

ATTACHMENT 2 STANDARD PROVISIONS

EXHIBIT A Services

1. Background and Purpose.

1.1 Background

The Habeas Corpus Resource Center (HCRC), located in San Francisco, represents indigent men and women under sentence of death in California. The HCRC's mission is to provide timely, high-quality legal representation for indigent petitioners in death penalty habeas corpus proceedings before the Supreme Court of California and the federal courts.

The HCRC is engaging Contractor to perform an entity-wide review of the HCRC's employee classification and compensation structure. This project is a comprehensive study of HCRC positions, classifications, and compensation. The Chief Justice sets compensation rates for all HCRC employees per Cal. Const., Art VI, §6; Gov. Code, §19825(b). Employees of the HCRC are not represented by unions.

1.2 The HCRC Office.

The HCRC office is located in San Francisco. There are 74 incumbents in 25 job classifications across various functional areas such as legal, law office support, administration and, information systems. The HCRC seeks to properly allocate positions/classification that have evolved and changed to meet the business needs of the organization.

2. Services and Deliverables.

2.1 Description of Services. Contractor shall perform the services ("Services") set forth in the attached Exhibit A, Attachment 1 ("Statement of Work").

2.2 Description of Deliverables. Contractor shall deliver to the HCRC the work products ("Deliverables") set forth in the attached Statement of Work.

2.3 Acceptance Criteria. The Services and Deliverables must meet the requirements of this Agreement, including the Statement of Work, and the acceptance requirements set forth in Section 3 below or the HCRC may reject the applicable Services or Deliverables. The HCRC may use the attached Exhibit A, Attachment 2 ("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.

- 2.4 Timeline.** Contractor shall perform the Services and deliver the Deliverables according to the timeline set forth in the attached Statement of Work.
- 2.5 Project Managers.** The HCRC's project manager is: [_____]. The HCRC 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: [_____]. Subject to written approval by the HCRC, Contractor may change its project manager without need for an amendment to this Agreement.
- 2.6 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 HCRC's 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 HCRC.
- 2.7 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.
- 2.8 Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and all HCRC-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Contractor's own risk.
- 2.9 Stop Work Orders.**
- A. The HCRC 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 HCRC 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 HCRC 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 HCRC decides the facts justify the action, the HCRC may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - C. The HCRC 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, and Deliverables are subject to acceptance by the HCRC. The HCRC may reject any 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 HCRC). If the HCRC 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 HCRC to correct the relevant deficiencies and shall redeliver such Good, Service, or Deliverable to the HCRC within ten (10) business days after the HCRC's rejection, unless otherwise agreed in writing by the HCRC. Thereafter, the parties shall repeat the process set forth in this section until the HCRC accepts such corrected Good, Service, or Deliverable. The HCRC may terminate that portion of this Agreement which relates to a rejected Good, Service, or Deliverable at no expense to the HCRC if the HCRC rejects that Good, Service, or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

END OF EXHIBIT

**EXHIBIT A
ATTACHMENT 1
STATEMENT OF WORK**

1. The Services.

Contractor will conduct a comprehensive, entity-wide classification, Fair Labor Standards Act (FLSA), and compensation study for the HCRC.

The Contractor will also review the compensation structure and make compensation recommendations for all classifications (requested by the HCRC).

The study consists of three major components. Under the direction of the HCRC, Contractor will provide the following services:

- Component 1: Classification and compensation study of all classifications (approximately 74 incumbents in 38 classifications).
- Component 2: FLSA review and determination of existing and proposed exempt classifications (approximately 14 incumbents/positions in 8 classifications).
- Component 3: Report of compensation recommendations for HCRC classifications impacted by FLSA determinations.

2. The Deliverables.

Component 1: Classification and compensation study of all classifications (approximately 74 incumbents in 38 classifications).

Communication

- a) The Contractor will facilitate a strategic planning meeting with the Executive Director and Assistant Director to recommend a job evaluation methodology appropriate for the needs of HCRC, and to discuss data collection methods, project plan, timeline, and deadlines.
- b) The Contractor will provide bi-weekly status updates to the Assistant Director via email, conference call, or in-person as necessary.

Job Analysis

- a) The Contractor will review existing classification specifications and collect a written position description questionnaire from each incumbent, which outlines the essential duties performed and the percent of time allocated to each of those duties. The questionnaires will encompass all information required to:

RFP Title: HCRC Class & Compensation Study

RFP Number: HCRC-CCS-17-22RB

- Comply with the Americans with Disabilities Act (ADA); and
 - Make appropriate classification and compensation recommendations.
- b) The Contractor will collect written feedback on each position description questionnaire from the incumbent's supervisor or the Assistant Director.
- c) The Contractor will conduct follow-up interviews and/or desk audits as necessary to clarify the information collected.
- d) The Contractor will analyze the information collected in the questionnaires, supervisor's feedback, and interviews to determine whether or not each incumbent is appropriately classified. The analysis will identify the specific duties found to be within or outside the scope of the assigned classification.
- e) The Contractor will determine whether the duties performed by each incumbent are within the scope of the assigned classification.
- f) The Contractor will review all existing HCRC classifications and recommend a classification structure that aligns with current business needs. This will include the amendment of existing classifications, and/or proposing new classifications as necessary.

Report of Findings - Classification

- a) The Contractor will prepare a draft report of all classification findings and recommendations.
- b) The Contractor will facilitate a meeting with the Executive Director and Assistant Director to discuss the classification findings.

Job Documentation

- a) The Contractor will develop a position-specific job description for every position reviewed (approximately 38).
- b) The Contractor will amend and/or draft up to 38 new classification specifications as necessary (see 2.4.2 (g) above).

Job Evaluation

- a) The Contractor will facilitate a meeting with the Executive Director and Assistant Director to recommend a job evaluation methodology appropriate for the HCRC's business needs.
- b) The Contractor will utilize the agreed upon methodology to determine the relative internal value of each classification, so that the fairness and equity of the compensation structure can be established.
- c) The Contractor will provide written materials which explain the application of the Contractor's job evaluation methodology.

Internal Hierarchy

- a) The Contractor will analyze the existing internal hierarchy and identify problem areas.
- b) If necessary, the Contractor will propose a revised internal hierarchy and recommend methods for implementation.

Compensation Review

- a) The Contractor will review and analyze the current compensation structure and identify problem areas.
- b) The Contractor will recommend appropriate classifications for the HCRC to utilize as external benchmarks.
- c) The Contractor will recommend appropriate comparator organizations for the HCRC.
- d) The Contractor will conduct a customized compensation survey of the selected comparator organizations.
- e) The Contractor will recommend a salary range for requested classifications and any newly created classifications, including recommendations on appropriate range spread and overlap.

Report of Findings – Component 1

- a) The Contractor will prepare a draft report of all compensation findings and recommendations.
- b) The Contractor will facilitate a meeting with the Executive Director and Assistant Director to discuss the compensation findings.

RFP Title: HCRC Class & Compensation Study

RFP Number: HCRC-CCS-17-22RB

- c) The Contractor will prepare a final report to include all findings and recommendations for component 1.

Component 2: FLSA review and determination of existing and proposed exempt classifications (approximately 14 incumbents/positions in 8 classifications).

Communication

- a) The Contractor will facilitate a strategic planning meeting with the Executive Director and Assistant Director to discuss project plan, timeline, and deadlines.
- b) The Contractor will provide bi-weekly status updates to the Assistant Director via email, conference call, or in-person as necessary.

Job Analysis

- a) The Contractor will review/create existing and proposed classification specifications and position descriptions, which outline the essential duties performed and the percent of time allocated to each of those duties. The review/creation will encompass all information required to:
 - i. Make a legally defensible FLSA determination for each position;
 - ii. Comply with the Americans with Disabilities Act (ADA); and
 - iii. Make appropriate classification and compensation recommendations.
- b) The Contractor will collect written feedback on each class specification and position description from the Assistant Director.

FLSA Review

- a) The Contractor will evaluate the collected information and make a recommendation for the appropriate FLSA designation for each position.
- b) The Contractor will provide written documentation in support of each of the recommendations to Executive Director and Assistant Director, for final approval.

Report of Findings – Component 2

- a) The Contractor will prepare a draft report of all FLSA findings and recommendations.
- b) The Contractor will facilitate a meeting with the Executive Director and Assistant Director to discuss the FLSA findings.
- c) The Contractor will prepare a final report to include all FLSA findings and recommendations for component 2.

Component 3: The Contractor will make compensation recommendations for HCRC classifications involving FLSA determinations.

Job Evaluation

- a) The Contractor will utilize the agreed upon methodology (see 2.4.1 (a) above) to determine the relative internal value of each classification, so that a fair and equitable compensation structure can be established.
- b) The Contractor will provide Assistant Director written materials which explain the application of the Contractor's job evaluation methodology.

Communication

- a) The Contractor will facilitate a strategic planning meeting with the Executive Office to discuss project plan, timeline and deadlines.

Report of Findings – Compensation

- a) The Contractor will prepare a draft report with recommendations on salary ranges for all HCRC classifications receiving FLSA determinations.
- b) The Contractor will facilitate a meeting with the Executive Director and Assistant Director to discuss the findings.
- c) The Contractor will prepare a final report to include all findings and recommendations for component 3.

RFP Title: HCRC Class & Compensation Study
RFP Number: HCRC-CCS-17-22RB

3. The Timeline.

Service Components

Component 1
Component 2
Component 3

Deliverable Timeline

TBD
TBD
TBD

RFP Title: HCRC Class & Compensation Study
RFP Number: HCRC-CCS-17-22RB

**EXHIBIT A
ATTACHMENT 2
ACCEPTANCE AND SIGNOFF FORM**

Description of Services or Deliverables provided by Contractor:

Date submitted to the HCRC: _____

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

EXHIBIT B

Payment Provisions

1. **General.** Subject to the terms of this Agreement, Contractor shall invoice the HCRC, and the HCRC shall compensate Contractor, as set forth in this Exhibit B. The amounts specified in this Exhibit B, Attachment 1 (“Contractor’s Compensation”) shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the HCRC 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.

3.1 **Amount.** Contractor will deliver monthly invoices at the end of every month outlining work completed per component. Except for the initial planning meetings and the draft/final reports, HCRC expects that the components/subcomponents of the scope of work will overlap and will be executed concurrently. The invoice due date is 45 days from the submission of the invoice.

As soon as all components are completed and accepted, a final invoice for all the Services or Deliverables that the HCRC has accepted shall be submitted. The invoice due date is 45 days from the submission of the invoice and from completion of the last Deliverable set forth in the Statement of Work.

3.2 **No Advance Payment.** The HCRC will not make any advance payment for Services.

3. **Expenses.** Except as set forth in this section, no expenses relating to the Services, and Deliverables shall be reimbursed by the HCRC.

4. Invoicing and Payment

4.1 **Invoicing.** Contractor shall submit only a final invoice to the HCRC. Contractor’s invoice must include information and supporting documentation acceptable to the HCRC. Contractor shall adhere to reasonable billing guidelines issued by the HCRC from time to time.

4.2 **Payment.** The HCRC will pay the final correct, itemized invoice received from Contractor after acceptance of the applicable 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.

4.3 **No Implied Acceptance.** Payment does not imply acceptance of Contractor’s invoice, Services, or Deliverables. Contractor shall immediately refund any payment made in

RFP Title: HCRC Class & Compensation Study

RFP Number: HCRC-CCS-17-22RB

error. The HCRC shall have the right at any time to set off any amount owing from Contractor to the HCRC against any amount payable by the HCRC to Contractor under this Agreement.

5. **Taxes.** Unless otherwise required by law, the HCRC 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 HCRC 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 HCRC pursuant to this Agreement.

END OF EXHIBIT B

RFP Title: HCRC Class & Compensation Study
RFP Number: HCRC-CCS-17-22RB

EXHIBIT B
ATTACHMENT 1
CONTRACTOR'S COMPENSATION
[This attachment will set forth the rates and compensation for Contractor's work in accordance with Contractor's RFP response and the parties' negotiation]

END OF EXHIBIT

EXHIBIT C

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 HCRC 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 HCRC if the HCRC wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the HCRC may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the HCRC of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the HCRC and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the HCRC: (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 HCRC, the HCRC advises are unacceptable to the HCRC.

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 HCRC 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 HCRC.
- 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 HCRC 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, 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.
- 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 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 HCRC's funds or property of significant value to the HCRC. 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 \$1,000,000.00.

- 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 HCRC 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 HCRC'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 HCRC and their 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 HCRC 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 HCRC.
- 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 HCRC and their 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 HCRC 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 HCRC or its designee), indemnify and hold harmless the HCRC against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (ii) a breach of a representation, warranty, or other provision of this Agreement, and (iii) 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, 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 HCRC's prior written consent, which consent shall not be unreasonably withheld; and the HCRC 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 HCRC 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 HCRC 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 HCRC 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 HCRC 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 HCRC 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 HCRC, Contractor shall immediately stop Services as specified in the Notice;

7.2 Termination for Cause. The HCRC 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 HCRC, 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 HCRC'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 HCRC 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 HCRC if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the HCRC determines that Contractor's performance under this Agreement has become infeasible due to changes in applicable laws.

7.5 Rights and Remedies of the HCRC.

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 HCRC 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 HCRC 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 like HCRC and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following Notice, the HCRC'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 HCRC terminates this Agreement in whole or in part for cause, the HCRC may acquire from third parties, under the terms and in the manner the HCRC considers appropriate, services equivalent to those terminated, and Contractor shall be liable to the HCRC for any excess costs for those services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the HCRC for such services be excluded under this Agreement as indirect,

incidental, special, exemplary, punitive or consequential damages of the HCRC. 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 HCRC with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any HCRC-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the HCRC shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the HCRC's termination is not for cause, the HCRC shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the HCRC'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 HCRC. 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 HCRC:
[name, title, address] TBD	Louis A. Stanford Assistant Director Habeas Corpus Resource Center 303 Second Street, Suite 400 South San Francisco, CA 94107
With a copy to: TBD	With a copy to: TBD

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 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 HCRC 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 HCRC: (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.

10.2 Antitrust Claims. *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the HCRC 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 materials, or services by Contractor for sale to the HCRC. Such assignment shall be made and become effective at the time the HCRC tenders final payment to Contractor. If the HCRC 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 HCRC any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the HCRC as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the HCRC 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 HCRC has not been injured thereby, or (b) the HCRC declines to file a court action for the cause of action.

10.3 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 HCRC. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the HCRC. Contractor has no authority to bind or incur any obligation on behalf of the HCRC. If any governmental entity concludes that Contractor is not an independent contractor, the HCRC 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 HCRC 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 HCRC five percent (5%) or more during the time period subject to audit, Contractor must reimburse the HCRC 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. 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 HCRC'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 and provide the Deliverables 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 HCRC owns all right, title and interest in the Confidential Information. Contractor will notify the HCRC promptly upon learning of any unauthorized disclosure or use of Confidential Information and will

cooperate fully with the HCRC to protect such Confidential Information. Upon the HCRC's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the HCRC or, if so directed by the HCRC, destroy all Confidential Information (in every form and medium), and (b) certify to the HCRC 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 HCRC 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.** Contractor hereby assigns to the HCRC 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 HCRC.
- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the HCRC.
- 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 HCRC. A waiver of enforcement of any of this Agreement's terms or conditions by the HCRC is effective only if expressly agreed in writing by a duly authorized officer of the HCRC. 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.

RFP Title: HCRC Class & Compensation Study

RFP Number: HCRC-CCS-17-22RB

- 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 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.

END OF EXHIBIT

RFP Title: HCRC Class & Compensation Study

RFP Number: HCRC-CCS-17-22RB

EXHIBIT 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 HCRC, including information relating to the HCRC’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the HCRC (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 HCRC’s satisfaction that: (a) Contractor lawfully knew prior to the HCRC’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.

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

RFP Title: HCRC Class & Compensation Study

RFP Number: HCRC-CCS-17-22RB

“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 HCRC.

“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.

END OF EXHIBIT