

# **RFP Attachment 2**

## **Agreement Terms and Conditions**

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**STANDARD PROVISION  
(EXHIBIT A)**

**NOTE: As set forth in Section 4 of the RFP: The provisions marked with an (\*) within the Terms and Conditions are minimum contract terms and conditions (“Minimum Terms”)A proposal that takes a material exception (addition, deletion, or other modification) to a Minimum Term will be deemed nonresponsive. The AOC, in its sole discretion will determine what constitutes a material exception.**

1. Indemnification

The Contractor shall indemnify, defend (with counsel satisfactory to the AOC), and save harmless the AOC 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

A. Pursuant to this provision, the AOC may terminate this Agreement in whole or in part under any one of the following circumstances, by issuing a written Notice of termination for default to the Contractor:

- i. If the Contractor (a) fails to perform the services within the time specified herein or any extension thereof, (b) fails to perform any requirements of this Agreement, or (c) so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, after receipt of a written Notice from the AOC specifying failure due to any of the preceding three (3) circumstances, the Contractor does not cure such failure within a period of five (5) business days or a longer period, if authorized in the Notice of failure; or,
- ii. If the Contractor should cease conducting business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of

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creditors, admit in writing its inability to pay its debts as they mature, suffer or permit the appointment of the receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any State authority relating to insolvency or protection from the rights of creditors.

- B. In the event the AOC terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the AOC may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the AOC for any excess costs for such similar supplies or services, subject to the limitations contained elsewhere herein; further, the Contractor shall continue the performance of this Agreement to the extent not terminated under this provision.
  - C. The Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of acts of Force Majeure; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
  - D. If, after Notice of termination for default of this Agreement, it is determined for any reason that the Contractor was not in default under this provision, or that the default was excusable under this provision, the obligations of the AOC shall be to pay only for the services rendered at the rates set forth in the Agreement.
  - E. The rights and remedies of either Party provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
4. No Assignment\*
- A. Contractor may not assign an Agreement, in whole or in part, without the prior written consent of the Project Manager. Consent may be granted or withheld in the absolute discretion of the AOC. Any attempted assignment without the prior written consent of the AOC is void. No assignment will release Contractor from its duties under an Agreement.
  - B. All billing must go through the Contractor.
5. Time of Essence
- Time is of the essence in the Contractor's performance of this Agreement.
6. Validity of Alterations

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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 full compensation for all the Contractor's time, materials, costs and expenses incurred in the performance of this Agreement unless otherwise expressly provided.

*END OF STANDARD PROVISIONS (EXHIBIT A)*

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**SPECIAL PROVISIONS**  
**(EXHIBIT B)**

1. Definitions

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

- A. **“Acceptance”** means the written acceptance issued to the Contractor by the AOC after the Contractor has completed a Deliverable, Submittal, or other Contract requirement, in compliance with the Contract Documents, including without limitation, the Acceptance of the Work provision set forth in this exhibit.
- B. **“Administrative Director”** refers to that individual or authorized designee, empowered by the AOC to make final and binding executive decisions on behalf of the AOC.
- C. **“Administrative Office of the Courts”** or **“AOC”** refers to the Judicial Council of California, Administrative Office of the Courts. The AOC is one of the Parties to this Agreement.
- D. **“Amendment”** means a written document issued by the AOC and signed by the Contractor which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in any not to exceed amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- E. **“Confidential Information”** means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the AOC’s business or the business of its Members. 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.
- F. The **“Contract”** or **“Contract Documents”** constitute the entire integrated agreement between the AOC and the Contractor, as attached to and incorporated by a fully executed Standard Agreement Coversheet. The terms **“Contract”** or **“Contract Documents”** may be used interchangeably with the term **“Agreement.”**

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- G. “**Contract Amount**” means the total amount encumbered under this Agreement for any payment by the AOC to the Contractor for performance of the Work, in accordance with the Contract Documents.
- H. The “**Contractor**” means the individual, subsidiaries, association, partnership, firm, company, consultant, corporation, or combination thereof, including joint ventures, contracting with the AOC to do the Contract Work. The Contractor is one of the Parties to this Agreement.
- I. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- J. “**Day**” means calendar day, unless otherwise specified.
- K. “**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 AOC for acceptance.
- L. “**Executive Office**” refers to the Administrative Director of the Courts, the Chief of Staff, the Chief Administrative Officer, and the Chief Operating Officer.
- M. “**Force Majeure**” means a delay which impacts the timely performance of Work for which neither the Contractor nor the AOC are liable 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.
- N. “**Key Personnel**” mean the Contractor’s personnel named in Exhibit E, Contractor’s Key Personnel, whom the AOC has identified and approved to perform the Work of the Contract. Roles of Key Personnel are set forth in Exhibit E, Contractor’s Key Personnel.
- O. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.

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- P. **“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.
- Q. **“Party”** means either the AOC or Contractor, as the case may be.
- R. **“Project Manager”** refers to the AOC’s assigned representative or designee responsible for the oversight of all Contractor activities/services.
- S. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the AOC and the AOC’s representatives.
- T. **“Standard Agreement Coversheet”** or **“Standard Amendment Coversheet”** means the form used by the AOC to enter into agreements or amendments with other parties. Several originally signed, fully executed versions of the Standard Agreement Coversheet or Standard Amendment Coversheet, together with the integrated Contract Documents, shall each represent the Agreement or Amendment as an individual **“Contract Counterpart.”**
- U. **“Stop Work Order”** means the written Notice, delivered in accordance with this Agreement, by which the AOC 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.
- V. **“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 AOC 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.
- W. **“Task(s)”** means one or more functions, if specified in the Contract to be performed by the Contractor for the AOC.
- X. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint

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ventures, other than the AOC or the Contractor, which is not a party to this Agreement.

- Y. **“Transition Period”** means a period of time commencing (i) three months prior to the expiration of this Agreement or on an earlier date as the AOC may request and Contractor may agree, (ii) upon any notice of termination or non-renewal of this Agreement, or (iii) three months prior to any other ceasing of services under this Agreement, as applicable, and continuing through the effective date of expiration, termination or cessation, but for no less than three months. Notwithstanding the foregoing, in no event shall the Transition Period extend more than 60 days beyond the effective date of termination, regardless of the reason for the termination.
- Z. **“Transition Plan”** refers to the plan set forth in this Agreement as necessary to allow the Work to continue without interruption or adverse effect and facilitate the orderly transfer of the Work to the AOC or the AOC’s designee.
- AA. **“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 AOC. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

#### 2. Manner of Performance of Work

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

#### 3. Termination Other Than for Cause\*

- A. In addition to termination for cause under Exhibit A, Standard Provisions paragraph 3, the AOC 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 AOC terminates all or a portion of this Agreement other than for cause, the AOC shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total not to exceed amount.

#### 4. AOC's Obligation Subject to Availability of Funds\*

- A. The AOC's obligation under this Agreement is subject to the availability of authorized funds. The AOC may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the AOC, for lack of



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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 AOC may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the AOC'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 AOC 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.

### 5. Stop Work

- A. The AOC 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. 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 AOC 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 AOC shall make an equitable adjustment in the delivery schedule, the

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not to exceed 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 AOC decides the facts justify the action, the AOC 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 AOC's Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the AOC shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- D. The AOC shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.
6. Agreement Administration/Communication
- A. Project Manager.
- i. The responsibilities of the AOC's Project Manager or designee include but are not limited to the following:
    - a) Acts a liaison between the Contractor and the AOC pertaining to the Work to be Performed under this Agreement;
    - b) Monitors and evaluates the Contractor's performance;
    - c) Proactively assists with resolution of issues; and
    - d) Oversees all Contractor activities/services.
- B. Designee.
- i. Any designees shall be set forth in writing for the benefit of the other party.

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C. Notices.

- i. Any notice from the Contractor to the AOC shall be in writing and shall be delivered as follows:

[TBD], Project Manager  
Judicial Council of California,  
Administrative Office of the Courts  
Human Resources Services Office  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

- ii. Notice from the AOC to the Contractor shall be directed in writing to:

[TBD]

- D. 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.

7. Standard of Professionalism

The Contractor shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement.

8. Evaluation of Contractor

The AOC shall evaluate the Contractor's performance under the Agreement.

9. 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;

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- 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), and concepts are presented logically and clearly.
- C. The Contractor shall provide the Work to the AOC, in accordance with direction from the Project Manager. The AOC shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The Project Manager shall use the Acceptance and Signoff Form, provided as Attachment 1 to this Agreement's Exhibit F, Attachments, to notify the Contractor of the Work's acceptability.
- D. If the AOC rejects the Work provided, the 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 AOC 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 Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.
- F. If agreement cannot be reached between the Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the AOC 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 AOC may terminate this Agreement pursuant to the terms of Standard Provisions paragraph 3, as set forth in Exhibit A.
10. Contractor's Personnel and Replacement of Personnel

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- A. The AOC reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the AOC under this Agreement if in the AOC's opinion, either the performance of the Contractor's personnel is unsatisfactory, or continued assignment of any of Contractor's personnel is not in the best interest of the AOC. The AOC agrees to provide Notice to the Contractor in the event it makes such a determination. If the AOC exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
  - B. If any of the Contractor's Key Personnel become unavailable, or are disapproved in accordance with subparagraph A, above, during the term of this Agreement, the Contractor shall immediately assign replacement personnel acceptable to the Project Manager, possessing equivalent or greater experience and skills as that demonstrated in the resume set forth in Exhibit E, Contractor's Key Personnel.
  - C. The Contractor shall endeavor to retain the same individuals on the Project during the performance of the Work of this Agreement. However, the Contractor may, with approval of the Project Manager, introduce personnel to the Project with specific skill sets or release personnel from the Project whose skill set is not needed at the time, except for the Contractor's point of contact.
  - D. If any of the Contractor's Key Personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the AOC, the AOC may terminate this Agreement for cause pursuant to Standard Provisions paragraph 3, as set forth in Exhibit A.
11. Assignments or Subcontracting
- A. This Agreement is based upon the unique expertise of the Contractor. Therefore, in addition to the prohibition against assignment under Exhibit A, Standard Provisions section 4, it is the policy of the AOC to withhold consent from proposed assignments, subcontracts, or notations when such transfer of responsibility would operate to decrease the AOC's likelihood of receiving performance under this Agreement. No performance of this Agreement or any portion thereof may be assigned or subcontracted by the Contractor without the express written consent of the AOC, and any attempt by the Contractor to assign or subcontract any performance of this Agreement without the express written consent of the AOC shall be void and shall constitute a breach of this Agreement. If the Contractor is authorized by the AOC to subcontract or assign, all the terms of this Agreement shall be included in such subcontract or assignment and all billing must come from the Contractor.
12. Services Warranty

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The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services or provide any technical assistance in planning, development, training, consulting or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will conform to the requirements of this Agreement. All warranties, including any special warranties specified elsewhere herein, shall inure to the AOC, its successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

13. 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 State Standard Agreement or Amendment Coversheet.

14. Accounting System Requirement

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

15. 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.

16. Audit

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

17. Insurance Requirements

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- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the AOC 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 insurance that covers the Contractor and the Assigned Personnel employed by the Contractor with limits no less than the following:
- i. Workers' Compensation at statutory requirements of the state of residency.
  - ii. Employers' Liability insurance shall not be less than **\$1,000,000.00** for injury or death for each occurrence.
  - iii. Comprehensive General Liability Insurance shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage “occurrence” form, with no coverage deletions. The limit shall not be less than **\$1,000,000.00** for each occurrence / **\$2,000,000.00** aggregate for bodily injury, property damage and personal injury. Coverage shall be:
    - (a) by “Additional Insured” endorsement add as insureds the AOC, its agents, and employees with respect to liability arising out of or connected with the service provided. In the event the Commercial General Liability policy includes a “blanket endorsement by contract,” the following language added to the certificate of insurance will satisfy the AOC’s additional insured requirement: “The AOC, its directors, agents and employees with respect to liability arising out of the work performed by or for the Contractor are additional insureds under a blanket endorsement”; and
    - (b) endorsed to specify that the Contractor’s insurance is primary and that any insurance or self-insurance maintained by the AOC shall not contribute with it.
  - iv. Business Automobile Liability Insurance coverage shall be at least as broad as the ISO Business Auto Coverage form covering Automobile Liability,

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code 1 “any auto.” The limit shall not be less than **\$1,000,000.00** each accident for bodily injury and property damage.

- v. Professional Liability: Errors and Omissions **\$1,000,000.00**.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the AOC. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor’s liability to the AOC and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions.
  - i. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
    - (a) To the extent of the Contractor’s negligence, the Contractor’s insurance coverage shall be primary insurance as respects the AOC, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the AOC, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way; and
    - (b) 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.
  - ii. In the event the Contractor will provide attorney, architectural, engineering, or other professional services, which require a “standard of care” against negligent acts, the Contractor will also maintain Professional Liability insurance, which covers the work provided by such personnel, at not less than \$1,000,000.00 per claims made.
- E. The Contractor shall provide the AOC certificates of insurance satisfactory to the AOC evidencing all required coverages before Contractor begins any work under this Agreement, and complete copies of each policy upon the AOC's request.
- F. Subcontractors. The Contractor shall include any Subcontractors as insured under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverage, provided by Subcontractors as evidence of compliance with the insurance requirements of this Agreement, shall be subject to all of the requirements stated herein.
- G. If at any time the foregoing policies shall be or become unsatisfactory to the AOC, as to form or substance, or if a company issuing any such policy shall be or become



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unsatisfactory to the AOC, the Contractor shall, upon Notice to that effect from the AOC, promptly obtain a new policy, and shall submit the same to the AOC, with the appropriate certificates and endorsements, for approval.

- H. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the AOC of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Judicial Council of California, Administrative Office of the Courts, Business Services Manager, 455 Golden Gate Ave., 6<sup>th</sup> Floor, San Francisco, CA 94102.

#### 18. Confidentiality

- A. Both the AOC and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the AOC 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 AOC's Confidential Information on a "need to know" basis to employees and Subcontractors of the Contractor performing services for the AOC. 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. 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 AOC.

#### 20. Ownership of Results

- A. Unless the Contractor and the AOC reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the AOC's requirement (i) 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 AOC shall be treated as if it were "work for hire"

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for the AOC, and (ii) the Contractor will immediately disclose to the AOC 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 AOC.

- 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 AOC, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the AOC, 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 AOC. The Contractor agrees to execute any documents required by the AOC to register its rights and to implement the provisions herein. Upon the AOC's written request, the Contractor shall provide the AOC with all this Data within thirty (30) Days of the request.
- C. 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 AOC.

#### 21. Protection of Proprietary Software and Other Proprietary Data

- A. The AOC agrees that all Data and Materials appropriately marked or identified in writing as proprietary, and furnished hereunder, are provided for the AOC's exclusive use for the purposes of this Agreement only. All such proprietary Data shall remain the property of the Contractor. The AOC agrees to take all reasonable steps to insure that such proprietary Data are not disclosed to others, without prior written consent of the Contractor.
- B. The AOC will use reasonable efforts to insure, prior to disposing of any media, that any licensed Data and Materials contained thereon have been erased or otherwise destroyed.
- C. The AOC agrees that it will take appropriate action by instruction, agreement, or otherwise, with its employees or other persons permitted access to licensed software and other proprietary Data, to satisfy its obligations under this Agreement with respect to use, copying, modification, protection, and security of proprietary software and other proprietary Data.

#### 22. Limitation on Publication

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- A. The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the AOC without prior review and written permission by the AOC's Business Services Manager.
- B. The AOC review shall be completed within thirty (30) Days of submission to the Project Manager and, if permission is denied, the AOC shall provide its reasons for denial in writing.

23. Permits and Licenses

The Contractor shall observe and comply with all federal, state, city, and county laws, rules, and regulations affecting services under this Agreement. The Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the Work contemplated in this Agreement.

24. 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 AOC 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 AOC 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.

25. Covenant Against Gratuities\*

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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 AOC 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 AOC will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the AOC 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 AOC 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.

26. 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.

27. Americans with Disabilities Act

By signing this Agreement, Contractor assures the AOC 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.

28. California Law

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

29. 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.

30. 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.

31. Signature Authority

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

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32. 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.

33. Dispute Resolution

- A. Project Manager Negotiations. The Project Manager and the Contractor's point of contract shall attempt in good faith to informally and promptly resolve any disagreement that arises ("**Dispute**") that can be settled within the limits of authority granted them under this Agreement.
- B. Dispute Notice. If the settlement of a disagreement is beyond the authority allowed the Project Manager and the Contractor's project manager under this Agreement, or if a disagreement has in the opinion of either Party persisted for an undue length of time, either Party may submit a written Notice to the other Party that the Parties will commence the procedure set forth in this provision to resolve the Dispute ("**Dispute Notice**"). The Dispute Notice shall include: (i) detailed factual information and supporting documentation in support of the submitting Party's position; (ii) the specific Agreement provisions on which the Dispute is based; and (iii) if the Dispute involves a cost adjustment, the exact amount of the cost adjustment accompanied by all records supporting the submitting Party's position. The Dispute Notice shall include a written statement signed by an authorized representative of the submitting Party indicating that the Dispute is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested, if any, accurately reflects the adjustment for which the submitting Party believes the other Party is responsible. To assist the other Party in its review of the Dispute, the submitting Party shall promptly comply with reasonable requests for additional information.
- C. Dispute Notice Response. Within fifteen (15) Days of receiving the Dispute Notice, the receiving Party shall provide a written response to the submitting Party's Dispute Notice ("**Dispute Notice Response**"). The Dispute Notice Response shall include: (i) detailed factual information and supporting documentation in support of the receiving Party's position; and (ii) if the Dispute involves a cost adjustment, state the exact amount that the receiving Party believes is at issue accompanied by all records supporting the receiving Party's position.
- D. Senior Level Negotiations. If after fifteen (15) Days of receipt of the Dispute Notice Response by the submitting Party or, in the event that the receiving Party fails to timely submit a Dispute Notice Response, either Party may, by providing written

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Notice to the other Party, request that the Dispute be resolved by direct negotiations between senior level negotiators of the Parties (“**Senior Level Negotiations Notice**”). The senior level negotiators shall meet in person or by phone as often as they deem reasonably necessary to exchange information and attempt to resolve the Dispute within thirty (30) Days after the Senior Level Negotiations Notice is given to the other Party.

- E. Litigation. If the senior level negotiations do not result in resolution of the Dispute, either Party may pursue any legally available remedy.
- F. Confidentiality. All negotiations conducted pursuant to this section 37 are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code section 1152 applies. The mediation shall be confidential and shall be subject to the provisions of California Evidence Code section 703.5 and sections 1115 through 1128.
- G. Continuation of Work. Pending the final resolution of any Dispute arising under, related to, or involving this Agreement, Contractor agrees to diligently proceed with the performance any Work under Dispute in accordance with the provisions of this Agreement and the AOC’s instructions. Contractor’s failure to diligently proceed with performance in this manner will be considered a material breach of this Agreement.

### 34. Transition Services

- A. During the Transition Period, the Contractor shall provide to the AOC or the AOC’s designee, in a manner consistent with Contractor’s normal business practices, the services set forth in the Transition Plan, if any, or any other services reasonably necessary to enable the AOC to obtain from another contractor, or to provide for itself, services to substitute for or replace the services provided by Contractor under this Agreement without interruption or adverse effect and to facilitate the orderly transfer of the Services to the AOC or the AOC’s designee (collectively, “**Transition Services**”). Contractor shall provide Transition Services to the AOC or the AOC’s designee regardless of the reason for termination or expiration.
- B. Transition Services shall be provided at no cost to the AOC or the AOC’s designated successor except as otherwise provided for in Exhibit C, Payment Provisions.

### 35. 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.

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- 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 AOC 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 AOC.
- 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 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

## **Attachment 2 Agreement Terms and Conditions**

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 AOC 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 AOC, 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.



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- 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 AOC under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the AOC.
- 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 AOC: (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 AOC 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 AOC. Such assignment shall be made and become effective at the time the AOC tenders final payment to the Contractor. If the AOC 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 AOC any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the AOC as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

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Upon demand in writing by the Contractor, the AOC 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 AOC has not been injured thereby, or (b) the AOC 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 AOC; (ii) adhere to litigation plans designated by the AOC, if applicable; (iii) adhere to case phasing of activities designated by the AOC, if applicable; (iv) submit and adhere to legal budgets as designated by the AOC; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the AOC; and (vi) submit to legal bill audits and law firm audits if so requested by the AOC, whether conducted by employees or designees of the AOC or by any legal cost-control provider retained by the AOC for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the AOC. 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 AOC 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 AOC 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.

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- xiv. **Agreements that the Participating JBE Cannot Terminate for Convenience.** The AOC's obligations under this Agreement are subject to the availability of applicable funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the initial appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. Upon notice, the AOC may terminate the Agreement, in whole or in part, without prejudice to any right or remedy of the AOC, for lack of appropriation of funds. Upon termination, the AOC will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total Contract Amount.

36. 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 AOC.

*END OF SPECIAL PROVISIONS (EXHIBIT B)*

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**PAYMENT PROVISIONS**  
**(EXHIBIT C)**

1. Contract Amount

- A. The total amount the AOC 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** as set forth in this Exhibit.
- B. The Contractor has estimated the costs and expenses necessary to complete the Work. The AOC's acceptance of the Contractor's proposal and price does not (i) imply that the AOC approves of or adopts the Contractor's plan, means, methods, techniques, or procedures required to perform the Work, nor (ii) relieve the Contractor from the sole responsibility for the accuracy of its estimate and timely completion of the Work of this Agreement within the total amount for compensation set forth herein.

2. Compensation for Contract Work

- A. For performing the Work of this Agreement as set forth in Exhibit D, Work To Be Performed, the AOC shall compensate the Contractor, for the completion and Acceptance of each Deliverable due, at either actual cost at the hourly rate(s) set forth in Table 1, not to exceed the amounts per Deliverable in Table 2 or at the firm fixed price per Deliverable in Table 2, as appropriate.

**Table 1**

<b>Contractor Title</b>	<b>Rate Per Hour</b>

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**Table 2**

<b>Deliverable No.</b>	<b>Task/Function</b>	<b>Not to Exceed Amount or Firm Fixed Price</b>
<b>Component 1</b>		
1	Communication <ul style="list-style-type: none"> <li>• Strategic planning meeting</li> <li>• Bi-weekly status updates</li> </ul>	<b>Not to Exceed (TBD)</b>
2	Job Analysis <ul style="list-style-type: none"> <li>• Collect position description questionnaires</li> <li>• Collect written feedback</li> <li>• Conduct follow-up interviews</li> <li>• Analyze information collected</li> <li>• Determine whether duties performed are within scope of classification</li> <li>• Make recommendation on manager classification</li> <li>• Make recommendation on classification structure</li> </ul>	<b>Not to Exceed (TBD)</b>
3	Report of Findings - Classification <ul style="list-style-type: none"> <li>• Prepare draft report</li> <li>• Facilitate meeting with HR and/or Executive Office</li> </ul>	<b>Firm Fixed Price (TBD)</b>
4	Job Documentation <ul style="list-style-type: none"> <li>• Develop position specific job description for every position reviewed</li> <li>• Amend and/or draft new classification specifications as necessary</li> </ul>	<b>Not to Exceed (TBD)</b>
5	Job Evaluation <ul style="list-style-type: none"> <li>• Recommend a job evaluation methodology</li> <li>• Determine the relative internal value of each classification</li> <li>• Provide HR staff with training and written materials explaining the job evaluation methodology</li> </ul>	<b>Not to Exceed (TBD)</b>
6	Internal Hierarchy	<b>Not to Exceed</b>

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<b>Deliverable No.</b>	<b>Task/Function</b>	<b>Not to Exceed Amount or Firm Fixed Price</b>
	<ul style="list-style-type: none"> <li>Analyze existing hierarchy and identify problem areas</li> <li>Propose revised internal hierarchy</li> </ul>	<b>(TBD)</b>
7	<b>Compensation Review</b> <ul style="list-style-type: none"> <li>Analyze current compensation structure</li> <li>Recommend benchmark classifications</li> <li>Recommend comparator organizations</li> <li>Conduct customized compensation survey</li> <li>Analyze compensation survey data available to the Contractor and the AOC</li> <li>Complete internal salary relationship analysis</li> <li>Recommend salary range for every classification reviewed</li> </ul>	<b>Not to Exceed (TBD)</b>
8	<b>Report of Findings – Component 1</b> <ul style="list-style-type: none"> <li>Prepare draft report</li> <li>Facilitate meeting with HR and/or Executive Office</li> <li>Prepare final report including all findings and recommendations from component 1</li> </ul>	<b>Firm Fixed Price (TBD)</b>
<b>Not to Exceed Total Amount for Component 1</b>		<b>XXX</b>
<b>Component 2</b>		
9	<b>Communication</b> <ul style="list-style-type: none"> <li>Strategic planning meeting</li> <li>Bi-weekly status updates</li> </ul>	<b>Not to Exceed (TBD)</b>
10	<b>Job Analysis</b> <ul style="list-style-type: none"> <li>Collect position description questionnaires</li> <li>Collect written feedback</li> <li>Conduct follow-up interviews</li> <li>Analyze information collected</li> <li>Determine whether duties performed are within scope of classification</li> <li>Identify appropriate career paths</li> <li>Make recommendation on classification structure</li> </ul>	<b>Not to Exceed (TBD)</b>

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<b>Deliverable No.</b>	<b>Task/Function</b>	<b>Not to Exceed Amount or Firm Fixed Price</b>
11	Report of Findings - Classification <ul style="list-style-type: none"> <li>• Prepare draft report</li> <li>• Facilitate meeting with HR and/or Executive Office</li> </ul>	<b>Firm Fixed Price (TBD)</b>
12	FLSA Review <ul style="list-style-type: none"> <li>• Evaluate information collected and make FLSA designation recommendation for each position</li> <li>• Provide written documentation in support of each recommendation</li> <li>• Facilitate meeting with HR, Legal Services Office, and Executive Office</li> </ul>	<b>Not to Exceed (TBD)</b>
13	Job Documentation <ul style="list-style-type: none"> <li>• Develop position specific job description for every position reviewed</li> <li>• Amend and/or draft new classification specifications</li> </ul>	<b>Not to Exceed (TBD)</b>
14	Job Evaluation <ul style="list-style-type: none"> <li>• Recommend a job evaluation methodology</li> <li>• Determine the relative internal value of each classification</li> <li>• Provide HR staff with training and written materials explaining the job evaluation methodology</li> </ul>	<b>Not to Exceed (TBD)</b>
15	Internal Hierarchy <ul style="list-style-type: none"> <li>• Analyze existing hierarchy and identify problem areas</li> <li>• Propose revised internal hierarchy</li> </ul>	<b>Not to Exceed (TBD)</b>
16	Compensation Review <ul style="list-style-type: none"> <li>• Analyze current compensation structure</li> <li>• Recommend benchmark classifications</li> </ul>	<b>Not to Exceed (TBD)</b>

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<b>Deliverable No.</b>	<b>Task/Function</b>	<b>Not to Exceed Amount or Firm Fixed Price</b>
	<ul style="list-style-type: none"> <li>• Recommend comparator organizations</li> <li>• Conduct customized compensation survey</li> <li>• Analyze compensation survey data available to the Contractor and the AOC</li> <li>• Complete internal salary relationship analysis</li> <li>• Recommend salary range for every classification reviewed</li> </ul>	
17	Report of Findings – Component 2 <ul style="list-style-type: none"> <li>• Prepare draft report</li> <li>• Facilitate meeting with HR and/or Executive</li> <li>• Prepare final report including all findings and recommendations from component 2</li> </ul>	<b>Firm Fixed Price (TBD)</b>
18	Appeal Process <ul style="list-style-type: none"> <li>• Propose an appeal process</li> <li>• Provide a written response for up to 50 appeals</li> </ul>	<b>Not to Exceed (TBD)</b>
<b>Not to Exceed Total Amount for Component 2</b>		<b>XXX</b>
<b>Component 3</b>		
19	Communication <ul style="list-style-type: none"> <li>• Strategic planning meeting</li> </ul>	<b>Not to Exceed (TBD)</b>
20	Training, guidance, oversight, and validation <ul style="list-style-type: none"> <li>• Provide training, guidance, and oversight on job evaluation methodology</li> <li>• Review and validate the analysis conducted by HR staff to ensure consistent application of methodology</li> </ul>	<b>Not to Exceed (TBD)</b>
21	Report of Findings – Component 3 <ul style="list-style-type: none"> <li>• Prepare draft report</li> <li>• Facilitate meeting with HR and/or Executive</li> <li>• Prepare final report including all findings and recommendations from component 2</li> </ul>	<b>Firm Fixed Price (TBD)</b>



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Deliverable No.	Task/Function	Not to Exceed Amount or Firm Fixed Price
<b>Not to Exceed Total Amount for Component 3</b>		<b>XXX</b>

- B. The hourly rates and not-to-exceed and firm fixed fee amounts prices set forth in Tables 1 and 2 of this Exhibit shall be fully burdened and inclusive of all costs, benefits, expenses, travel-related costs, fees, overhead, and profits payable to the Contractor for services rendered to the AOC.
- C. The Contractor shall not charge nor shall the AOC pay any overtime rate.
- D. The Contractor shall not request nor shall the AOC consider any reimbursement for non-production work including but not limited to time spent traveling to and from a job site or any living expenses.

2. Other Expenses

The AOC 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.

3. Taxes

The AOC 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 AOC 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 including any surplus or excess lines and similar taxes. If requested by the Contractor, the AOC shall provide the Contractor proof of its tax-exempt status.

4. Method of Payment

- A. The Contractor shall submit an invoice for Work provided upon completion and Acceptance of the Deliverables as set forth in Exhibit D, Work to be Performed. After receipt of invoice, the AOC 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.
- B. The AOC will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate the following:

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- i. The Agreement number;
- ii. An unique invoice number;
- iii. The Contractor's name and address;
- iv. Taxpayer identification number (the Contractor's federal employer identification number);
- v. Description of the completed Work, including services rendered, hours worked, Task(s) performed, and/or Deliverable(s) made, as appropriate;
- vi. The contractual charges, including the appropriate rate(s) or firm fixed prices(s) allowable under this Contract; and
- vii. Preferred remittance address, if different from the mailing address.

- C. The Contractor shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California  
Administrative Office of the Courts  
c/o Fiscal Services Office, Accounts Payable  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

- D. 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.

5. Disallowance

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

6. Payment Does Not Imply Final Acceptance of Work

The granting of any payment by the AOC 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.

*END OF PAYMENT PROVISIONS (EXHIBIT C)*

## **Attachment 2 Agreement Terms and Conditions**

### **WORK TO BE PERFORMED (EXHIBIT D)**

#### **1.0 BACKGROUND INFORMATION**

##### 1.1 Background

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

##### 1.2 AOC Classification and Compensation Study

The AOC has undergone a significant downsizing and restructuring, and has not conducted an in-depth, agency-wide review of the classification and compensation structure in recent years. The AOC Human Resources Services Office (HRSO) provides direct classification and compensation support for employees of the AOC, as well as employees of the California Supreme Court and the Courts of Appeal, and, upon request, the Superior Courts of California. This project is a comprehensive study of only AOC positions, classifications, and compensation. The Chief Justice sets compensation rates for all AOC employees per Cal. Const., Art VI, §6; Gov. Code, §19825(b). Employees of the AOC are not represented by unions.

Currently, the AOC has 21 offices spread over four divisions. There are approximately 725 incumbents in 183 job classifications across various functional areas such as legal, finance, administration, education, information systems, court services, human resources, governmental affairs, and security. The AOC seeks to consolidate classifications no longer deemed essential in meeting the business needs of the organization with the goal of streamlining the classification system. The AOC's salary listing, including links to classification specifications, is available through the following link: <http://www.courts.ca.gov/12228.htm>. Information regarding the AOC's organizational structure is available through the following link: <http://www.courts.ca.gov/policyadmin-aoc.htm>.

#### **2.0 DESCRIPTION OF SERVICES AND DELIVERABLES**

## **Attachment 2 Agreement Terms and Conditions**

- 2.1 The AOC seeks the services of a Contractor with expertise and experience in the public sector to conduct and/or assist in conducting a comprehensive, agency-wide classification, Fair Labor Standards Act (FLSA), and compensation study.
- 2.2 Contractors must bid on all three major components of the study outlined below and also must indicate the cost for each component individually. The AOC may award only certain components of this Request for Proposals (RFP) as a contract to a single vendor. For example, there is a possibility that a Contractor will conduct the classification and compensation study of manager classifications and above (component 1), and the AOC will conduct the classification and compensation study of supervisor classifications and below (component 2). In this scenario, the Contractor will also provide any necessary training to HRSO staff on the Contractor's job evaluation methodology used to conduct the study of manager classifications and above. Additionally, the Contractor will provide guidance, oversight, and validation of the application of that methodology to the classifications studied by AOC staff. The Contractor will also review the compensation structure and make compensation recommendations for all classifications in the AOC (component 3).
- 2.3 The study consists of three major components. The Contractor must provide a timeline for each component listed below:
  - **Component 1:** Classification and compensation study of manager classifications and above (approximately 80 incumbents in 16 classifications).
  - **Component 2:** Classification, FLSA, and compensation study of supervisor classifications and below (approximately 645 incumbents in 167 classifications).
  - **Component 3:** Training, guidance, oversight, and validation of HRSO staff's application of the Contractor's job evaluation methodology; and compensation recommendations for all classifications in the AOC. Note that this component will be awarded only in the event that the AOC conducts the study of supervisor classifications and below.
- 2.4 **Component 1:** Classification and compensation study of manager classifications and above (approximately 80 incumbents in 16 classifications).

Currently, the AOC has a multitude of supervisory classifications in different functional areas with varying salary ranges. However, with a few exceptions, there is one generic classification and salary range for manager as well as most of the classifications above that level such as senior manager, assistant director, and director. This structural divide causes widely varying promotional increase amounts when incumbents are promoted from different supervisory classifications to manager.

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#### 2.4.1 Communication

- a) The Contractor will facilitate a strategic planning meeting with HRSO and/or the Executive Office to discuss data collection methods, project plan, timeline, and deadlines.
- b) The Contractor will provide bi-weekly status updates to the AOC Project Manager (Project Manager) via email, conference call, or in person as necessary.

#### 2.4.2 Job Analysis

- a) The Contractor will 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:
  - i. Comply with the Americans with Disabilities Act (ADA); and
  - ii. Make appropriate classification and compensation recommendations.
- b) The Contractor will collect written feedback on each position description questionnaire from the incumbent's supervisor.
- c) The Contractor will conduct up to 80 follow-up interviews 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 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 make a recommendation as to whether the manager classification should be split into more than one classification to reflect different functional areas and levels of responsibility.
- g) The Contractor will review all existing AOC classifications and recommend a classification structure that aligns with current business needs. This will

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include the amendment of existing classifications and/or creating new classifications as necessary.

#### 2.4.3 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 HRSO and/or the Executive Office to discuss the classification findings.

#### 2.4.4 Job Documentation

- a) The Contractor will develop a position-specific job description for every position reviewed (approximately 80).
- b) The Contractor will amend and/or draft new classification specifications as necessary (see 2.4.2 (f) and (g) above).

#### 2.4.5 Job Evaluation

- a) The Contractor will facilitate a meeting with HRSO and/or the Executive Office to recommend a job evaluation methodology appropriate for the AOC's business needs.
- b) The Contractor will utilize the agreed upon methodology to determine the relative internal value of each classification, so that a fair and equitable compensation structure can be established.
- c) The Contractor will provide HRSO staff with training and written materials, which explain the application of the Contractor's job evaluation methodology.

#### 2.4.6 Internal Hierarchy

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

#### 2.4.7 Compensation Review

- a) The Contractor will review and analyze the current compensation structure and identify problem areas.

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- b) The Contractor will recommend appropriate classifications for the AOC to utilize as external benchmarks.
- c) The Contractor will recommend appropriate comparator organizations for the AOC.
- d) The Contractor will conduct a customized compensation survey of the selected comparator organizations.
- e) The Contractor will analyze compensation survey data currently available to the Contractor and the AOC.
- f) The Contractor will complete an internal salary relationship analysis, including the development of appropriate internal relationship guidelines.
- g) The Contractor will recommend a salary range for every classification reviewed and any newly created classifications, including recommendations on appropriate range spread and overlap.

#### 2.4.8 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 HRSO and/or the Executive Office to discuss the compensation findings.
- c) The Contractor will prepare a final report to include all findings and recommendations for component 1.

#### 2.5 **Component 2:** Classification, FLSA, and compensation study of supervisor classifications and below (approximately 645 incumbents in 167 classifications).

##### 2.5.1 Communication

- a) The Contractor will facilitate a strategic planning meeting with HRSO and/or the Executive Office to discuss data collection methods, project plan, timeline, and deadlines.
- b) The Contractor will provide bi-weekly status updates to the Project Manager via email, conference call, or in-person as necessary.

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#### 2.5.2 Job Analysis

- a) The Contractor will 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:
  - 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 position description questionnaire from the incumbent's supervisor.
- c) The Contractor will conduct up to 160 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 identify appropriate career paths for related classifications within the structure.
- g) The Contractor will review all existing AOC classifications and recommend a classification structure that aligns with current business needs. This will include the amendment of existing classifications, and/or creating new classifications as necessary.

#### 2.5.3 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 HRSO and/or the Executive Office to discuss the classification findings.



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#### 2.5.4 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 HRSO, for final approval by the AOC Legal Services Office (LSO).
- c) The Contractor will facilitate a meeting with HRSO, the LSO and the Executive Office to discuss the FLSA findings.

#### 2.5.5 Job Documentation

- a) The Contractor will develop a position-specific job description for every position reviewed (approximately 645).
- b) The Contractor will amend and/or draft up to 167 new classification specifications as necessary (see 2.5.2 (g) above).

#### 2.5.6 Job Evaluation

- a) The Contractor will facilitate a meeting with HRSO and/or the Executive Office to recommend a job evaluation methodology appropriate for the AOC's business needs.
- b) The Contractor will utilize the agreed upon methodology to determine the relative internal value of each classification, so that a fair and equitable compensation structure can be established.
- c) The Contractor will provide HRSO staff with training and written materials, which explain the application of the Contractor's job evaluation methodology.

#### 2.5.7 Internal Hierarchy

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

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#### 2.5.8 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 AOC to utilize as external benchmarks.
- c) The Contractor will recommend appropriate comparator organizations for the AOC.
- d) The Contractor will conduct a customized compensation survey of the selected comparator organizations.
- e) The Contractor will analyze compensation survey data currently available to the Contractor and the AOC.
- f) The Contractor will complete an internal salary relationship analysis, including the development of appropriate internal relationship guidelines.
- g) The Contractor will recommend a salary range for every classification reviewed and any newly created classifications, including recommendations on appropriate range spread and overlap.

#### 2.5.9 Report of Findings – Component 2

- a) The Contractor will prepare a draft report of all compensation findings and recommendations.
- b) The Contractor will facilitate a meeting with HRSO and/or the Executive Office to discuss the compensation findings.
- c) The Contractor will prepare a final report to include all findings and recommendations for component 2.

#### 2.5.10 Appeals Process

- a) The Contractor will propose a management review/appeal process to find resolution to classification-related disputes.
- b) The Contractor will provide an evaluative written response for each appeal, up to a maximum of 50 appeals.

## **Attachment 2**

### **Agreement Terms and Conditions**

2.6 **Component 3:** This component assumes that the Contractor will conduct the study of manager classifications and above (component 1) and that the AOC will conduct the study of supervisor classifications and below (component 2). The Contractor will provide training, guidance, oversight, and validation of HRSO staff's application of the Contractor's job evaluation methodology; and make compensation recommendations for all classifications in the AOC.

#### 2.6.1 Communication

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

#### 2.6.2 Training, guidance, oversight, and validation

- a) The Contractor will provide training, guidance and oversight to HRSO staff on the Contractor's job evaluation methodology for the study of manager classifications and above.
- b) The Contractor will review the analysis conducted by HRSO staff on supervisor classifications and below to validate the consistent application of the Contractor's job evaluation methodology.

#### 2.6.3 Report of Findings - Compensation

- a) The Contractor will prepare a report with recommendations on salary ranges for all classifications in the AOC.
- b) The Contractor will facilitate a meeting with HRSO and/or the Executive Office to discuss the findings.
- c) The Contractor will prepare a final report to include all findings and recommendations for component 3.

*END OF WORK TO BE PERFORMED (EXHIBIT D)*

**Attachment 2**  
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**CONTRACTOR'S KEY PERSONNEL**  
**(EXHIBIT E)**

- The following individual, or equivalent as approved pursuant to Exhibit B, Special Provisions, paragraph 10, Contractor's Personnel and Replacement of Personnel, shall be the Key Personnel designated to perform and function in a key capacity in managing the work of the Contract:

<b>Name of Key Staff</b>	<b>Role</b>
	Project Manager

- The resumes of the Contractor's Key Staff, identified above, are attached to this Exhibit and set forth on the following page(s).

*END OF CONTRACTOR'S KEY STAFF (EXHIBIT E)*

**Attachment 2**  
**Agreement Terms and Conditions**

**ATTACHMENTS**  
**(EXHIBIT F)**

This Exhibit includes the following form(s):

Attachment 1, Acceptance & Signoff Form

*END OF ATTACHMENTS (EXHIBIT F)*

**EXHIBIT F**  
**ACCEPTANCE OF WORK AND SIGN-OFF FORM**

▶ Agreement No. \_\_\_\_\_

▶ Description of Work provided by Contractor:

\_\_\_\_\_  
\_\_\_\_\_

▶ Date submitted: \_\_\_\_\_

▶ Work is:

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 Work.

\_\_\_\_\_

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

\_\_\_\_\_

▶ Please indicate the level of satisfaction:  Poor  Fair  Good  Very Good  Excellent

▶ Comments, if any:

\_\_\_\_\_  
\_\_\_\_\_

▶ Work:  is accepted.  is unacceptable as noted above.

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

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

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

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

*(END OF EXHIBIT F)*

\*\*END OF CONTRACT TERMS AND CONDITIONS\*\*  
\*\*RFP ATTACHMENT 2\*\*