

**ATTACHMENT 2**  
**STANDARD TERMS AND CONDITIONS**

**EXHIBIT A**  
**STANDARD PROVISIONS**

1. Indemnification

The Contractor shall indemnify, defend (with counsel satisfactory to the Judicial Council), and save harmless the Judicial Council and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all other contractors, Subcontractors, suppliers, and laborers, and any other person, firm, or corporation furnishing or supplying Work, Materials, Data, or services in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor or its agents or employees in the performance of this Agreement.

2. Relationship of Parties

The Contractor and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

3. Termination for Cause

The Judicial Council may terminate this Agreement and be relieved of the payment of any consideration to the Contractor if the Contractor fails to perform the provisions of this Agreement at the time and in the manner provided. If the Agreement is terminated, the Judicial Council may proceed with the Work in any manner it deems proper. The cost to the Judicial Council to perform this Agreement shall be deducted from any sum due the Contractor under this Agreement or any other agreement, and the balance, if any, shall be paid to the Contractor upon demand.

4. No Assignment

Without the written consent of the Judicial Council, the Contractor shall not assign this Agreement in whole or in part.

5. Time of Essence

Time is of the essence in the performance of Work under this Agreement.

6. Validity of Alterations

Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

7. Consideration

The consideration to be paid to the Contractor under this Agreement shall be compensation for all the Contractor's expenses incurred in the performance of this Agreement, including travel and per diem, unless otherwise expressly provided.

**END OF EXHIBIT**

**EXHIBIT B**  
**SPECIAL PROVISIONS**

1. Definitions

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.

- A. “**Executive Director**” refers to that individual or authorized designee, empowered by the Judicial Council and state law to make final and binding executive decisions on behalf of the HCRC.
- B. “**Amendment**” means a written document issued by the HCRC and signed by the Contractor which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- C. “**Confidential Information**” means legal, trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the HCRC’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- D. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the HCRC and the Contractor, as attached to and incorporated by a fully executed Judicial Council Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “**Agreement**.”
- E. The “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, subsidiaries, affiliates, or combination thereof, including joint ventures, contracting with the HCRC to do the Contract Work. The Contractor is one of the parties to this Agreement.
- F. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- G. “**Day**” means calendar day, unless otherwise specified.

- H. “**Deliverable(s)**” or “**Submittal(s)**” means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the Judicial Council for acceptance.
- I. “**Force Majeure**” means a delay which impacts the timely performance of Work which neither the Contractor nor the Judicial Council are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i. Acts of God or the public enemy;
  - ii. Acts or omissions of any government entity;
  - iii. Fire or other casualty for which a party is not responsible;
  - iv. Quarantine or epidemic;
  - v. Strike or defensive lockout; and,
  - vi. Unusually severe weather conditions.
- J. “**Judicial Council Standard Agreement**” means the form used by the HCRC to enter into agreements with other parties. Several originally signed, fully executed versions of the Judicial Council Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual “**Contract Counterpart**.”
- K. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- L. “**Notice**” means a written document initiated by the authorized representative of either party to this Agreement and given by:
- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
  - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- M. “**Project**” refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the HCRC and the HCRC’s representatives.
- N. “**Stop Work Order**” means the written Notice, delivered in accordance with this Agreement, by which the HCRC may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this Exhibit B.

- O. “**Subcontractor**” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the HCRC refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
  - P. “**Task(s)**” means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the HCRC.
  - Q. “**Third Party**” refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the HCRC or the Contractor, which is not a party to this Agreement.
  - R. “**Work**” or “**Work to be Performed**” or “**Contract Work**” may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the HCRC. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.
2. Termination Other Than for Cause
- A. In addition to termination for cause under Exhibit A, Standard Provisions paragraph 3, the HCRC may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.
  - B. If the HCRC terminates all or a portion of this Agreement other than for cause, the HCRC shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.
3. HCRC's Obligation Subject to Availability of Funds
- A. The HCRC's obligation under this Agreement is subject to the availability of authorized funds. The HCRC may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the HCRC, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the HCRC may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the HCRC's rights to terminate for convenience or default.

- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
  - i. The HCRC will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
  - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
  
- C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

4. Stop Work

- A. The HCRC may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the 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, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the 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 Work covered by the Stop Work Order as provided for in either of the termination provisions of 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, the Contractor shall resume Work. 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 the Contractor’s cost properly allocable to the performance of any part of this Agreement; and
  - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work 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. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the HCRC's Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the HCRC shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- D. The HCRC shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

5. Agreement Administration / Communication

A. Under this Agreement, the Project Manager, TBD, shall monitor and evaluate the Contractor's performance. All requests and communications about the Work to be Performed under this Agreement shall be made through the Project Manager.

- i. Any Notice from the Contractor to the HCRC shall be in writing and shall be delivered the Project Manager as follows:

TBD, Project Manager  
Habeas Corpus Resource Center  
303 Second Street, Suite 400 South  
San Francisco, CA 94107

- ii. Other than for Notices, the Project Manager may be contacted as follows:

TBD, Project Manager  
Telephone: 415-348-3800  
Facsimile: 415-348-3800  
Email: TBD@hrc.ca.gov

- iii. Notice to the Contractor shall be directed in writing to:

Contractor: TBD  
Attn: TBD  
Address1: TBD  
Address2: TBD

- iv. Other than for Notices, the Contractor may be contacted as follows:

Attn: TBD  
Telephone: TBD  
Facsimile: TBD  
Email: TBD

6. Manner of Performance of Work

The Contractor shall complete all Work specified in these Contract Documents to the HCRC's satisfaction and in compliance with the Nondiscrimination / No Harassment Clause, as set forth in this Exhibit B.

7. Acceptance of the Work

- A. The Project Manager shall be responsible for the sign-off acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the Project Manager will apply the acceptance criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
- B. Acceptance Criteria for Work (“**Criteria**”) provided by the Contractor pursuant to this Agreement:
- i. Timeliness: The Work was delivered on time;
  - ii. Completeness: The Work contained the Data, Materials, and features required in the Contract; and
  - iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the HCRC, in accordance with direction from the Project Manager. The HCRC shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The HCRC’s Project Manager shall use the Acceptance and Signoff Form, provided as Attachment 1 to Exhibit E, to notify the Contractor of the Work’s acceptability.
- D. If the HCRC rejects the Work provided, the HCRC’s Project Manager shall submit to the Contractor a written rejection using Attachment 1, the Acceptance and Signoff Form, describing in detail the failure of the Work as measured against the Criteria. If the HCRC rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- E. If the Project Manager requests further change, the Contractor shall meet with the Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the HCRC and a principal of the Contractor, as set forth in subparagraph F below.

- F. If agreement cannot be reached between the HCRC's Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the HCRC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the HCRC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the HCRC, or its designee, in the reasonable time established by the HCRC, the HCRC may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the HCRC may terminate this Agreement pursuant to the terms of Standard Provisions paragraph 3, as set forth in Exhibit A.

8. Agreement Term Options

- A. Until this Agreement is mutually signed and delivered, none of the terms and conditions of this Agreement shall have any legal force or effect, and any such prior commencement of performance by the Contractor shall be at the Contractor's own risk; provided however, following mutual execution and delivery of this Agreement, the terms and conditions of this Agreement shall be deemed to apply equally to both subsequent and prior performance.
- B. For the purposes of the **HCRC Scanning Services** Initial Term, the Agreement Initial Term shall be from **June 23, 2016** through **May 31, 2019**.
- C. The Parties agree that the HCRC may elect to exercise an option to extend the Agreement for four (**4**) option terms, if authorized in writing in accordance with the terms and conditions of the Agreement.
- D. The Agreement First Option Term shall be from **June 1, 2016** through **May 31, 2017** (FY2015-16).
- E. The Agreement Second Option Term shall be from **June 1, 2017** through **May 31, 2018** (FY2016-17).
- F. The Agreement Third Option Term shall be from **June 1, 2018** through **May 31, 2019** (FY2017-18).
- G. The Agreement Fourth Option Term shall be from **June 1, 2019** through **May 31, 2020** (FY2018-19).
- H. In the event the HCRC elects to exercise an Agreement Option Term, as set forth in this provision, the Agreement will be modified by a Standard Agreement Amendment, executed by the Parties.

9. Subcontracting

The Contractor shall not subcontract this Agreement or services provided under this Agreement, unless the HCRC agrees to the subcontracting in writing. Any authorized subcontract(s) shall be executed in the same manner as this Agreement. No party to this Agreement shall in any way contract on behalf of or in the name of another party to this Agreement.

10. Changes and Amendments

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Project Manager. Requests for changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After the Project Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a Judicial Council Standard Agreement.

11. Accounting System Requirement

The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP.

12. Retention of Records

The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with state and federal law, a minimum retention period being no less than four (4) years. The retention period starts from the date of the submission of the final payment request. The Contractor is also obligated to protect Data adequately against fire or other damage.

13. Audit

The Contractor shall permit the authorized representative of the HCRC or its designee or both at any reasonable time to inspect or audit all Data relating to performance and billing to the HCRC under this Agreement. The Contractor further agrees to maintain such Data for a period of four (4) years after final payment under this Agreement.

14. Copyrights and Rights in Data

All copyrights and rights in the Data produced with funding from this Agreement that may presumptively vest in the Contractor shall be transferred to the HCRC.

15. Ownership of Results

- A. Any interest of the Contractor in Data in any form, or other documents and/or recordings prepared by the Contractor for performance of services under this Agreement shall become the property of the HCRC. Upon the HCRC's written request, the Contractor shall provide the HCRC with all this Data within thirty (30) Days of the request.
- B. The Contractor agrees not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole, or part, or any manner or form, or authorize others to do so without the written consent of the HCRC.

16. Ownership of Intellectual Property, Etc.

- A. Unless the Contractor and the HCRC reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the HCRC's requirement (a) all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the HCRC shall be treated as if it were "work for hire" for the HCRC, and (b) the Contractor will immediately disclose to the HCRC all discoveries, inventions, enhancements, improvements, and similar creations (collectively, "Creations") made, in whole or in part, by the Contractor in the course of or related to providing services to the HCRC.
- B. All ownership and control of the above Data, Materials, and Creations, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the HCRC, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the HCRC, without any additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the HCRC. The Contractor agrees to execute any documents required by the HCRC to register its rights and to implement the provisions herein.

17. Insurance Requirements

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the HCRC shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy

renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.

- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
- i. Workers' Compensation at statutory requirements of the state of residency.
  - ii. Employers' Liability with limits not less than **\$1,000,000.00** for each accident.
  - iii. Commercial General Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage.
  - iv. Business Automobile Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
  - v. Professional Liability: **\$1,000,000.00**.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the HCRC. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the HCRC and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
- i. The HCRC, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
  - ii. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the HCRC, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the HCRC, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way,
  - iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the HCRC certificates of insurance satisfactory to the HCRC evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the HCRC's request.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the HCRC, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the HCRC, the Contractor shall, upon Notice to that effect from the HCRC, promptly obtain a new policy, and shall submit the same to the HCRC, with the appropriate certificates and endorsements, for approval.

- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the HCRC of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Habeas Corpus Resource Center, 303 Second Street, Suite 400 South, San Francisco, CA 94107

18. Confidentiality

- A. Both the HCRC and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the HCRC may disclose Confidential Information to the Contractor.
- B. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the HCRC's Confidential Information on a "need to know" basis to the Contractor's employees and Subcontractors and, as directed by the Project Manager, representatives of the HCRC that are working on the Project. All such employees and Subcontractors of the Contractor shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor's clients and business.
- C. The Contractor shall acquire no right or title to the Confidential Information. The Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

19. Conflict of Interest

- A. The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of state funds or that are sponsored by the HCRC if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or (v) adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- B. The Contractor certifies and shall require any Subcontractor to certify to the following: Former HCRC employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision

making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from state service.

20. Covenant Against Gratuities

The Contractor warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the HCRC with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the HCRC will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the HCRC in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the HCRC provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

21. Drug-Free Workplace

The Contractor certifies that it will provide a drug-free workplace as required by California Government Code, Section 8355 through Section 8357.

22. Americans with Disabilities Act

By signing this Agreement, Contractor assures the HCRC that it complies with applicable provisions of the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. Sections 012101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

23. California Law

This Agreement shall be subject to and construed in accordance with the laws of the State of California.

24. Severability

If any term or provision of this Agreement is found to be illegal or unenforceable, this Agreement shall remain in full force and effect and that term or provision shall be deemed stricken.

25. Waiver

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at

the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

26. Signature Authority

The parties signing this Agreement certify that they have proper authorization to do so.

27. Survival

The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

28. Judicial Branch Contracting Law Provisions

The Judicial Branch Contracting Law (JBCL) provisions are required for compliance with Public Contract Code (“PCC”), part 2.5, enacted under Senate Bill 78 (Stats. 2011, ch. 10), and the Judicial Branch Contracting Manual (“JBCM”) adopted pursuant to that law.

- A. **Contractor Certification Clauses.** Contractor certifies that the following representations and warranties are true, and shall cause these representations and warranties to remain true during the term of this Agreement. Contractor shall promptly notify the HCRC if any representation and warranty becomes untrue.
- i. **Non-discrimination.** 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 section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of non-discrimination.
  - ii. **National Labor Relations Board.** 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.

- iii. **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.

**B. Provisions Applicable Only to Certain Agreements.** The provisions in this section are *applicable only to the types of agreements specified in the title of each subsection*. If the agreement is not of the type described in the title of a subsection, then that subsection does not apply to the agreement.

- i. **Agreements over \$10,000.** This Agreement is subject to examinations and audit by the California State Auditor for a period of three years after final payment.
- ii. **Agreements over \$50,000.** No funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term).
- iii. **Agreements of \$100,000 or More.** Contractor certifies that it is, and will remain for the term of the Agreement, in compliance with PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits regarding marital or domestic partner status. Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in 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.
- iv. **Agreements for Services over \$200,000 (Excluding consulting services).** Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare & Institutions Code section 11200 and PCC 10353.
- v. **Agreements of \$1,000,000 or More.** 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 HCRC to enter into this Agreement pursuant to PCC 2203(c).
- vi. **Agreements for the Purchase of Goods.** Contractor shall not sell or use any article or product as a “loss leader” as defined in Business and Professions Code section 17030.

- vii. **Agreements for the Purchase of Certain Goods, and Printing, Parts Cleaning, Janitorial, and Building Maintenance Services Agreements.** If Contractor will sell to the HCRC, or use in the performance of this Agreement, 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), then with respect to those goods: (i) Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible, and (ii) 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.
- viii. **Agreements for Furnishing Equipment, Materials, Supplies, or for Laundering Services.** Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the HCRC 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 Sweat free Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the HCRC.
- ix. **Agreements for which Contractor Has Committed to Achieve DVBE Participation.** Contractor shall within sixty (60) days of receiving final payment under this Agreement certify in a report to the HCRC: (i) the total amount the prime Contractor received under this Agreement; (ii) the name and address of any disabled veterans business enterprise ("DVBE") that participated in the performance of this Agreement; (iii) the amount each DVBE received from the Contractor; (iv) that all payments under this Agreement have been made to the DVBE; and (v) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

- x. **Agreements Resulting from Competitive Solicitations.** 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 goods, 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 the Contractor. If the HCRC receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the 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 the 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 the Contractor, the HCRC shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the HCRC has not been injured thereby, or (b) the HCRC declines to file a court action for the cause of action.
- xi. **Agreements for Legal Services.** Contractor shall: (i) adhere to legal cost and billing guidelines designated by the HCRC; (ii) adhere to litigation plans designated by the HCRC, if applicable; (iii) adhere to case phasing of activities designated by the HCRC, if applicable; (iv) submit and adhere to legal budgets as designated by the HCRC; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the HCRC; and (vi) submit to legal bill audits and law firm audits if so requested by the HCRC, whether conducted by employees or designees of the HCRC or by any legal cost-control provider retained by the HCRC for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the HCRC. If (a) the value of this agreement 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 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 non-renewal of the 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.

- xii. **Agreements Allowing for Reimbursement of Contractor's Costs.**  
Contractor must include with any request for reimbursement from the HCRC a certification that the 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 HCRC was sought for these costs, and Contractor will provide those records to the Attorney General upon request.
  
- xiii. **Agreements Performed in California by Contractors that are Corporations, LLCs, or LPs.** Contractor is, and will remain for the term of the Agreement, qualified to do business and in good standing in California.

29. Entire Agreement

This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a duly authorized representative of the HCRC.

**END OF EXHIBIT**

**EXHIBIT C**  
**PAYMENT PROVISIONS**

1. Contract Amount

The total amount the HCRC may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, shall not exceed \$TBD for the Initial Term, as set forth below. The Contract Amount may be changed only by amendment to this Agreement.

Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement. Contractor shall immediately refund any payment made in error. The 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.

2. Consideration for Contract Work

Compensation shall be based upon actual expenses at the rates and fees set forth in Exhibit F, Rate and Fee Schedule. The Contractor shall not charge the HCRC for any service change not included in Exhibit F, unless authorized by the HCRC. However in no event shall the Contract Amount exceed the amount listed in paragraph, above.

3. Other Expenses

The HCRC shall not consider reimbursement for costs not defined as allowable in this Agreement, including but not limited to any administrative, operating, travel, meals, and lodging expenses incurred during the performance of this Agreement.

4. Taxes

The HCRC is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employees' wages. The HCRC will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement.

5. Method of Payment

A. The Contractor shall submit an invoice for Work provided upon completion of the Work, as set forth in Exhibit D, Work to be Performed. After receipt of invoice, the HCRC will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

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- B. The HCRC will make payment in arrears after receipt of the Contractor’s properly completed invoice. Invoices shall clearly indicate the following:
- i. The Contract number.
  - ii. A unique invoice number.
  - iii. The Contractor's name and address.
  - iv. The taxpayer identification number (the Contractor’s social security or federal employer identification number).
  - v. A description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate.
  - vi. The DVBE dollars expended, if DVBE commitments were made;
  - vii. The appropriate receipts for reimbursement of allowable expenses, if this Agreement provides for reimbursement.
  - viii. The dates and hours worked.
  - ix. The contractual charges, including the appropriate cost, price, rate, progress payment, or expenses, if allowable under this Contract.
  - x. A preferred remittance address, if different from the mailing address or the following remittance address:

Ktr: TBD  
 Attn: TBD  
 Remit address: TBD

- C. The Contractor shall submit one (1) original invoice to:

Attn: PROJECT MANAGER TBD  
 Habeas Corpus Resource Center  
 303 Second Street, Suite 400 South  
 San Francisco, CA 94107

- D. Note that invoices to be paid from certain funding sources used for this Agreement, must be submitted to HCRC’s Accounts Payable no later than the applicable dates set forth in Table 1, below. The HCRC may not be responsible for payment of invoices from the funding sources identified in Table 1, below, if invoices to be paid from such funding sources are received after the applicable dates specified in Table 1.

**Table 1, Invoice Due Dates for Specified Funding Sources**

<i>Term / Option Term</i>	<i>Fiscal Year</i>	<i>Invoice(s) Due No Later Than</i>
Initial Term	2016-17	April 30, 2017
Option Term 1	2017-18	April 30, 2018
Option Term 2	2018-19	April 30, 2019
Option Term 3	2019-20	April 30, 2020
Option Term 4	2020-21	April 30, 2021

- E. Please note that invoices or vouchers not on printed bill heads shall be signed by the Contractor or the person furnishing the supplies or services.

6. Disallowance

If the Contractor claims or receives payment from the HCRC for a service or reimbursement that is later disallowed by the HCRC, the Contractor shall promptly refund the disallowed amount to the HCRC upon the HCRC's request. At its option, the HCRC may offset the amount disallowed from any payment due or that may become due to the Contractor under this Agreement or any other agreement.

7. Payment Does Not Imply Work Is Accurate

The granting of any progress payment by the HCRC as provided in this Exhibit, shall in no way lessen the liability of the Contractor to replace unsatisfactory Work or Material, even if the unsatisfactory character of such Work or Material may not have been apparent or detected at the time such payment was made. Materials, Data, components, or workmanship that do not conform to Exhibit D, Work to Be Performed, shall be rejected and shall be replaced by the Contractor without delay.

8. Final Invoicing

- A. Contractor must submit invoices for completed and accepted Deliverables no later than the "Invoice Due No Later Than" Date identified for each appropriate fund source in Table 1 of this Exhibit. The HCRC may not be responsible for payment of invoices received after the "Invoice Due No Later Than" Date specified in this Exhibit for the applicable fund source.
- B. For the very last invoice to be processed against this Agreement, Contractor will identify as "Final Invoice."

**END OF EXHIBIT**

**EXHIBIT D  
WORK TO BE PERFORMED**

1. Definitions

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined. [HCRC and Contractor to complete complete definitions upon the issuance of the Notice of Intent to Award].

- A. B&W
- B. Color
- C. Data Entry
- D. Document Delivery and Pickup
- E. Document Perparation
- F. Document Reassembly
- G. Electronic Endorsement of Bates
- H. Image Capture
- I. Load File Creation
- J. Optical Mark Detection
- K. Physical Bates
- L. Project Mangement
- M. Quality Control
- N. Rush Services
- O. Scan Setup

2. Summary of Work

The HCRC agrees to retain the Contractor to provide Scanning services outlined in Exhibit F, including black and white, color scanning, image catpure, indexing, bates labeling, and file conversion. The Contractor must perform all work in a manner that complies with indistry standards.

3. Basic roles and responsibilities of HCRC:

- A. The HCRC's project manager will be responsible for managing and scheduling all project activities, including providing documents to be scanned as outlined below and communicating timelines, and instructions to the Contractor.
- B. For batches containing documents with physical Bates numbers, ensure that all pages within the batch have Bates labels, individual documents are organized in Bates number order, there are no duplicate Bates numbers, and there are no gaps in Bates sequences within a document.
- C. Delimit each document using agreed-upon conventions (such as OMD sheets, logical document breaks, etc.).
- D. Flag any batches that contain disturbing material, especially photographs.
- E. Clearly mark any pages that are not to be scanned.

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- F. Prepare a job request form for each batch that provides general information and details any special instructions for that scanning batch.

4. Basic roles and responsibilities of vendor:

- A. Provide document pick up and drop off for all scanning work.
- B. Contact HCRC if clarification is required for the scanning project.
- C. Provide HCRC with estimated turnaround times upon request and notify HCRC of any concerns regarding problems or delays in workflow.
- D. Perform scanning, load file creation, and quality control for all projects.
- E. Adhere to strict chain-of-custody and confidentiality protocols.
- F. Provide scanned images and LFP load files on re-usable USB Flash drives ("thumb drives") which will be provided by HCRC.

5. Changes in Instructions

The HCRC may change its project instructions by notifying the Contractor in writing atleast two (2) days in advance. The HCRC may add or delete services, as required, at rates set forth in Exhibit F, Rate and Fee Schedule, without altering Contract provisions. Exhibit B, Special Provisions, Paragraph 10, Changes and Amendments, shall apply to changes to any Contract terms and conditions.

6. Authority and Approval

The Contractor is not authorized to make final and binding decisions or approvals on behalf of the HCRC. As required in this Agreement, the Contractor will obtain the necessary approvals from the Project Manager and/or the Business Services Manager as may be required.

**END OF EXHIBIT**

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**EXHIBIT E**  
**ATTACHMENTS**

1. This Exhibit includes the following form(s):
  - A. Attachment 1, Rate and Fee Schedule
  - B. Attachment 2, Acceptance & Signoff Form

**END OF EXHIBIT**

**EXHIBIT E**  
**ATTACHMENT 1**

**RATE AND FEE SCHEDULE**

1. Rates and Fees Applicable during Initial Term

The following rates and changes are applicable for services rendered by the Contractor during the Initial Term, [term date to be entered here]

[rate and fees to be inserted here].

**END OF ATTACHMENT**

**EXHIBIT E**  
**ATTACHMENT 2**

**ACCEPTANCE AND SIGNOFF FORM**

Description of Work provided by Contractor:

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Date submitted: \_\_\_\_\_

Work is:

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

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2) Complete:  yes  no. If no, please identify incomplete aspects of the Work.

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

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Please note level of satisfaction:

Poor  Fair  Good  Very Good  Excellent

Comments, if any:

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Work is accepted.

Work is unacceptable as noted above.

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

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

Date: \_\_\_\_\_

**END OF ATTACHMENT**