and Judicial Branch Personnel. Contractor waives any right of recovery it may have, and will require that any insurer providing commercial general liability, workers compensation, and automobile liability to also waive any right of recovery it may have against Judicial Branch Entities and Judicial Branch Personnel for liability arising out of the Work; and

(b) Separation of Insureds. The insurance applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer’s liability.

7.10 Partnerships. If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods: (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.

7.11 Consequences of Lapse. If required insurance lapses during the Term, the Judicial Council is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

## **8 Term / Termination.**

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

8.2 Termination for Convenience. The Judicial Council may terminate, in whole or in part, this Agreement and/or any Statement of Work for convenience (without cause) upon thirty (30) days prior written notice. The Judicial Council’s notice obligations under the foregoing sentence shall not apply to any stop work orders issued by the Judicial Council under this Agreement or any Statement of Work. After receipt of such notice, and except as otherwise directed by the Judicial Council, Contractor shall immediately: (a) stop Work as specified in the notice; and (b) place no further

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subcontracts, except as necessary to complete the continued portion of this Agreement.

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

#### 8.4 Rights and Remedies of the Judicial Council.

(a) All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Judicial Council immediately if Contractor is in Default, or if a Third Party claim or dispute is brought or threatened that alleges facts that would constitute a Default under this Agreement. If Contractor is in Default, the Judicial Council may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following notice, the Judicial Council’s right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

(b) If the Judicial Council terminates this Agreement or any Statement of Work in whole or in part for cause, 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 Contractor 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 Entities 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 Entities. Contractor shall continue the Work not terminated hereunder.

(c) In the event of any expiration or termination of this Agreement or the applicable Statement of Work, Contractor shall promptly provide the Judicial Council with all originals and copies of the Deliverables (including: (i) any partially-completed Deliverables and related work product or materials; and (ii) any Contractor Materials, Third Party Materials, and Developed Materials comprising such Deliverables or partially-completed Deliverables), Confidential Information, Judicial Council Data, Judicial Council Materials, and all portions thereof, in its possession, custody, or control. In the event of any termination of this Agreement or a Statement of Work, the Judicial Council shall not be liable to Contractor 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.

8.5 Termination Assistance. At the Judicial Council’s request and option, during the Termination Assistance Period, Contractor shall provide, at the same rates charged immediately before the start of the Termination Assistance Period, to the Judicial Council or to its designee (collectively, “Successor”) services reasonably necessary to enable the Judicial Council to obtain from another contractor, or to provide for itself, services to substitute for or replace the Work, together with all other services to allow the Work to continue without interruption or adverse effect and to facilitate the orderly transfer of the Work to the Successor (collectively, the “Termination Assistance Services”). Termination Assistance Services will be provided to the Judicial Council by Contractor 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) months.

8.6 Survival. Termination of this Agreement shall not affect the rights and/or obligations of the Parties, which arose prior to any such termination (unless otherwise provided herein), and such rights and/or obligations shall survive any such expiration or termination. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including Sections 3 through 10 of these General Terms and Conditions, and Appendix E.

## 9 **Special Provisions.**

9.1 Agreements Providing for Compensation of \$50,000 or more; Union Activities Restrictions. As required under Government Code sections 16645-16649, if the Contact Amount is \$50,000 or more, Contractor agrees that no Judicial Council funds received under this agreement will be used to assist, promote or deter union organizing. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no Judicial Council funds were used for those expenditures and no reimbursement from the Judicial Council was sought

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for these costs. Contractor will provide those records to the Attorney General upon request.

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

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

(a) Contractor shall assign to the Judicial Council all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Judicial Council pursuant to the bid. Such assignment shall be made and become effective at the time the Judicial Council tenders final payment to the Contractor. (GC 4552)

(b) If the Judicial Council receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Judicial Council any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the Judicial Council as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)

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

9.5 Loss Leader Prohibition. If this Agreement involves the purchase of goods, this section is applicable. Contractor shall not sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

9.6 Recycling. If this Agreement provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable. Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

9.7 Sweatshop Labor. If this Agreement provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable. Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Judicial Council under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor’s records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor’s compliance with the requirements under this section and shall provide the same rights of access to the Judicial Council.

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

(a) It is mutually understood between the Parties that this Agreement may have been written for the mutual benefit of both Parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

(b) This Agreement is valid and enforceable only if sufficient funds are made available to the 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.

(c) The Parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the Parties to reflect any reduction in funds.

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

9.9 Equipment Purchases. If this Agreement includes the purchase of equipment, this section is applicable. The Judicial Council may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the Judicial Council, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Judicial Council at no expense to the Judicial Council. If a theft occurs, Contractor must file a police report immediately.

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

## **10 General.**

10.1 Audits. Contractor shall allow the Judicial Council and its designees to review and audit Contractor's documents and records relating to this Agreement, and Contractor shall retain such documents and records for a period of four years following final payment under this Agreement. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit. Contractor shall provide to the Judicial Branch Entities and Judicial Council Contractors, on Contractor's premises (or, if the audit is being performed of an Subcontractor, Subcontractor's premises if necessary), space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office-related equipment and duplicating services as the Judicial Branch Entities or such Judicial Council Contractors may reasonably require to perform the audits described in this Section. Without limiting the foregoing, this Agreement is subject to examinations and audit by the State Auditor for a period three years after final payment.

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

10.3 Assignment. This Agreement will not be assignable by Contractor in whole or in part (whether by operation of law or otherwise) without the prior written consent of the Judicial Council. Any assignment made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the Parties and their permitted successors and assigns.

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



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If to Contractor:	If to the Judicial Council:
[name, title, address]	[name, title, address]

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

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

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

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

10.8 Third Party Beneficiaries. Except for the Judicial Branch Entities, each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties.

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

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

10.11 Order of Precedence. Any conflict among or between the documents making up this Agreement will be resolved in accordance with the following order of precedence (in descending order of precedence): (i) Appendix C - The General Terms and Conditions and Appendix D – Defined Terms; (ii) the Coversheet; (iii) Appendix B – Pricing and Payment; (iv) Appendix A – Statement of Work; (v) Appendix E – The Licensed Software; (vi) Appendix F – Unruh Civil Rights Act and FEHA Certification; and (viii) any exhibits to the Agreement.

10.12 Miscellaneous. This Agreement has been arrived at through negotiation between the Parties. Neither Party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654. No amendment to this Agreement will be effective unless in writing. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. If any part of this Agreement is held unenforceable, all other parts remain enforceable. A Party’s waiver of enforcement of any of this Agreement’s terms or conditions is effective only if in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Time is of the essence regarding Contractor’s performance of the Work. Unless otherwise approved by the Judicial Council in writing in advance, Work may not be performed outside of the United States. The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but taken together, all of which shall constitute one and the same Agreement.

**APPENDIX D: Defined Terms<sup>1</sup>**

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

“Agreement” means this Standard Agreement as defined on the Coversheet, including the following: Appendix A (Statement of Work), Appendix B (Pricing and Payment), Appendix C (General Provisions), Appendix D (Defined Terms), Appendix E (Licensed Software) and Appendix F (Unruh Civil Rights Act and FEHA Certification).

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

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

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

“Confidential Information” means: (i) any information related to the business or operations of Judicial Branch Entities, including court records, and information relating to court proceedings, security practices, and business methodologies, (ii) information relating to Judicial Branch Entities’ 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 Entities (and proprietary information of third parties provided to Contractor), including trade secrets and other intellectual property, or proprietary information; (iv) data and information that is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know is confidential; and (v) Personal Information, Deliverables, Developed Materials, and Judicial Council Materials. Confidential Information does not include information (that Contractor demonstrates to the Judicial Council’s satisfaction, by written evidence): (a) that Contractor lawfully knew prior to the Judicial Council’s first disclosure to Contractor, (b) that a Third Party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) that is, or through no fault of Contractor has become, generally available to the public.

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

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

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

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

“Contractor Work Location(s)” means any location (except for a Judicial Council Work Location) from which Contractor provides Work.

“Contractor Materials” means Materials owned or developed prior to the provision of the Work, or developed by Contractor independently from the provision of the Work and without use of the Judicial Council Materials or Confidential Information.

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

“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 the Judicial Council Data or Confidential Information, and such other related safeguards that are set forth in Applicable Laws, a Statement of Work, or pursuant to Judicial Council policies or procedures.

“Default” means if any of the following occurs: (i) Contractor breaches any of Contractor’s obligations under this Agreement, and this breach is not cured within ten (10) days following notice of breach (or in the opinion of the Judicial Council, is not capable of being cured within this cure period); (ii) Contractor or Contractor’s creditors file a petition as to Contractor’s bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; (iii) Contractor makes or has

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<sup>1</sup> Additional capitalized terms may be defined in the other Appendices to this Agreement.

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made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading; or (iv) any act, condition, or item required to be fulfilled or performed by Contractor to (x) enable Contractor lawfully to enter into or perform its obligations under this Agreement, (y) ensure that these obligations are legal, valid, and binding, or (z) make this Agreement admissible when required is not fulfilled or performed.

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

“Deliverables” means any Developed Materials, Contractor Materials, 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 pursuant to the Work (except the Licensed Software).

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

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

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

“Hosted Services” means any cloud-based services, hosted service (including hosted services relating to the Licensed Software), software as a service, or other Internet or network-based services provided under the Agreement.

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

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

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

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

“Judicial Council Data” means the Confidential Information, Personal Information, and any information, data, or content that is provided to or accessed by Contractor.

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

“Judicial Council Work Locations” means any Judicial Council facility at which Contractor provides Work.

“Judicial Council Materials” means Materials owned, licensed, made, conceived, or reduced to practice by a Judicial Branch Entity or a Judicial Council Contractor, 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 Entity” or “Judicial Branch Entities” means the Judicial Council and any California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center; these entities comprise the “Judicial Branch.”

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

“Licensed Software” means Contractor’s software set forth in Appendix E, including Source Code and object code versions of such software, in whatever form or media, together with all Upgrades and Documentation thereto.

“Malicious Code” means any (i) program routine, device or other feature or hidden file, including any time bomb, virus, software lock, trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm any of the Judicial Branch Entities’ hardware, software, data or other programs, and (ii) hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.

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“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.

“Parties” means the Judicial Council and Contractor, collectively.

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

“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.

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

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

“Specifications” means with respect to each Deliverable, Licensed Software, service, goods, or other portion of the Work, the detailed provisions and documents setting out the specifications, functionality and requirements.

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

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

“Term” means the term of this Agreement.

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

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

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

“Upgrades” means all new versions and releases of, and bug fixes, error corrections, Workarounds, updates, upgrades, modifications, patches for, the Licensed Software, Deliverables, Documentation, or any other portion of the Work.

“Work” means each of the following, individually and collectively: the services (including the Maintenance and Support Services, and the Hosted Services), Deliverables, Licensed Software, goods (including equipment) and materials provided under this Agreement, including those services and Deliverables set forth in a Statement of Work, and any incidental services, items, or responsibilities that are reasonable and customary in the industry and not specifically described in this Agreement (or the Statement of Work), but which are required for the performance of Contractor’s obligations and delivery of services.

“Workaround” means a temporary modification to or change in operating procedures for the Work that: (i) circumvents or effectively mitigates the adverse effects of a Defect so that the Work complies with and performs in accordance with the applicable Specifications and Documentation; (ii) does not require substantial reconfiguration of the Work or any reloading of data; and (iii) does not otherwise impose any requirements that would impede an end user’s efficient use of the Work.

“Work Location(s)” means any Judicial Council Work Location or Contractor Work location.

**APPENDIX E: THE LICENSED SOFTWARE**

1. The Licensed Software. **[SECTION INSTRUCTIONS: if the Judicial Council will be licensing Licensed Software from Contractor (usually, commercially available software), add description of the Licensed Software, and include specifications/requirements. As necessary, identify Documentation for the Licensed Software. If the Judicial Council will NOT be licensing Licensed Software, omit this Appendix E from the Agreement and make conforming edits to the other appendixes.]** Contractor will provide all on-site services necessary to install the Licensed Software. Contractor will provide the following training for the use and operation of the Licensed Software:  
\_\_\_\_\_ **[SECTION INSTRUCTIONS: describe training, as applicable.]**
2. Software License. **[SECTION INSTRUCTIONS: Modify license grant terms below as appropriate to meet the Judicial Council's business and IT requirements]** Contractor grants to the Judicial Branch Entities a fully paid-up, perpetual, irrevocable, worldwide, royalty-free, nonexclusive license to: (i) install, use and host the Licensed Software; (ii) make a reasonable number of copies of the Licensed Software for archival and/or backup purposes, or to the extent reasonably necessary to enable access to and use of the Licensed Software; (iii) modify the Licensed Software for judicial branch purposes and use; and (iv) use the Licensed Software in conjunction with other software developed or acquired by Judicial Branch Entities. The Judicial Branch Entities' rights hereunder shall extend to permit the installation, use, hosting and/or reproduction and copying of the Licensed Software, or portions thereof, to the extent reasonably necessary to enable access to and use of the Licensed Software by: (a) any law enforcement, judicial or other governmental entity for purposes reasonably related to the business or operations of the California judicial branch, (b) any court user or party needing the Licensed Software for the purpose of connecting to, making use of (such as lawyers, litigants, parties and the general public) or supporting the operations of the Judicial Branch Entities, and (c) Judicial Council Contractors, but only in connection with their provision of goods or services to Judicial Branch Entities. The foregoing use and access may be directly enabled or web enabled via Internet or intranet or enabled via any other communication facility. All data created and/or processed by the Licensed Software shall remain the property of the Judicial Branch Entities, nor shall Contractor have any rights in or to such data.

**APPENDIX F**

**UNRUH CIVIL RIGHTS ACT AND  
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION**

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

**CERTIFICATIONS:**

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

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

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