

RFP Title: **Data Governance Consultant**
 RFP Number: **CR-2019-04-LV**

ATTACHMENT 2

STANDARD AGREEMENT rev July 2017

AGREEMENT NUMBER

[Agreement number]

1. In this agreement (“Agreement”), the term “Contractor” refers to **[Contractor name]**, and the term “JCC” or “JBE” refers to the **Judicial Council of California**.
2. This Agreement is effective as of **[TBD]** (“Effective Date”) and expires on **[TBD]** (“Expiration Date”). This Agreement may be extended for one (1) year at the option of the Judicial Council.
3. The maximum amount the Judicial Council of California may pay Contractor under this Agreement is \$**[Dollar amount]** (the “Contract Amount”).
4. The purpose or title of this Agreement is: **Data Governance Consultant**

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

5. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, RFP-BS-2018-03-DM (the RFP) and Contractor’s RFP Responses, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.



Appendix A – Services

Appendix B – Payment Provisions

Appendix C – General Provisions

Appendix D – Defined Terms

Appendix E – Unruh Civil Rights Act and FEHA Certification (*Only when entering into or renewing a contract \$100,000 or more*)

JUDICIAL COUNCIL OF CALIFORNIA’S SIGNATURE	CONTRACTOR’S SIGNATURE
JUDICIAL COUNCIL OF CALIFORNIA	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> [Contractor name]
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
<div style="background-color: #fce4d6; padding: 20px; border: 1px solid #ccc;"> <p>SAMPLE ONLY – DO NOT SIGN</p> </div>	
[Date]	[Date]
ADDRESS [Address]	ADDRESS [Address]

ATTACHMENT 2

APPENDIX A

Services

1. Background and Purpose.

1.1 Background

The Judicial Council of California (“JCC”), chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system. The California Constitution directs the Council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The Council also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law. The Judicial Council is the staff agency for the Council and assists both the Council and its chair in performing their duties.

The Council is seeking to modernize management of branch data to increase efficiency, maximize opportunities for data analysis, and position the branch to employ more data-drive decision making. One aspect of this modernization effort is to implement a data governance framework to help both the Judicial Council and the courts institute policies and rules around data management. The Office of Court Research, responsible for data, policy, and analysis in support of branch initiatives, has been tasked with leading the Council’s data governance development efforts.

1.2

2. Services.

Description of Services.

Design a model or framework for data governance. Framework will incorporate the perspective and data needs of individual courts (Supreme, Appellate, and Trial Courts). The framework will address all of the following elements of a data governance strategy:

- Data collection
- Data storage
- Data access and security

2.1 Contractor will meet with the Judicial Council team either in person or by phone no less than biweekly during the project period. At least one in-person meeting will be required. A kickoff meeting (either phone or in person) will be held on or before June 15, 2019

2.2

2.3 **Description of Deliverables.** Contractor shall deliver to the Judicial Council of California the following work products (“Deliverables”):

Deliverables	Estimated Completion Date
1. Kickoff Meeting	[TBD]
2. Delivery of Data Governance Framework	[TBD]
3. Delivery of implementation plan	[TBD]
4. Bi weekly meetings throughout project period	[TBD]

2.4 Acceptance Criteria. The Services and Deliverables must meet the following acceptance criteria or the Judicial Council of California may reject the applicable Services or Deliverables. Judicial Council of California may use the attached Acceptance and Signoff Form to notify Contractor of the acceptance or rejection of the Services and Deliverables. Contractor will not be paid for any rejected Services or Deliverables.

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2.5 Timeline. Contractor must perform the Services and deliver the Deliverables according to the timeline in [TBD]

2.6 Project Managers. The Judicial Council of California’s project manager is: [TBD]. The Judicial Council of California may change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement. Contractor’s project manager is: [TBD]. Subject to written approval by the Judicial Council of California, Contractor may change its project manager without need for an amendment to this Agreement.

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

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

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

2.10 Stop Work Orders.

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

Stop Work Order; or (ii) terminate the Services covered by the Stop Work Order as provided for in this Agreement.

- B.** If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the performance of Services. The JUDICIAL COUNCIL OF CALIFORNIA shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:

 - i. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Agreement; and
 - ii. Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the JUDICIAL COUNCIL OF CALIFORNIA decides the facts justify the action, the JUDICIAL COUNCIL OF CALIFORNIA may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - C.** The JUDICIAL COUNCIL OF CALIFORNIA shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.
- 3. Acceptance or Rejection.** All Goods, Services, and Deliverables are subject to acceptance by the Judicial Council of California. The Judicial Council of California may reject any Goods, Services or Deliverables that (i) fail to meet applicable acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the Judicial Council of California). If the Judicial Council of California rejects any Good, Service, or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Good, Service, or Deliverable at no expense to the Judicial Council of California to correct the relevant deficiencies and shall redeliver such Good, Service, or Deliverable to the Judicial Council of California within ten (10) business days after the Judicial Council of California's rejection, unless otherwise agreed in writing by the Judicial Council of California. Thereafter, the parties shall repeat the process set forth in this section until the Judicial Council of California accepts such corrected Good, Service, or Deliverable. The Judicial Council of California may terminate that portion of this Agreement which relates to a rejected Good, Service, or Deliverable at no expense to the Judicial Council of California if the Judicial Council of California rejects that Good, Service, or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

**ATTACHMENT 1
ACCEPTANCE AND SIGNOFF FORM**

Description of Services or Deliverables provided by Contractor: _____

Date submitted to the JUDICIAL COUNCIL OF CALIFORNIA: _____

The Services or Deliverables are:

1) Submitted on time: yes no. If no, please note length of delay and reasons.

2) Complete: yes no. If no, please identify incomplete aspects of the Services or Deliverables.

3) Technically accurate: yes no. If no, please note corrections required.

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

The Services or Deliverables listed above are accepted.

The Services or Deliverables listed above are rejected.

Name: _____

Title: _____

Date: _____

END OF ATTACHMENT

APPENDIX B

Payment Provisions

1. General. Subject to the terms of this Agreement, Contractor shall invoice the JUDICIAL COUNCIL OF CALIFORNIA, and the JUDICIAL COUNCIL OF CALIFORNIA shall compensate Contractor, as set forth in this Appendix B. The amounts specified in this Appendix 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 OF CALIFORNIA shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature which Contractor incurs.

2. Compensation for Services.

2.1 Amount. Contractor will invoice the following amounts for Services or Deliverables that the JUDICIAL COUNCIL OF CALIFORNIA has accepted:

Table 1

Deliverable	Description	Amount	Due Date
Kickoff meeting	[TBD]	[TBD]	[TBD]
Delivery of Data Governance Framework	[TBD]	[TBD]	[TBD]
Delivery of implementation plan	[TBD]	[TBD]	[TBD]
Bi weekly meetings throughout project period	[TBD]	[TBD]	[TBD]

2.2 Withholding. When making a payment tied to the acceptance of Deliverables, the JUDICIAL COUNCIL OF CALIFORNIA shall have the right to withhold the amounts be paid to Contractor, as outlined in Table 1 above for each such payment until the JUDICIAL COUNCIL OF CALIFORNIA accepts the final Deliverable.

2.3 No Advance Payment. The JUDICIAL COUNCIL OF CALIFORNIA will not make any advance payment for Services.

3 Invoicing and Payment

3.1 Invoicing. Contractor shall submit invoices to the in arrears no more frequently than monthly. Contractor's invoices must include information and supporting documentation acceptable to the JUDICIAL COUNCIL OF CALIFORNIA. Contractor shall adhere to reasonable billing guidelines issued by the JUDICIAL COUNCIL OF CALIFORNIA from time to time.

3.2 Payment. The JUDICIAL COUNCIL OF CALIFORNIA will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Goods, Services, or Deliverables, in accordance with the terms of 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.

3.3 No Implied Acceptance. Payment does not imply acceptance of Contractor's invoice, Goods, Services, or Deliverables. Contractor shall immediately refund any payment made in error. The JUDICIAL COUNCIL OF CALIFORNIA shall have the right at any time to set off any amount owing from

Agreement No. [REDACTED], with [REDACTED].

Contractor to the JUDICIAL COUNCIL OF CALIFORNIA against any amount payable by the JUDICIAL COUNCIL OF CALIFORNIA to Contractor under this Agreement.

4. Taxes. Unless otherwise required by law, the JUDICIAL COUNCIL OF CALIFORNIA 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 OF CALIFORNIA shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the JUDICIAL COUNCIL OF CALIFORNIA pursuant to this Agreement.

ATTACHMENT 2

APPENDIX C

General Provisions

1. **Contractor Certification Clauses.** Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JUDICIAL COUNCIL OF CALIFORNIA if any representation and warranty becomes untrue. Contractor represents and warrants as follows:
 - 1.1 **Authority.** Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement.
 - 1.2 **Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JUDICIAL COUNCIL OF CALIFORNIA.
 - 1.3 **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
 - 1.4 **No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
 - 1.5 **No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
 - 1.6 **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform the Services.
 - 1.7 **Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.
 - 1.8 **Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
 - 1.9 **No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
 - 1.10 **Noninfringement.** The Goods, Services, Deliverables, and Contractor's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
 - 1.11 **Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.
 - 1.12 **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. Insurance

- 3.1 Basic Coverage.** Contractor shall provide and maintain at the JUDICIAL COUNCIL OF CALIFORNIA's discretion and Contractor's expense the following insurance during the Term:
- A. Commercial General Liability.** The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
 - B. Workers Compensation and Employer's Liability.** The policy is required only if Contractor has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
 - C. Automobile Liability.** This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor's performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.
 - D. Professional Liability.** This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.
 - E. Commercial Crime Insurance.** This policy is required only if Contractor handles or has regular access to the JBE's funds or property of significant value to the JBE. This policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$[Dollar amount].
- 3.2 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- 3.3 Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 3.4 Deductibles and Self-Insured Retentions.** Contractor shall declare to the JUDICIAL COUNCIL OF CALIFORNIA all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the JUDICIAL COUNCIL OF CALIFORNIA's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- 3.5 Additional Insured Endorsements.** Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the JUDICIAL COUNCIL OF CALIFORNIA, the State of California, the Judicial Council of California, and their

respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.

- 3.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the JUDICIAL COUNCIL OF CALIFORNIA certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days' prior written notice to the JUDICIAL COUNCIL OF CALIFORNIA.
- 3.7 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.
- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the JUDICIAL COUNCIL OF CALIFORNIA, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the JUDICIAL COUNCIL OF CALIFORNIA is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the JUDICIAL COUNCIL OF CALIFORNIA or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) a latent or patent defect in any Goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the JUDICIAL COUNCIL OF CALIFORNIA's prior written consent, which consent shall not be unreasonably withheld; and the JUDICIAL COUNCIL OF CALIFORNIA 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.
- 5. Option Term.** Unless Section 2 of the Coversheet indicates that an Option Term is not applicable, the JUDICIAL COUNCIL OF CALIFORNIA may, at its sole option, extend this Agreement for a single one-year term, at the end of which Option Term this Agreement shall expire. In order to exercise this Option Term, the JUDICIAL COUNCIL OF CALIFORNIA must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Contractor's signature.
- 6. Tax Delinquency.** Contractor must provide notice to the JUDICIAL COUNCIL OF CALIFORNIA immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The JUDICIAL COUNCIL OF CALIFORNIA may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.

7. Termination

- 7.1 Termination for Convenience.** The JUDICIAL COUNCIL OF CALIFORNIA may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the JUDICIAL COUNCIL OF CALIFORNIA, Contractor shall immediately: (a) stop Services as specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.
- 7.2 Termination for Cause.** The JUDICIAL COUNCIL OF CALIFORNIA may terminate this Agreement, in whole or in part, immediately “for cause” if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the JUDICIAL COUNCIL OF CALIFORNIA, is not capable of being cured within this cure period); (ii) Contractor or Contractor’s creditors file a petition as to Contractor’s bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
- 7.3 Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
- 7.4 Termination for Changes in Budget or Law.** The JUDICIAL COUNCIL OF CALIFORNIA’s payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The JUDICIAL COUNCIL OF CALIFORNIA may terminate this Agreement or limit Contractor’s Services (and reduce proportionately Contractor’s fees) upon Notice to Contractor without prejudice to any right or remedy of the JUDICIAL COUNCIL OF CALIFORNIA if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the JUDICIAL COUNCIL OF CALIFORNIA determines that Contractor’s performance under this Agreement has become infeasible due to changes in applicable laws.
- 7.5 Rights and Remedies of the JUDICIAL COUNCIL OF CALIFORNIA.**
- A. *Nonexclusive Remedies.*** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the JUDICIAL COUNCIL OF CALIFORNIA 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 OF CALIFORNIA 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 OF CALIFORNIA’s right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.
- B. *Replacement.*** If the JUDICIAL COUNCIL OF CALIFORNIA terminates this Agreement in whole or in part for cause, the JUDICIAL COUNCIL OF CALIFORNIA may acquire from third parties, under the terms and in the manner the JUDICIAL COUNCIL OF CALIFORNIA considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the JUDICIAL COUNCIL OF CALIFORNIA 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 COUNCIL OF CALIFORNIA for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the JUDICIAL COUNCIL OF CALIFORNIA. Contractor shall continue any Services not terminated hereunder.

C. *Delivery of Materials.* In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the JUDICIAL COUNCIL OF CALIFORNIA with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any JUDICIAL COUNCIL OF CALIFORNIA-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the JUDICIAL COUNCIL OF CALIFORNIA shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the JUDICIAL COUNCIL OF CALIFORNIA’s termination is not for cause, the JUDICIAL COUNCIL OF CALIFORNIA shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the JUDICIAL COUNCIL OF CALIFORNIA’s termination Notice.

7.6 **Survival.** Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

8. **Assignment and Subcontracting.** Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the JUDICIAL COUNCIL OF CALIFORNIA. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

9. **Notices.** Notices must be sent to the following address and recipient:

If to Contractor:	If to the JUDICIAL COUNCIL OF CALIFORNIA:
[name, title, address] [TBD]	[name, title, address] [TBD]
<u>With a copy to:</u>	<u>With a copy to:</u>

Either party may change its address for Notices by giving the other party 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) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

10. **Provisions Applicable to Certain Agreements.** The provisions in this section are *applicable only to the types of orders specified in the first sentence of each subsection*. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.

10.1 **Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

10.2 **Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3 which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee’s or dependent’s actual or perceived gender identity.

10.3 **Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child

and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

- 10.4 Federal Funding Requirements.** *If this Agreement is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to the JBE by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The JBE may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.
- 10.5 DVBE Commitment.** *This section is applicable if Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement.* Contractor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the JBE: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
- 10.6 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the JUDICIAL COUNCIL OF CALIFORNIA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 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 OF CALIFORNIA. Such assignment shall be made and become effective at the time the JUDICIAL COUNCIL OF CALIFORNIA tenders final payment to Contractor. If the JUDICIAL COUNCIL OF CALIFORNIA receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JUDICIAL COUNCIL OF CALIFORNIA any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the JUDICIAL COUNCIL OF CALIFORNIA as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the JUDICIAL COUNCIL OF CALIFORNIA shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JUDICIAL COUNCIL OF CALIFORNIA has not been injured thereby, or (b) the JUDICIAL COUNCIL OF CALIFORNIA declines to file a court action for the cause of action.
- 10.7 Good Standing.** *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.

11. Miscellaneous Provisions.

- 11.1 Independent Contractor.** Contractor is an independent contractor to the JUDICIAL COUNCIL OF CALIFORNIA. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JUDICIAL COUNCIL OF CALIFORNIA. Contractor has no authority to bind or incur any obligation on behalf of the JUDICIAL COUNCIL OF CALIFORNIA. If any governmental entity concludes that Contractor is not an independent contractor, the JUDICIAL COUNCIL OF CALIFORNIA may terminate this Agreement immediately upon Notice.
- 11.2 GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 11.3 Audit.** Contractor must allow the JUDICIAL COUNCIL OF CALIFORNIA or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the JUDICIAL COUNCIL OF CALIFORNIA five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JUDICIAL COUNCIL OF CALIFORNIA in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.
- 11.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services or the delivery of the Goods. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.
- 11.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the JUDICIAL COUNCIL OF CALIFORNIA's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The JUDICIAL COUNCIL OF CALIFORNIA owns all right, title and interest in the Confidential Information. Contractor will notify the JUDICIAL COUNCIL OF CALIFORNIA promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JUDICIAL COUNCIL OF CALIFORNIA to protect such Confidential Information. Upon the JUDICIAL COUNCIL OF CALIFORNIA's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the JUDICIAL COUNCIL OF CALIFORNIA or, if so directed by the JUDICIAL COUNCIL OF CALIFORNIA, destroy all Confidential Information (in every form and medium), and (b) certify to the JUDICIAL COUNCIL OF CALIFORNIA in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the JUDICIAL COUNCIL OF CALIFORNIA shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Contractor hereby assigns to the JUDICIAL COUNCIL OF CALIFORNIA ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not

publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JUDICIAL COUNCIL OF CALIFORNIA.

- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the JUDICIAL COUNCIL OF CALIFORNIA.
- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 11.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the JUDICIAL COUNCIL OF CALIFORNIA. A waiver of enforcement of any of this Agreement's terms or conditions by the JUDICIAL COUNCIL OF CALIFORNIA is effective only if expressly agreed in writing by a duly authorized officer of the JUDICIAL COUNCIL OF CALIFORNIA. 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.
- 11.11 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 11.12 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 11.13 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.14 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 11.15 Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.
- 11.16 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

APPENDIX D

Defined Terms

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

“Agreement” is defined on the Coversheet.

“Contractor” is defined on the Coversheet.

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

“Consulting Services” refers to the services performed under “Consulting Services Agreements,” which are defined in PCC 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.

“Contract Amount” is defined on the Coversheet.

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

“Deliverables” is defined in Appendix A.

“Effective Date” is defined on the Coversheet.

“Expiration Date” is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.

“Goods” is defined in Appendix A.

“Initial Term” is the period commencing on the Effective Date and ending on the Expiration Date designated on the Coversheet.

“JBE” is defined on the Coversheet.

“Judicial Branch Entity” or **“Judicial Branch Entities”** means any California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

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

“Notice” means a written communication from one party to another that is (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 in Appendix C.

“Option Term” means a period, if any, through which this Agreement may be or has been extended by the JBE.

“PCC” refers to the California Public Contract Code.

“Services” is defined in Appendix A.

“Stop Work Order” is defined in Appendix B.

“Term” comprises the Initial Term and any Option Terms.

APPENDIX E

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

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

CERTIFICATIONS:

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

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

<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>	