

STANDARD AGREEMENT



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| AGREEMENT NUMBER [@ Agreement number] |
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- In this agreement (“Agreement”), the term “Contractor” or “Broker” refers to **[@ Brokerage Company Name]**, and the term “Judicial Council” refers to the **Judicial Council of California**.
- This Agreement is effective as of **[June 2020]** (“Effective Date”) and expires on **[June 2025]** (“Expiration Date”). This Agreement includes two (2) additional periods for two (2) year options to extend (“Option Term(s”).
- The purpose or title of this Agreement is: **Insurance Brokerage Services Agreement**.

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 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 – Pricing
- Appendix D – General Provisions
- Appendix E – Defined Terms
- Appendix F – Unruh Civil Rights Act and California Fair Employment and Housing Act Certification

| JUDICIAL COUNCIL’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> [@ Brokerage Company Name] |
| BY <i>(Authorized Signature)</i>  | BY <i>(Authorized Signature)</i>  |
| PRINTED NAME AND TITLE OF PERSON SIGNING [@ Name and title] | PRINTED NAME AND TITLE OF PERSON SIGNING [@ Name and title] |
| DATE EXECUTED [@ Date] | DATE EXECUTED [@ Date] |
| ADDRESS Branch Accounting and Procurement 455 Golden Gate Avenue, 6th Floor San Francisco, CA 94102 | ADDRESS [@ Address] |

APPENDIX A

Services

- 1. Background and Purpose.** Contractor shall provide, on an as-needed basis, when and as directed by the Judicial Council's designated project manager ("Project Manager"), consulting and brokerage services ("Services") related to the various lines of insurance specified, but not limited to, in Appendix C – Pricing. Services shall be provided to the Judicial Council's satisfaction, in compliance with Section 2 and in the best interests of the Judicial Council and not those of the Contractor.
- 2. Description of Services. Contractor shall perform the following Services:**
 - 2.1** When requested by the Judicial Council's Project Manager, the Contractor will participate in and/or perform detailed program design for a designated line of insurance, to include:
 - 2.1.1 Recommend terms and conditions for each line of insurance coverage to be provided within the program that, with respect to liability coverage, are consistent with California Government Code sections 810 through 995 and California Rule of Court rule 10.810
 - 2.1.2 Recommend levels of retained risk to be considered by the Judicial Council or other Judicial Branch Entities (JBEs).
 - 2.1.3 Recommend insurance markets that are best able to provide the insurance required and relative transition proposal.
 - 2.1.4 Provide a conceptual analysis of the cost of each line of insurance for which coverage may be sought.
 - 2.1.5 Develop and deliver a written report analyzing exposure data provided by the Judicial Council and discussing issues and appropriate coverage and limits of liability to effectively treat such exposure.
 - 2.1.6 Develop and deliver a list identifying insurers and reinsurers with a proven ability to insure public entities, including potential risk retention pools, and that have the capability to meet the Judicial Council's solvency, service and loss control requirements.
 - 2.1.7 If requested, make introductions and set up meetings with potential underwriters.
 - 2.1.8 The Broker will prepare, in consultation with the Judicial Council's Project Manager and other Judicial Council staff, a detailed implementation plan for each line of insurance for which coverage may be sought, to include:
 - 2.8.1.1. Develop specifications for terms and conditions of each line of insurance that may be included in the program.
 - 2.8.1.2. Survey potential insurance underwriters to determine market receptivity to the program as designed.
 - 2.8.1.3. Prepare a final report concerning the feasibility, potential cost and administrative requirements of the line of insurance.
 - 2.1.9 Should the Judicial Council's Project Manager authorize Broker to explore the possible purchase of a specific line of insurance, Broker will provide all services necessary to solicit and bind the insurance, including but not limited to:
 - 2.9.1.1. Develop and deliver a report for each line of insurance that describes the relevant insurance market, as directed by the Judicial Council, the Judicial Council's and/or JBEs' requirements and priorities, with respect to the following:

- i. Overall insurance goals of the Judicial Council
 - ii. Insurance coverage scope and limits required
 - iii. Insurer service requirements
- 2.9.1.2. If deemed appropriate and requested by the Judicial Council's Project Manager, develop and deliver a list of any excess or surplus lines, insurance companies, brokers, or reinsurance intermediaries that may be used in making the solicitation for insurance or reinsurance.
 - 2.9.1.3. Prepare and provide written documents detailing the final underwriting submissions and market insurance coverage for the line(s) of insurance the Judicial Council desires be solicited for possible purchase.
 - 2.9.1.4. Using specifications agreed to by the Judicial Council's Project Manager, solicit and receive competitive policy proposals ("Policy Proposals") from at least three (3) different qualified insurers for each line of insurance solicited.
 - 2.9.1.5. Assist the Judicial Council in the analysis and evaluation of the Policy Proposals received for each line of insurance, including comprehensively analyzing insurance and reinsurance proposals received with respect to compliance with Judicial Council's and/or JBEs' solicited requirements and other topics as requested by the Judicial Council's Project Manager.
 - 2.9.1.6. Broker shall not participate in the actual scoring of Policy Proposals or make the final decision regarding the insurance policy to be purchased.
 - 2.9.1.7. Should the Judicial Council's Project Manager authorize binding of the line of insurance, the Project Manager shall provide the Broker with a written instruction to bind the insurance for the Judicial Council or JBE.
 - 2.9.1.8. With the exceptions of making offers, binding lines of insurance and invoicing and accepting payment on behalf of insurers, Broker shall not be an agent for any insurer, or represent, or have the authority to make any other binding commitments on behalf of any insurer.
 - 2.9.1.9. Subject to written instructions from the Judicial Council's Project Manager, Broker shall bind insurance and provide timely documentation and delivery of insurance and reinsurance contract documents, upon receipt of the insurance policies and contracts from insurers and reinsurers.

2.2 Program Administration.

- 2.2.1 The Broker will provide ongoing administration for each line of insurance bound, including:
 - 2.2.1.1 Prior to payment by the Judicial Council, Broker shall review insurance and reinsurance policies purchased and subsequent endorsements upon receipt to verify conformance with specifications of the contract.
 - 2.2.1.2 Payment for any insurance bound will be made directly to the Broker by the Judicial Council. Broker will invoice the Judicial Council in accordance with the provisions of this Agreement.
 - 2.2.1.3 Broker is responsible for making timely payment of the insurance premiums to the applicable insurer or reinsurer.

- 2.2.1.4 Provide certificates of insurance on coverage placed by Broker as needed by the Judicial Council or JBEs to satisfy government entities (including county government), lessors, regulators and other parties.
- 2.2.1.5 Maintain a program management information system acceptable to the Judicial Council's Project Manager that includes each of the following metrics:
 - i. Insurance program coverage specifications and limits of liability;
 - ii. Insurance policy register, including premium basis, and minimum premium requirements, if any;
 - iii. Register of certificates of insurance by line of coverage and total program.

2.3 Risk Control and Claims Services:

- 2.3.1 The Broker will provide, in coordination with the Judicial Council's Project Manager, claims management services to include:
 - 2.3.1.1 Assist in claims investigations, claims administration, and loss mitigation programs (e.g., claim reserve analysis);
 - 2.3.1.2 Provide loss control consultations for areas of concern as expressed by either the Judicial Council and/or other JBEs;
 - 2.3.1.3 Act as liaison/advocate between the insurance company and the Judicial Council and/or other JBEs as appropriate;
 - 2.3.1.4 Submit claims to insurers and re-insurers as appropriate.

2.4 Accuracy of Information:

- 2.4.1 The Judicial Council shall be solely responsible for the accuracy and completeness of information and other documents furnished to Contractor and/or insurers by the Judicial Council and the Judicial Council shall sign any required application for insurance.
- 2.4.2 The Judicial Council recognizes and agrees that all insurance coverage placed in connection with this Agreement and all Services, evaluations, reports and recommendations provided by Contractor hereunder are based on data and information furnished by the Judicial Council.
- 2.4.3 Contractor will be under no obligation to investigate or verify the completeness or accuracy of any such data or information, nor will Contractor have any liability for any errors, deficiencies or omissions in any Services, evaluations, reports or recommendations provided to, or any insurance coverage placed on behalf of, the Judicial Council that are based on such inaccurate or incomplete data or information.
- 2.4.4 The Judicial Council understands that the failure to provide all necessary information to an insurer, whether intentional or by error, could result in the impairment of voiding of coverage.

2.5 Acceptance Criteria. The Services must meet the following acceptance criteria or the Judicial Council may reject the applicable Services. Contractor will not be paid for any rejected Services.

- 2.5.1 Timeliness: The Service was delivered on time and according to schedule;
- 2.5.2 Completeness: The Service(s) contained the Data, Materials, and features required in the authorized Service request;

- 2.5.3 **Technical Accuracy:** The Service is accurate as measured against commonly accepted practices (i.e., a statistical formula, an industry standard, or de facto marketplace standard), and concepts are presented logically and clearly.
- 2.6 Project Managers.** The Judicial Council’s project manager is an assigned representative or designee of the Judicial Council. The Judicial Council 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 an assigned representative or designee of the Contractor. Contractor shall provide a list of key personnel assigned to this Agreement. Subject to written approval by the Judicial Council, 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.
- 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 required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Contractor's own risk.
- 2.10 Insurance Coverage Request Process.** The Judicial Council will authorize the performance of Services and spending of funds under this Agreement via Service Requests which shall be substantially in the format provided herein, as follows:
- 2.10.1 The Judicial Council’s Project Manager will provide the Contractor with an email (service request form) describing in full the Services to be performed, including:
- 2.10.1.1 Specify the entity requiring insurance coverage;
 - 2.10.1.2 Specify the various lines of insurance required;
 - 2.10.1.3 Specify the limits of coverage required;
 - 2.10.1.4 Requested coverage period;
- 2.10.2 Upon receipt, Contractor will, based upon the Services requested by the Judicial Council, provide their quote (“Quote”) within the Judicial Council’s request time period.
- 2.10.3 Judicial Council will review the Quote (s) submitted by the Contractor and make a selection based on the most appropriate cost and coverage options.
- 2.10.4 If the Judicial Council accepts the Contractor’s quoted premium, the Judicial Council will notify the Contractor and authorize the issuance of insurance policy binding instruction (“Binding Instruction”) via an email confirmation.
- 2.10.5 The execution of the Binding Instructions by the Judicial Council and the Contractor shall authorize the Services as specified. Any commencement of Services or any expenditure prior to the Contractor’s receipt of Binding Instructions shall be made at the Contractor’s sole risk.
- 2.10.6 Compensation shall be at the Total Compensation due to Contractor for the line of insurance, per rates noted in Appendix C, Pricing.

2.11 Stop Work Orders.

- 2.11.1 The Judicial Council 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 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.
- 2.11.2 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 shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
- 2.11.1.1 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
- 2.11.1.2 Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the Judicial Council decides the facts justify the action, the Judicial Council may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- 2.11.3 The Judicial Council 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 Services are subject to acceptance by the Judicial Council. The Judicial Council may reject any Services 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). If the Judicial Council rejects any Service (other than for late performance or delivery), Contractor shall modify such rejected Service at no expense to the Judicial Council to correct the relevant deficiencies and shall redeliver such Service to the Judicial Council within ten (10) business days after the Judicial Council’s rejection, unless otherwise agreed in writing by the Judicial Council. Thereafter, the parties shall repeat the process set forth in this section until the Judicial Council accepts such corrected Service. The Judicial Council may terminate that portion of this Agreement which relates to a rejected Service at no expense to the Judicial Council if the Judicial Council rejects that Service (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

END OF APPENDIX A

APPENDIX B

Payment Provisions

1. **General.** Subject to the terms of this Agreement, Contractor shall invoice the Judicial Council, and the Judicial Council 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 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 that the Judicial Council has accepted:
 - 2.1.1 The total amount of compensation (“Total Compensation”) due Contractor when a line of insurance is purchased (i.e. when the Judicial Council Project Manager issues Binding Instructions for that line of insurance) is equal to the percentage fee specified in Exhibit C – Pricing, multiplied by the Actual Cost of that individual line of insurance.
 - 2.1.2 Contractor will, for each line of insurance that is purchased, provide the Judicial Council an original written quotation from the insurance company, reinsurance company, or insurance intermediary from or through whom the Contractor will be paying for the insurance. This quotation must show the amount actually charged by the company from whom Contractor is purchasing the insurance (the “Actual Cost”), as well as the amount(s) of any discount(s) or any other form of deduction(s) (“Discount(s)”) against the insurance price allowed Contractor, any Commission(s) due Contractor, and the net price (“Net Price”), which is the amount that will actually be paid by Contractor for the insurance.
 - 2.1.3 If and when applicable, Contractor will provide a written accounting disclosing the amount(s), nature, and sources of any Commission(s) other than the Commission(s) disclosed per Article 2.1.2 above. This accounting will be provided to the Judicial Council’s Project Manager.
 - 2.1.4 Commission (“Commission”) means and includes compensation, in any form, received or to be received by the Contractor, Contractor’s parent organization, or any of its employees or agents from any party as a direct or indirect consequence of the Judicial Council’s, or other Judicial Branch Entities’ (“JBEs”), purchase of insurance, regardless of when received, and including, but not limited to, compensation customarily referred to as “contingent commission.”
 - 2.1.5 If Contractor or any of its employees or agents receives a Commission other than the Commission declared in accordance with Article 2.B. above, the amount of that Commission owed the Judicial Council shall be in direct proportion to the degree to which the Judicial Council’s or other JBE’s purchase of the insurance is responsible for the Commission. (e.g. If the Commission received was based on Contractor obtaining sales of \$1,000,000 in insurance and the Judicial Council or JBEs insurance purchase was \$100,000, the proportion of that Commission owed the Judicial Council is $\$100,000 \div \$1,000,000$, or 10%.
 - 2.1.6 Contractor shall invoice the Judicial Council for the Net Price of the insurance.
 - 2.1.7 If the Total Compensation due Contractor resulting from the purchase of a line of insurance is less than the total of any Discount(s) and Commission(s), Contractor shall separately invoice the Judicial Council for the difference between the Total Compensation due plus any Commissions plus Discount(s) allowed.
 - 2.1.8 If the Total Compensation due Contractor resulting from the purchase of a line of insurance is greater than the total of any Discount(s) and Commission(s), Contractor shall, at the Judicial Council’s Project Manager’s written direction, either remit the difference between the Total Compensation due and any Commissions plus Discount(s) allowed to the Judicial Council or

apply the difference as a credit against the Judicial Council's purchase of other lines of insurance then pending.

2.1.9 The Project Managers of the respective parties shall be responsible the retention of all records pertaining to insurance purchases under this Agreement, and for maintaining an accurate and up to date accounting of the amounts to be paid to and by the Judicial Council under this Agreement. These records shall be retained by the Judicial Branch Capital Program office.

2.1.10 Contractor shall provide the Judicial Council's Project Manager with a notification when the Contractor has remitted to an insurance company the premium (i.e. Net Price) due for a line of insurance purchased by the Judicial Council, or other Judicial Branch Entity.

2.2 No Advance Payment. The Judicial Council will not make any advance payment for Services.

2.3 Contract Amount. The Judicial Council make no promise that it will purchase insurance of any type or in any amount during the term of the Agreement.

3. Expenses. Except as set forth in this section, no expenses relating to the Services shall be reimbursed by the Judicial Council.

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

3.2 Limit on Travel Expenses. If travel expenses are allowed under Section 3.1 above: (i) all travel is subject to written preauthorization and approval by the Judicial Council, and (ii) all travel expenses are limited to the maximum amounts set forth in the Judicial Council's travel expense policy, as indicated in Section 3.4 below.

3.3 Required Certification. Contractor must include with any request for reimbursement from the Judicial Council a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the Judicial Council was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

3.4 Judicial Council's Travel Expense Policy. For overnight travel, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) California Department of Human Resources guidelines, the Judicial Council will reimburse lodging expenses incurred while traveling, at Contractor's actual cost. Lodging costs may not exceed \$250 (per day per person), plus tax and energy surcharge in San Francisco county; \$125 (per day per person), plus tax and energy surcharge in Monterey and San Diego counties; \$120 (per day per person), plus tax and energy surcharge in Los Angeles, Orange and Ventura counties; \$140 (per day per person), plus tax and energy surcharge in Alameda, San Mateo, and Santa Clara counties; or \$110 (per day per person), plus tax and energy surcharge in all other California counties. Meals shall be reimbursed at the actual cost not to exceed the following maximum amounts per person per Day: breakfast - **\$8.00**; lunch - **\$12.00**; dinner - **\$20.00**; and/or incidentals - **\$6.00**.

3.4.1 For necessary private vehicle ground transportation usage, the Judicial Council will reimburse the Contractor at the applicable IRS-approved rate per mile.

3.4.2 Upon the Project Manager's request, the Contractor shall provide copies of receipts for reimbursement of transportation, lodging, and meal expenses.

4. Invoicing and Payment

4.1 Invoicing. Contractor shall submit invoices to the Judicial Council in arrears no more frequently than monthly. Contractor's invoices must include information and supporting documentation acceptable to the Judicial Council. Contractor shall adhere to reasonable billing guidelines issued by the Judicial Council from time to time. Invoices shall clearly indicate all relevant policy information including the following:

- 4.1.1 The name of the insurance company;
- 4.1.2 The line of coverage and the policy number;
- 4.1.3 A unique invoice number;
- 4.1.4 The Contractor's name and address;
- 4.1.5 Taxpayer Identification number (the Contractor's federal employer identification number)
- 4.1.6 Invoice on Contractor's letterhead should include, as applicable, a description of the completed Services rendered;
- 4.1.7 Contractor shall include in their invoice an itemized breakdown of any Allowable Expenses noted above in Section 3, including travel costs, and the Judicial Council Project Manager's written preauthorization and approval of said expenses.
- 4.1.8 Preferred remittance address, if different from mailing address;
- 4.1.9 The Contractor shall email one (1) copy of the invoice to:

Maria.Topete@jud.ca.gov

With a copy to the project manager indicated in the insurance coverage request.

- 4.2 Payment.** The Judicial Council will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Services 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.

- 4.3 No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice, or Services. 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.

- 5. 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 Services rendered or equipment, parts or software supplied to the Judicial Council pursuant to this Agreement.

END OF APPENDIX B

APPENDIX C

PRICING

(Contractor's Pricing Detail to be inserted here)

__%* APPLIES TO ALL LINES OF INSURANCE LISTED BELOW

Insurance Lines**

Commercial General Liability
Excess Liability
All Risk Commercial Property
Inland Marine
Equipment Breakdown
Public Officials Liability
Pollution Liability
Commercial Crime
Excess Property
DIC (earthquake, flood, terrorism)
Fiduciary Liability
Legal Professional Liability
Miscellaneous Professional Liability
Non-Owned Aviation
Foreign Liability and Mexican Automobile
Automobile Physical Damage
Fine Arts and Manuscripts Property
Business Personal Property
Surety/Appeal Bond

*The percentage that will be multiplied by the Actual Cost of the insurance to determine compensation due to the Contractor when that line of Insurance is purchased by the Judicial Council. Indicated percentage shall be fixed for the entire term of the Agreement, including any Option Term.

**The list is not inclusive of all lines of insurance that will be purchased by the Judicial Council. If a line of insurance is not listed, the percentage provided on this form will be used to determine compensation due the contractor in the same manner as reflected above.

END OF APPENDIX C

APPENDIX D

General Provisions

1. Provisions Applicable to Services

- 1.1 **Qualifications.** Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the Judicial Council is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.
- 1.2 **Turnover.** Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.
- 1.3 **Background Checks.** Contractor shall cooperate with the Judicial Council if the Judicial Council wishes to perform any background checks on Contractor's personnel 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 ensure that the following persons are not assigned to perform services for the Judicial Council: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the Judicial Council, the Judicial Council advises are unacceptable to the Judicial Council.

2. 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 if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

- 2.1 **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.
- 2.2 **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.
- 2.3 **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.
- 2.4 **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.
- 2.5 **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.
- 2.6 **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.
- 2.7 **Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.
- 2.8 **Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.

- 2.9 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.
- 2.10 Noninfringement.** The Services 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.
- 2.11 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.
- 2.12 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'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 Judicial Council's 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 \$1,000,000.

- 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 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'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, 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 certificates of insurance attesting to the existence of coverage. Contractor shall provide prompt written notice to the Judicial Council in the event that insurance coverage is cancelled or materially changed from the coverage set forth in the current certificate of insurance provided to the Judicial Council.
- 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, 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 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 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 Services. 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.

5. **Option Term.** The Judicial Council may, at its sole discretion, extend this Agreement beyond the Initial Term for up to two (2) consecutive two (2) year Option Terms, at the end of which Option Terms this Agreement shall expire. In order to exercise an Option Term, the Judicial Council must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term (or the then-current Option Term).
6. **Tax Delinquency.** Contractor must provide notice to the Judicial Council 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 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 may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, Contractor shall immediately stop Services as specified in the Notice, except as otherwise directed by the Judicial Council or required by the provisions of this Agreement, including Section 7.5 below
 - 7.2 **Termination for Cause.** The Judicial Council 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, 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'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 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 if: (i) expected or actual funding to compensate 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.
 - 7.5 **Claims Closeout Work.** Contractor's obligation to complete the Services set forth in Appendix A, Section 2.3 (Risk Control and Claims Services) survives the termination or expiration of this Agreement. Contractor shall not be entitled to any additional compensation for those Services. In the event the Contractor fails to complete the Services as required by this Section 7.5, the Judicial Council shall be entitled to compensation for the incomplete work and may seek any other remedy available at law or in equity.
 - 7.6 **Rights and Remedies of the Judicial Council.**
 - 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

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. Replacement. If the Judicial Council terminates this Agreement 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 Council for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Judicial Council. Contractor shall continue any Services not terminated hereunder.

7.7 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. 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: |
|-------------------------------|--|
| <u>[name, title, address]</u> | Attn: Principal Manager 1, Contracts Branch Accounting and Procurement 455 Golden Gate Avenue, 6th Floor San Francisco, CA 94102-3688 |
| <u>With a copy to:</u> | <u>With a copy to:</u> Attn: Manager, Facilities Services Facility Services |

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 Judicial Council 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

Judicial Council 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 Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority 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.
- 10.5 Iran Contracting Act.** *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to Judicial Council an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Judicial Council to enter into this Agreement pursuant to PCC 2203(c).
- 10.6 Loss Leader Prohibition.** *If this Agreement involves the purchase of goods, this section is applicable.* Contractor shall not sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.
- 10.7 Recycling.** *If this Agreement provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable.* Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
- 10.8 Sweatshop Labor.** *If this Agreement provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable.* Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the 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, 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.

- 10.9 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 Judicial Council 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 Judicial Council 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.
- 10.10 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 and percentage of work Contractor committed to provide to each DVBE subcontractor and the amount each DVBE subcontractor 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. Upon request by the Judicial Council Contractor shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Contractor will comply with all rules, regulations, ordinances and statutes that govern the DVBE program, including, without limitation, Military and Veterans Code Section 999.5.
- 10.11 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* 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. Such assignment shall be made and become effective at the time the Judicial Council tenders final payment to Contractor. If the Judicial Council 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 any portion of the recovery, including treble damages, attributable to overcharges that were paid by 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. Upon demand in writing by Contractor, the Judicial Council 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 has not been injured thereby, or (b) the Judicial Council declines to file a court action for the cause of action.

- 10.12 Legal Services.** *If this Agreement is for legal services, this section is applicable.* Contractor shall: (i) adhere to legal cost and billing guidelines designated by the Judicial Council; (ii) adhere to litigation plans designated by the Judicial Council, if applicable; (iii) adhere to case phasing of activities designated by the Judicial Council, if applicable; (iv) submit and adhere to legal budgets as designated by the Judicial Council; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the Judicial Council; and (vi) submit to legal bill audits and law firm audits if so requested by the Judicial Council, whether conducted by employees or designees of the Judicial Council or by any legal cost-control provider retained by the Judicial Council for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the Judicial Council. If (a) the Contract Amount is greater than \$50,000, (b) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in section 6213 of the Business and Professions Code, during each year of the Agreement equal to the lesser of either (A) thirty (30) multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any period of less than a full year or (B) the number of hours equal to ten percent (10%) of the Contract Amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for nonrenewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with a Judicial Branch Entity for legal services.
- 10.13 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.
- 10.14 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.
- 10.15 Four-Digit Date Compliance.** *If this Agreement includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Contractor represents and warrants that it will provide only Four-Digit Date Compliant services to the Judicial Council. "Four-Digit Date Compliant" services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.
- 10.16 Janitorial Services or Building Maintenance Services.** *If this Agreement is for janitorial or building maintenance services, this section is applicable.* If this Agreement requires Contractor to perform Services at a new site, Contractor shall retain for sixty (60) days all employees currently employed at that site by any previous contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.
- 10.17 Small Business Preference Commitment.** *This section is applicable if Contractor received a small business preference in connection with this Agreement.* Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the 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.

11. Miscellaneous Provisions.

- 11.1 Independent Contractor.** Contractor is an independent contractor to the Judicial Council. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Judicial Council. Contractor has no authority to bind or incur any obligation on behalf of the Judicial Council. If any governmental entity concludes that Contractor is not an independent contractor, the Judicial Council 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 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 five percent (5%) or more during the time period subject to audit, Contractor must reimburse the Judicial Council 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'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 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. 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. 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 shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 11.6 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the Judicial Council.
- 11.7 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.

- 11.8 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.
- 11.9 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. A waiver of enforcement of any of this Agreement's terms or conditions by the Judicial Council is effective only if expressly agreed in writing by a duly authorized officer of the Judicial Council. 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.
- 11.10 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.
- 11.11 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.
- 11.12 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.13 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.
- 11.14 Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.
- 11.15 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

END OF APPENDIX D

APPENDIX E

Defined Terms

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

“**Actual Costs**” is defined in Appendix B, Section 2.1(2.1.2).

“**Agreement**” is defined on the Coversheet.

“**Commission**” is defined in Appendix B, Section 2.1(2.1.4).

“**Contractor**” is defined on the Coversheet.

“**Confidential Information**” means: (i) any information related to the business or operations of the Judicial Council, including information relating to the Judicial Council’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Judicial Council (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 Judicial Council’s satisfaction that: (a) Contractor lawfully knew prior to the Judicial Council’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.

“**Discounts**” is defined in Appendix B, Section 2.1(2.1.2).

“**Disabled Veteran Enterprise Incentive**” or “**DVBE**” is defined in Appendix C, Section 10.10.

“**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.

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

“**Iran List**” is defined in Appendix C, Section 10.5.

“**Judicial Council**” is defined on the Coversheet.

“**Judicial Branch Entity**” or “**Judicial Branch Entities**” or “**JBES**” 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.

“**Net Price**” is defined in Appendix B, Section 2.1(2.1.2).

“**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 Judicial Council.

RFP Title: Insurance Brokerage Services

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“**PCC**” refers to the California Public Contract Code.

“**Policy Proposals**” is defined in Appendix B, Section 2.1(2.1.9) and refers to

“**Services**” is defined in Appendix A.

“**Stop Work Order**” is defined in Appendix B, Section 2.11.

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

“**Total Compensation**” is defined in Appendix B, Section 2.1(2.1.1).

END OF APPENDIX E

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 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. We are in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. We are 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. We do 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 proposer/bidder/vendor to certifications made in this document.

| | |
|---|--|
| <i>Company 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> |

**END OF APPENDIX E
END OF AGREEMENT**