

**STANDARD AGREEMENT**

AGREEMENT NUMBER

**[Agreement number]**

1. In this Agreement, the term “Contractor” refers to **[Contractor name]**, and the term “Judicial Council” refers to the **Judicial Council of California**.

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2. This Agreement is effective as of **May 16, 2018** (“Effective Date”).

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3. The maximum amount the Judicial Council may pay Contractor under this Agreement is \$**[Dollar amount]** (the “Contract Amount”).



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4. The purpose or title of this Agreement is: Data Center Colocation Services

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

5. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement and is mutually binding on the parties in accordance with its terms.

- Appendix A – Statement of Service
- Appendix B – Pricing and Payment
- Appendix C – General Terms and Conditions
- Appendix D – Defined Terms
- Appendix E – Unruh Civil Rights Act and FEHA Certification

JUDICIAL COUNCIL’S SIGNATURE	CONTRACTOR’S SIGNATURE
<b>JUDICIAL COUNCIL OF CALIFORNIA</b>	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized)</i> <b>[Contractor name]</b>
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING <b>[Name and title]</b>	PRINTED NAME AND TITLE OF PERSON SIGNING <b>[Name and title]</b>
DATE EXECUTED	DATE EXECUTED
ADDRESS Branch Accounting and Procurement/Administrative Division 455 Golden Gate Avenue, 6th Floor San Francisco, CA 94102-3688	ADDRESS <b>[Address]</b>

RFP Title: JUDICIAL COUNCIL OF CALIFORNIA WEBSITE COLOCATION FACILITY

RFP Number: IT-OPD-18-043-RB

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**APPENDIX A: Statement of Service**

This Statement of Service is subject to the Agreement between Contractor and the Judicial Council. By executing this Statement of Service, the Parties agree to be bound by the terms and conditions set out in the Agreement with respect to the Service to be provided under this Statement of Service.

**1. Term of this Statement of Service.**

The term of this Statement of Service will commence on May 16, 2018 (the "SOW Effective Date") and will continue until May 15, 2019. This is for month-to-month hosting services for a designated period. All applicable terms and conditions of the Agreement will continue to apply to this Statement of Service until the expiration or termination of this Statement of Service. The Judicial Council may, at its sole option, extend this Statement of Service for up to four additional one-year terms, at the end of which this Agreement shall expire. In order to exercise these Option Terms, the Judicial Council must send Notice to Contractor at least thirty (30) days prior to the end of the current Term. The exercise of an Option Term will be effective without Contractor's signature.

**2. Judicial Council's Requirements and Description of the Service.**

The Contractor bid to secure offsite hosting of the Courts.Ca.Gov website that serves the public with access to the court systems.

The Judicial Council engaged Contractor as a qualified and experienced firm provide data center colocation services in a secured environment with high availability.

The minimum requirements:

- One Full standard size secured four-post enclosed data cabinet that is lockable (not shared with other customers), providing a minimum of 42 u usable space.
- Power requirements: redundant 115v circuits rated at 20amps or greater each on dual metered power strips located in cabinet.
- Backup power requirements: Rack to have 7x24 UPS/Generator backup systems.
- Internet Connectivity minimum 25 Mbps burstable (or greater)
- Static IP address: Minimum ten (10) IP addresses or a /28,
- Onsite facility security 24x7 and monitoring: Ability for Judicial Council technical staff to access facility 24x7 for any scheduled service or unplanned/emergency troubleshooting.
- HVAC and environmental controls to meet cooling, heating and static issues 24x7.

Fire suppression

- 24x7 qualified network/technical support onsite at facility.
- Multi-provider infrastructure (ISP, Power)
- Facility to provide documentation proof that proposed site meets all state and federal regulations as it pertains to data hosting facilities (minimum Tier 3/Level 3, preferred Tier 4 / Level 4 or higher)

**BY SIGNING BELOW**, the Parties agree to be bound by the terms of this Statement of Service as of the SOW Effective Date.

**JUDICIAL COUNCIL OF CALIFORNIA**

**[NAME OF CONTRACTOR]**

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

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

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

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

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

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

**APPENDIX B: Pricing and Payment**

1. **Fees.** In consideration of and subject to the satisfactory performance and delivery by Contractor of the Service, the Judicial Council shall pay to Contractor the fees as set forth in this Appendix B. Except as expressly set forth in this Appendix B: (i) such fees are the entire compensation for all Service under this Agreement; and (ii) all expenses relating to the Service are included in such fees and shall not be reimbursed by the Judicial Council. The maximum amount payable to Contractor under this Agreement will not exceed the Contract Amount. The Contract Amount may be changed only by amendment to this Agreement. Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement. Contractor shall immediately refund any payment made in error. The Judicial Council shall have the right at any time to set off any amount owing from Contractor to the Judicial Council against any amount payable by the Judicial Council to Contractor under this Agreement.

Payment provisions should not exceed amount of fees, prices, and costs of no more than \$48,400.00. For payment frequency/milestones; progress payments (see JBCM, Ch. 9, section 9.1(C) for requirements.

2. **Expenses.**

2.1 **Allowable Expenses.** Contractor will not submit for reimbursement for any category of expense.

2.2 **Limitation on Travel Expenses.** If allowed, limit to same cost as would be applicable were Contractor a Judicial Council employee. Refer to the Judicial Council Travel Expense Policy. See JBCM, Ch. 9, section 9.1(F). All travel is subject to preauthorization and approval by the Judicial Council.

2.3 **Limitation on Expenses.** Contractor shall not invoice the Judicial Council, and the Judicial Council shall not reimburse Contractor, for expenses of any type.

2.4 **Required Certification.** Contractor must include with any request for reimbursement from the Judicial Council 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 Judicial Council was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

3. **Invoicing and Payment.**

3.1 **Invoicing.** Contractor's invoices must include information and supporting documentation, including a workload report in the form the Judicial Council may specify from time to time. Contractor shall adhere to reasonable billing guidelines issued by the Judicial Council from time to time. The current payment policy is monthly invoice/billing amount statement, net 45 days. Contractor shall invoice the Judicial Council for the applicable fees upon Acceptance of each Requirement by the Judicial Council and in accordance with payment milestones and schedules under this Agreement). The Judicial Council will not make any advance payment for the Service. Contractor shall provide invoices with the level of detail reasonably requested by the Judicial Council. The Judicial Council will pay each correct, itemized invoice received from Contractor after Acceptance, in accordance with the terms hereof.

3.2 **Availability of Funds.** The Judicial Council's obligation to compensate Contractor is subject to the availability of funds. The Judicial Council shall notify Contractor if funds become unavailable or limited.

4. **Taxes.** Unless otherwise required by law, the Judicial Council is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The Judicial Council shall only pay for any state or local sales, service, use, or similar taxes imposed on the Service rendered or equipment, parts or software supplied to the Judicial Council pursuant to this Agreement.

5. **Retention Amount.** Notwithstanding the terms of this Appendix B, and without limiting the rights of the Judicial Council under the Agreement, the Judicial Council shall have the right at the time of Acceptance, with respect to those Requirements in each Statement of Service, on a Statement of Service-by-Statement of Service basis, to withhold fifteen percent (15%) from the amounts to be paid by the Judicial Council to Contractor therefor, until Acceptance of the final Requirement under such Statement of Service.

## **APPENDIX C: General Terms and Conditions**

### **1. Service**

1.1 **Service.** Contractor shall provide the Service described in this Agreement, including the Statement of Service and the Specifications. Except as set forth in the Statement of Service, Contractor is responsible for providing all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for delivery of the Service and to meet Contractor's obligations under this Agreement.

#### 1.2 **Stop Service Orders.**

(a) **Effect.** The Judicial Council may, at any time, by written stop work order to Contractor, require Contractor to stop all, or any part, of the Service for a period of up to ninety (90) days after the stop work order is delivered to Contractor, and for any further period to which the Parties may agree. Upon receipt of a stop work order, Contractor shall promptly comply with the terms of the stop work order and take all reasonable steps to end the incurrence of any costs, expenses or liabilities allocable to the Service covered by the stop work order during the period of work stoppage. The Judicial Council shall not be liable to Contractor for loss of profits arising out of such stop work order. Within ninety (90) days after a stop work order is delivered to Contractor, or within any extension of that period mutually agreed to by the Parties, the Judicial Council shall either: (i) cancel the stop work order; or (ii) terminate the Service covered by the stop work order.

(b) **Expiration or Cancellation.** If a stop work order is canceled by the Judicial Council or the period of the stop work order or any extension thereof expires, Contractor shall promptly resume the Service covered by such stop work order. The Judicial Council shall make an equitable adjustment in the delivery schedule, and the applicable Statement of Service shall be modified, in writing, accordingly, if: (i) the stop work order directly and proximately results in an increase in the time required for the performance of any part of the Statement of Service; and (ii) Contractor asserts its right to such equitable adjustment within thirty (30) days after the end of the period of work stoppage.

1.3 **Change Orders.** From time to time during the term of this Agreement, the Parties may mutually agree on a change to the Service, which may require an extension or reduction in the schedule and/or an increase or decrease in the fees and expenses and/or the Service (each, a "Change"), including: (i) a change to the scope or functionality of the Requirements; or (ii) a change to the scope of the Service. In the event the Parties agree on a Change, the Parties will seek to mutually agree on a change order identifying the impact and setting forth any applicable adjustments in the Statement of Service and/or payments to Contractor. An authorized representative of each Party shall promptly sign the mutually agreed upon change order to acknowledge the impact and to indicate that Party's agreement to the adjustments.

1.4 **Third Party or Judicial Council Services.** Notwithstanding anything in this Agreement to the contrary, the Judicial Council shall have the right to perform or contract with a Third Party to provide any services or within or outside the scope of the Service, including services to augment or supplement the Service or to interface with the IT Infrastructure of the Judicial Branch Entities or Judicial Council Contractors. In the event the Judicial Council performs or contracts with a Third Party to perform any such service, Contractor shall cooperate in good faith with the Judicial Branch Entities and any such Third Party, to the extent reasonably required by the Judicial Council. Such cooperation shall include, without limitation, providing such information as a person with reasonable commercial skills and expertise would find reasonably necessary for the Judicial Council or a Third Party to perform its services relating to the Service.

1.5 **Data and Security.** *[SECTION INSTRUCTIONS: the Judicial Council should modify the provisions below depending on the specific privacy, data security, and IT requirements for its project.]*

(a) **Safety and Security Procedures.** Contractor shall maintain and enforce, at the Contractor Service Locations, industry-standard safety and physical security policies and procedures. While at each Judicial Council Service Location, Contractor shall comply with the safety and security policies and procedures in effect at such Judicial Council Service Location.

#### (b) **Data Security.**

(i) Contractor shall comply with the Data Safeguards. Contractor shall implement and maintain a comprehensive information security program ("Contractor's Information Security Program") in accordance with the Data Safeguards. Contractor shall comply with all applicable privacy and data security laws, and other laws (including the California Rules of Court) and regulations relating to the protection, collection, use, and distribution of Judicial Council Data, as well as privacy and data security requirements and standards set forth in the Judicial Council's policies or procedures. To the

extent that California Rule of Court 2.505 applies to this Agreement, Contractor shall provide access and protect confidentiality of court records as set forth in that rule and in accordance with this Agreement.

- (ii) Unauthorized access to, or use or disclosure of Judicial Council Data (including data mining, or any commercial use) by Contractor or third parties, is prohibited. Contractor shall not, without the prior written consent of an authorized representative of Judicial Council, use or access the Judicial Council Data for any purpose other than to provide the Service under this Agreement. In no event shall Contractor transfer the Judicial Council Data to third parties, or provide third parties access to the Judicial Council Data, except as may be expressly authorized by Judicial Council. Contractor is responsible for the security and confidentiality of the Judicial Council Data. Judicial Council owns and retains all right and title to the Judicial Council Data, and has the exclusive right to control its use.
- (iii) No Service shall be provided from outside the continental United States. Remote access to Judicial Council Data from outside the continental United States is prohibited unless approved in writing in advance by the Judicial Council. The physical location of Contractor's data center, systems, and equipment where the Judicial Council Data is stored shall be within the continental United States. Contractor shall ensure that access to the Judicial Council Data will be provided to the Judicial Council (and its authorized users) 24 hours per day, 365 days per year (excluding agreed-upon maintenance downtime). Upon the Judicial Council's request, all Judicial Council Data in the possession of Contractor shall be provided to Judicial Council in a manner reasonably requested by Judicial Council and all copies shall be permanently removed from Contractor's system, records, and backups, and all subsequent use of such information by Contractor shall cease.
- (iv) Confidential, sensitive, or personally identifiable information shall be encrypted in accordance with the highest industry standards, applicable laws, this Agreement, and Judicial Council policies and procedures.

(c) Data Breach

If there is a suspected or actual Data Breach, Contractor shall notify the Judicial Council in writing within two (2) hours of becoming aware of such occurrence. A "Data Breach" means any access, destruction, loss, theft, use, modification or disclosure of the Judicial Council Data by an unauthorized party. Contractor's notification shall identify: (i) the nature of the Data Breach; (ii) the data accessed, used or disclosed; (iii) who accessed, used, disclosed and/or received data (if known); (iv) what Contractor has done or will do to mitigate the Data Breach; and (v) corrective action Contractor has taken or will take to prevent future Data Breaches. Contractor shall promptly investigate the Data Breach and shall provide daily updates, or more frequently if required by the Judicial Council, regarding findings and actions performed by Contractor until the Data Breach has been resolved to the Judicial Council's satisfaction, and Contractor has taken measures satisfactory to the Judicial Council to prevent future Data Breaches. Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the Judicial Council. The Judicial Council and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the Judicial Council, its agents and law enforcement, including with respect to taking steps to mitigate any adverse impact or harm arising from the Data Breach. After any Data Breach, Contractor shall at its expense have an independent, industry-recognized, Judicial Council-approved third party perform an information security audit. The audit results shall be shared with the Judicial Council within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor shall provide the Judicial Council with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Agreement.

A more normal way to accomplish this would be for the Contractor to perform periodic SAS 70/SOC 2 Type 2 audits and provide customers with certification of completion.

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**3. Representations and Warranties.** Contractor represents and warrants to the Judicial Council as follows:

3.1 Authorization/Compliance with Laws. (i) Contractor has full power and authority to enter into this Agreement, to grant the rights and licenses herein and to perform its obligations under this Agreement, and that Contractor's representative who signs this Agreement has the authority to bind Contractor to this Agreement; (ii) the execution, delivery and performance of this Agreement have been duly authorized by all requisite corporate action on the part of Contractor; (iii) Contractor shall not and shall cause Subcontractors not to enter into any arrangement with any Third Party which could

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reasonably be expected to abridge any rights of the Judicial Branch Entities under this Agreement; (iv) this Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms; (v) Contractor is qualified to do business and in good standing in the State of California; (vi) Contractor, its business, and its performance of its obligations under this Agreement comply with all Applicable Laws; and (vii) Contractor pays all undisputed debts when they come due.

3.2 No Gratuities or Conflict of Interest. Contractor: (i) has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement; and (ii) has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.

3.3 No Litigation. No Claim or governmental investigation is pending or threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this Agreement.

3.4 Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the Judicial Council.

3.5 No Interference. To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or breach under any of Contractor's other contracts.

3.6 Drug Free Workplace. Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.

3.7 No Harassment/ Nondiscrimination. Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring. Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.

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

3.9 National Labor Relations Board Orders. No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3.10 Child Support Compliance Act. If the Contract Amount is \$100,000 or more: (i) Contractor recognizes the importance of child and family support obligations and fully complies with 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 Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and (ii) Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

3.11 Intellectual Property. Contractor shall perform its obligations under this Agreement in a manner that the Service (including each Requirement) and any portion thereof, does not infringe, or constitute an infringement, misappropriation or violation of, any Intellectual Property Right. Contractor has full Intellectual Property Rights and authority to perform all of its obligations under this Agreement, and Contractor is and will be either the owner of, or authorized to use for its own and the Judicial Branch Entities' benefit, all Contractor Materials, Third Party Materials, and Licensed Software used and to be used in connection with the Service.

3.12 Service. (i) the Service will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Service; (ii) Contractor will use efficiently the resources or services necessary to provide

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the Service; and provide the Service in the most cost efficient manner consistent with the required level of quality and performance; (iii) the Service will be provided free and clear of all liens, claims, and encumbrances; (iv) all Service will be free from all defects in materials and workmanship, and will be in accordance with Specifications, Documentation, Applicable Laws, and other requirements of this Agreement; and (v) all equipment purchased by the Judicial Council from Contractor will be new. In the event any Service does not conform to the foregoing provisions of this Section 3.12, Contractor shall promptly correct all nonconformities.

3.13 Malicious Code. No Service will contain any Malicious Code. Contractor shall immediately provide to the Judicial Council written notice in reasonable detail upon becoming aware of the existence of any Malicious Code. Without limiting the foregoing, Contractor shall use best efforts and all necessary precautions to prevent the introduction and proliferation of any Malicious Code in the Judicial Branch Entities' IT Infrastructure or networks or in the Contractor systems used to provide Service. In the event Contractor or the Judicial Council discovers the existence of any Malicious Code, Contractor shall use its best efforts, in cooperation with the Judicial Council, to effect the prompt removal of the Malicious Code from the Service and the Judicial Branch Entities' IT Infrastructure and the repair of any files or data corrupted thereby, and the expenses associated with the removal of the Malicious Code and restoration of the data shall be borne by Contractor. In no event will Contractor or any Subcontractor invoke any Malicious Code.

3.14 Four-Digit Date Compliance. Contractor will provide only Four-Digit Date Compliant Service to the Judicial Council. "Four-Digit Date Compliant" Service can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries.

3.15 Conflict Minerals. Contractor certifies either: (i) it is not a "scrutinized company" as defined in PCC 10490(b), or (ii) the services the Contractor will provide to the Judicial Council are not related to products or services that are the reason the Contractor must comply with Section 13(p) of the Securities Exchange Act of 1934

3.16 Miscellaneous. The rights and remedies of the Judicial Council provided in this Section 3 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. The representations and warranties that Contractor makes in this Section 3 shall be true and accurate as of the Effective Date, and shall remain true during the term of this Agreement and the Termination Assistance Period. Contractor shall promptly notify the Judicial Council if any representation or warranty becomes untrue.

#### **4 Intellectual Property.**

4.1 Contractor/Third-Party Materials. Contractor shall set forth in an exhibit to each Statement of Service all Contractor Materials and Third Party Materials that Contractor intends to use in connection with that Statement of Service. The Judicial Council shall have the right to approve in writing the introduction of any Contractor Materials or Third Party Materials into any Service prior to such introduction. Contractor grants to the Judicial Branch Entities, together with all Judicial Council Contractors, without additional charge, a perpetual, irrevocable, royalty-free, fully paid-up, worldwide, nonexclusive license to use, reproduce, perform, display, transmit, distribute, modify, create derivative works of, make, have made, sell, offer for sale and import Contractor Materials and Third Party Materials (including Source Code) and to sublicense such rights to other entities, in each case for California judicial branch business and operations.

4.2 Rights in Developed Materials. Notwithstanding any provision to the contrary, upon their creation the Developed Materials (and all Intellectual Property Rights therein) will be the sole and exclusive property of the Judicial Council. Contractor (for itself, Project Staff and Subcontractors) hereby irrevocably assigns, transfers and conveys to the Judicial Council without further consideration all worldwide right, title and interest in and to the Developed Materials, including all Intellectual Property Rights therein. Contractor further agrees to execute, and shall cause Project Staff and Subcontractors to execute, any documents or take any other actions as may be reasonably necessary or convenient to perfect the Judicial Council's or its designee's ownership of any Developed Materials and to obtain and enforce Intellectual Property Rights in or relating to Developed Materials. Contractor shall promptly notify the Judicial Council upon the completion of the development, creation or reduction to practice of any and all Developed Materials.

4.3 Retention of Rights. The Judicial Council retains all rights, title and interest (including all Intellectual Property Rights) in and to the Judicial Council Materials. Subject to rights granted herein, Contractor retains all rights, title and interest (including all Intellectual Property Rights) in and to the Contractor Materials.

4.4 Third-Party Rights. Contractor hereby assigns to the Judicial Branch Entities all of Contractor's licenses and other rights (including any representations, warranties, or indemnities that inure to Contractor from third parties) to all Third Party Materials incorporated into the Service. If such licenses and rights cannot be validly assigned to or passed through to Judicial Branch Entities by Contractor without a Third Party's consent, then Contractor will use its best efforts to obtain such consent (at Contractor's expense) and will indemnify and hold harmless the Judicial Council, Judicial Branch Entities and Judicial Branch Personnel against all Claims arising from Contractor's failure to obtain such consent.

**5 Confidentiality.**

5.1 General Obligations. During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any Third Party without obtaining the Judicial Council's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to Project Staff (including Subcontractors) with a need to know in order to provide the Service hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this Section 5. The provisions of this Section 5 shall survive beyond the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than reasonable care and industry-standard care. The Judicial Council owns all right, title and interest in the Confidential Information. Contractor will notify the Judicial Council promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Judicial Council to protect such Confidential Information. Notwithstanding any provision to the contrary, Contractor will keep all Personal Information confidential, unless otherwise authorized by the Judicial Council in writing.

5.2 Removal; Return. Contractor will not remove any Confidential Information from Judicial Branch Entities' facilities or premises without the Judicial Council's express prior written consent. Upon the Judicial Council's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the Judicial Council or, if so directed by the Judicial Council, destroy all Confidential Information (in every form and medium), and (b) certify to the Judicial Council in writing that Contractor has fully complied with the foregoing obligations.

5.3 Breach of Confidentiality. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations hereunder, that any such breach will likely result in irreparable harm, and therefore, that upon any breach or threatened breach of the confidentiality obligations, the Judicial Council shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

**6 Indemnification.**

6.1 General Indemnity. Contractor shall indemnify, defend (with counsel satisfactory to the Judicial Council), and hold harmless Judicial Branch Entities and Judicial Branch Personnel against all Claims founded upon or that arise out of or in connection with: (i) Contractor's provision of, or failure to provide, the Service (ii) any other breach by Contractor under this Agreement; or (iii) Third Party Claims relating to infringement or misappropriation of any Intellectual Property Right by Contractor or the Service, including software, services, systems, equipment, or other materials provided by Contractor or Subcontractors to Judicial Branch Entities (collectively, the "Covered Items"). Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Judicial Council's prior written consent, which consent shall not be unreasonably withheld; and the Judicial Council shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

6.2 Certain Remedies. If any Covered Item provided under this Agreement becomes, or in Contractor's or the Judicial Council's reasonable opinion is likely to become, the subject of any Claim arising from or alleging infringement, misappropriation or other violation of, or in the event of any adjudication that such Covered Item infringes, misappropriates or otherwise violates any Intellectual Property Right of a Third Party, Contractor at its own expense shall take the following actions in the listed order of preference: (a) secure for the Judicial Branch Entities the right to continue using the applicable Covered Item; or (b) if commercially reasonable efforts are unavailing, replace or modify the infringing Covered Item to make it noninfringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Covered Item.

**7 Insurance.**

7.1 Basic Coverage. Contractor shall provide and maintain at Contractor's expense the following insurance during the Term:

(a) Workers Compensation and Employer's Liability. The policy is required only if Contractor has employees. It must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;

(b) Commercial General Liability. The policy must be written on an occurrence form with limits of



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not less than \$1 million per occurrence, and a \$1 million annual aggregate. Each policy must include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed in a contract.; and

(c) Professional Liability. The policy must cover Contractor's acts, errors and omissions committed or alleged to have been committed which arise out of rendering or failure to render services provided under this Agreement. The policy shall provide limits of not less than \$1 million per occurrence and annual aggregate.

(d) Commercial Automobile Liability. If an automobile is used in providing the Service, automobile liability insurance with limits of not less than \$1 million per accident. Such insurance must cover liability arising out of the operation of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with providing the Service.

(e) Commercial Crime Insurance. If Contractor handles or has regular access to the Judicial Council's funds or property of significant value to the Judicial Council, this policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$100,000.00.

7.2 "Claims Made" Coverage. If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the Judicial Council's acceptance of all Service provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that Service commences under this Agreement.

7.3 Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of primary, excess or umbrella insurance.

7.4 Aggregate Limits of Liability. The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

7.5 Deductibles and Self-Insured Retentions. Contractor is responsible for and may not recover from the Judicial Council, including Judicial Branch Personnel, any deductible or self-insured retention that is connected to the insurance required under this Section 7.

7.6 Additional Insured Status. With respect to commercial general liability, automobile liability insurance, and, if applicable, umbrella policy, the policies must be endorsed to name the Judicial Branch Entities and Judicial Branch Personnel as additional insureds with respect to liabilities arising out of the performance of the Agreement.

7.7 Certificates of Insurance. Before Contractor begins providing Service, Contractor shall give the Judicial Council certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 or more days' prior written notice to the Judicial Council. Any replacement certificates of insurance are subject to the approval of the Judicial Council, and, without prejudice to the Judicial Council, Contractor shall not provide Service before the Judicial Council approves the certificates.

7.8 Qualifying Insurers. For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.

7.9 Required Policy Provisions. Each policy must provide, as follows:

(a) Insurance Primary; Waiver of Recovery. With respect to commercial general liability and automobile liability insurance, the policies must be endorsed to be primary and noncontributory with any insurance or self-insurance programs maintained by Judicial Branch Entities and Judicial Branch Personnel. Contractor waives any right of recovery it may have, and will require that any insurer providing commercial general liability, workers compensation, and automobile liability to also waive any right of recovery it may have against Judicial Branch Entities and Judicial Branch Personnel for liability arising out of the Service; and

(b) Separation of Insureds. The insurance applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.

7.10 Partnerships. If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods: (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.

7.11 Consequences of Lapse. If required insurance lapses during the Term, the Judicial Council is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

## **8 Term / Termination.**

8.1 Term. This Agreement shall commence on the Effective Date and have an initial term of one (1) year. The Judicial Council may, at its sole option, extend the Term for up to five (5) consecutive one-year periods, at the end of which this Agreement shall expire. In order to extend the Term, the Judicial Council must notify Contractor prior to the end of the initial term or the then-current one-year extension period.

8.2 Termination for Convenience. The Judicial Council may terminate, in whole or in part, this Agreement and/or any Statement of Service for convenience (without cause) upon thirty (30) days prior written notice. The Judicial Council's notice obligations under the foregoing sentence shall not apply to any stop work orders issued by the Judicial Council under this Agreement or any Statement of Service. After receipt of such notice, and except as otherwise directed by the Judicial Council, Contractor shall immediately: (a) stop Service as specified in the notice; and (b) place no further subcontracts, except as necessary to complete the continued portion of this Agreement.

8.3 Early Termination. The Judicial Council may terminate, in whole or in part, this Agreement or any Statement of Service immediately "for cause" if Contractor is in Default. The Judicial Council may also terminate this Agreement or limit Service (and proportionately, Contractor's fees) upon written notice to Contractor without prejudice to any right or remedy of the Judicial Branch Entities if: (i) expected or actual funding to compensate the Contractor is withdrawn, reduced or limited; or (ii) the Judicial Council determines that Contractor's performance under this Agreement has become infeasible due to changes in Applicable Laws.

### **8.4 Rights and Remedies of the Judicial Council.**

(a) All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Judicial Council immediately if Contractor is in Default, or if a Third Party claim or dispute is brought or threatened that alleges facts that would constitute a Default under this Agreement. If Contractor is in Default, the Judicial Council may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following notice, the Judicial Council's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

(b) If the Judicial Council terminates this Agreement or any Statement of Service in whole or in part for cause, the Judicial Council may acquire from third parties, under the terms and in the manner, the Judicial Council considers appropriate, services equivalent to those terminated, and Contractor shall be liable to the Judicial Council for any excess costs for those services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Judicial Branch Entities for such services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Judicial Council or Judicial Branch Entities. Contractor shall continue the Service not terminated hereunder.

(c) In the event of any expiration or termination of this Agreement or the applicable Statement of Service, Contractor shall promptly provide the Judicial Council with all originals and copies of the Requirements (including: (i) any partially-completed Requirements and related work product or materials; and (ii) any Contractor Materials, Third Party Materials, and Developed Materials comprising such Requirements or partially-completed Requirements), Confidential Information, Judicial Council Data, Judicial Council Materials, and all portions thereof, in its possession, custody, or control. In the event of any termination of this Agreement or a Statement of Service, the Judicial Council shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the Judicial Council's termination is not based on a Default, Judicial Council shall pay any fees due under this Agreement for Requirements completed and accepted as of the date of the Judicial Council's termination notice.

8.5 Termination Assistance. At the Judicial Council's request and option, during the Termination Assistance Period, Contractor shall provide, at the same rates charged immediately before the start of the Termination Assistance Period, to the Judicial Council or to its designee (collectively, "Successor") services reasonably necessary to enable the Judicial Council to obtain from another contractor, or to provide for itself, services to substitute for or replace the Service, together with all other services to allow the Service to continue without interruption or adverse effect and to facilitate the orderly transfer of the Service to the Successor (collectively, the "Termination Assistance Services"). Termination Assistance Services will be provided to the Judicial Council by Contractor regardless of the reason for termination or expiration. At the Judicial Council's option and election, the Judicial Council may extend the Termination Assistance Period for an additional six (6) months.

8.6 Survival. Termination of this Agreement shall not affect the rights and/or obligations of the Parties, which arose prior to any such termination (unless otherwise provided herein), and such rights and/or obligations shall survive any such expiration or termination. Rights and obligations, which by their nature should survive, shall remain in effect after termination or expiration of this Agreement, including Sections 3 through 10 of these General Terms and Conditions.

## 9 Special Provisions.

9.1 Agreements Providing for Compensation of \$50,000 or more; Union Activities Restrictions. As required under Government Code sections 16645-16649, if the Contact Amount is \$50,000 or more, Contractor agrees that no Judicial Council funds received under this agreement will be used 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 Judicial Council funds were used for those expenditures and no reimbursement from the Judicial Council was sought for these costs. Contractor will provide those records to the Attorney General upon request.

9.2 DVBE Commitment. This section is applicable if Contractor received a disabled veteran business enterprise (“DVBE”) incentive in connection with this Agreement. Contractor’s failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the Judicial Council approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the Judicial Council: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

9.3 Competitively Bid Contracts; Antitrust Claims. If this Agreement resulted from a competitive bid, Contractor shall comply with the requirements of the Government Code sections set out below.

(a) Contractor shall assign to the Judicial Council all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of materials, or services by Contractor for sale to the Judicial Council pursuant to the bid. Such assignment shall be made and become effective at the time the Judicial Council tenders final payment to the Contractor. (GC 4552)

(b) If the Judicial Council receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Judicial Council any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the Judicial Council as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)

(c) Upon demand in writing by the Contractor, the Judicial Council 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 (1) the Judicial Council has not been injured thereby, or (2) the Judicial Council declines to file a court action for the cause of action. (GC 4554)

9.4 Federally-funded Agreements. If this Agreement is funded in whole or in part by the federal government, then:

(a) It is mutually understood between the Parties that this Agreement may have been written for the mutual benefit of both Parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

(b) This Agreement is valid and enforceable only if sufficient funds are made available to the Judicial Council by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.

(c) The Parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the Parties to reflect any reduction in funds.

(d) The Parties may amend the Agreement to reflect any reduction in funds.

9.5 Small Business Preference Contract Clause. This section is applicable if Contractor received a small business preference in connection with this Agreement. Contractor’s failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must deliver to the Judicial Council with its final invoice a report detailing the actual percentage of small/micro business participation that was achieved under this Agreement; the Judicial Council will not pay Contractor’s final invoice until this report is received. If Contractor is a nonprofit veteran service agency (“NVSA”), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the provision of services performed pursuant to this Agreement.

**10 General.**

10.1 Audits. Contractor shall allow the Judicial Council and its designees to review and audit Contractor’s documents and records relating to this Agreement, and Contractor shall retain such documents and records for a period of four years following final payment under this Agreement. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit. Contractor shall provide to the Judicial Branch Entities and Judicial Council Contractors, on Contractor’s premises (or, if the audit is being performed of an Subcontractor, Subcontractor’s premises if necessary), space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office-related equipment and duplicating services as the Judicial Branch Entities or such Judicial Council Contractors may reasonably require to perform the audits described in this Section. Without limiting the foregoing, this Agreement is subject to examinations and audit by the State Auditor for a period three years after final payment.

10.2 References. In this Agreement and the Appendixes: (a) the Appendixes shall be incorporated into and deemed part of this Agreement and all references to this Agreement shall include the Appendixes; (b) the Article and Section headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement; (c) references to and mentions of the word “including” or the phrase “e.g.” means “including, without limitation” and (d) unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.

10.3 Assignment. This Agreement will not be assignable by Contractor in whole or in part (whether by operation of law or otherwise) without the prior written consent of the Judicial Council. Any assignment made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the Parties and their permitted successors and assigns.

10.4 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth below:

If to Contractor:	If to the Judicial Council:
[name, title, address]	[name, title, address]

Either Party may change its address for notification purposes by giving the other Party written notice of the new address in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) Business Days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

10.5 Independent Contractors. Contractor and Subcontractors in the performance of this Agreement shall act in an independent capacity and not as officers, employees, or agents of the Judicial Branch Entities or Judicial Council Contractors. Neither the making of this Agreement nor the performance of its provisions shall be construed to constitute either of the Parties hereto as an agent, employee, partner, joint venturer, or legal representative of the other, and the relationship of the Parties under this Agreement is that of independent contractors. Neither Party shall have any right, power or authority, express or implied, to bind the other.

10.6 Covenant of Further Assurances. Contractor covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, Contractor shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

10.7 Publicity. News releases and other public disclosures pertaining to this Agreement will not be made by Contractor without prior written approval of the Judicial Council.

10.8 Third Party Beneficiaries. Except for the Judicial Branch Entities, each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties.

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10.9 Governing Law; Jurisdiction; and Venue. This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Contractor hereby irrevocably submits to the exclusive jurisdiction and venue of the state and federal district courts located in California in any legal action concerning or relating to this Agreement.

10.10 Follow-On Contracting. Subject to certain exceptions, no person, firm, or subsidiary thereof who has been awarded a Consulting Services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the Consulting Services contract.

10.11 Order of Precedence. Any conflict among or between the documents making up this Agreement will be resolved in accordance with the following order of precedence (in descending order of precedence): (i) Appendix C - The General Terms and Conditions and Appendix D – Defined Terms; (ii) the Coversheet; (iii) Appendix B – Pricing and Payment; (iv) Appendix A – Statement of Service; (v) Appendix E – Unruh Civil Rights Act and FEHA Certification; and (viii) any exhibits to the Agreement.

10.12 Miscellaneous. This Agreement has been arrived at through negotiation between the Parties. Neither Party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654. No amendment to this Agreement will be effective unless in writing. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. If any part of this Agreement is held unenforceable, all other parts remain enforceable. A Party's waiver of enforcement of any of this Agreement's terms or conditions is effective only if in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Time is of the essence regarding Contractor's performance of the Service. Unless otherwise approved by the Judicial Council in writing in advance, Service may not be performed outside of the United States. The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but taken together, all of which shall constitute the same Agreement.

**APPENDIX D: Defined Terms<sup>1</sup>**

“Acceptance” is defined in Appendix C, Section 2.2.

“Agreement” means this Standard Agreement as defined on the Coversheet, including the following: Appendix A (Statement of Service), Appendix B (Pricing and Payment), Appendix C (General Provisions), Appendix D (Defined Terms) and Appendix E (Unruh Civil Rights Act and FEHA Certification).

“Applicable Law” means any applicable laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders.

“Business Day” means any day other than Saturday, Sunday or a scheduled Judicial Council holiday.

“Claims” means claims, suits, actions, arbitrations, demands, proceedings, fines, penalties, losses, damages, liabilities, judgments, settlements, costs, and expenses (including reasonable attorneys’ fees and costs), including those based on the injury to or death of any person or damage to property.

“Confidential Information” means: (i) any information related to the business or operations of Judicial Branch Entities, including court records, and information relating to court proceedings, security practices, and business methodologies, (ii) information relating to Judicial Branch Entities’ personnel, users, contractors, or agents, including information that the Judicial Council’s personnel, agents, and users upload, create, access or modify pursuant to this Agreement; (iii) all financial, statistical, technical and other data and information of the Judicial Branch Entities (and proprietary information of third parties provided to Contractor), including trade secrets and other intellectual property, or proprietary information; (iv) data and information that is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know is confidential; and (v) Personal Information, Requirements, Developed Materials, and Judicial Council Materials. Confidential Information does not include information (that Contractor demonstrates to the Judicial Council’s satisfaction, by written evidence): (a) that Contractor lawfully knew prior to the Judicial Council’s first disclosure to Contractor, (b) that a Third Party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) that is, or through no fault of Contractor has become, generally available to the public.

“Consulting Services” refers to the services performed under “Consulting Services Agreements,” which are defined in Public Contract Code section 10335.5, substantially, as contracts that: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (iv) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type. The end product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

“Contract Amount” has the meaning set forth on the Coversheet.

“Contractor Key Personnel” means the Contractor Project Manager and those Project Staff members identified as “Key Personnel” as set forth in a Statement of Service.

“Contractor Project Manager” means the employee identified in a Statement of Service as the Contractor project manager.

“Contractor Service Location(s)” means any location (except for a Judicial Council Service Location) from which Contractor provides Service.

“Contractor Materials” means Materials owned or developed prior to the provision of the Service, or developed by Contractor independently from the provision of the Service and without use of the Judicial Council Materials or Confidential Information.

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

“Data Safeguards” means the highest industry-standard safeguards (including administrative, physical, technical, and procedural safeguards) against the destruction, loss, misuse, unauthorized disclosure, or alteration of the Judicial Council Data or Confidential Information, and such other related safeguards that are set forth in Applicable Laws, a Statement of Service, or pursuant to Judicial Council policies or procedures.

“Default” means if any of the following occurs: (i) Contractor breaches any of Contractor’s obligations under this Agreement, and this breach is not cured within ten (10) days following notice of breach (or in the opinion of the Judicial Council, is not capable of being cured within this cure period); (ii) Contractor or Contractor’s creditors file a petition as to Contractor’s bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of

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<sup>1</sup> Additional capitalized terms may be defined in the other Appendices to this Agreement.

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creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading; or (iv) any act, condition, or item required to be fulfilled or performed by Contractor to (x) enable Contractor lawfully to enter into or perform its obligations under this Agreement, (y) ensure that these obligations are legal, valid, and binding, or (z) make this Agreement admissible when required is not fulfilled or performed.

“Defect” means any failure of any portion of the Service to conform to and perform in accordance with the requirements of this Agreement and all applicable Specifications and Documentation.

“Requirements” means any Developed Materials, Contractor Materials, Third Party Materials, or any combination thereof (including those identified as “Requirements” in a Statement of Service, together with all Upgrades thereto), as well as any other items or equipment provided pursuant to the Service (except the Licensed Software).

“Developed Materials” means Materials created, made, or developed by Contractor or Subcontractors, either solely or jointly with the Judicial Branch Entities or Judicial Council Contractors, in the course of providing the Service under this Agreement, and all Intellectual Property Rights therein and thereto, including, without limitation, (i) all work-in-process, data or information, (ii) all modifications, enhancements and derivative works made to Contractor Materials, and (iii) all Requirements; provided, however, that Developed Materials do not include Contractor Materials.

“Documentation” means all technical architecture documents, technical manuals, user manuals, flow diagrams, operations guides, file descriptions, training materials and other documentation related to the Service; together with all Upgrades thereto.

“Effective Date” has the meaning set forth on the Coversheet.

“Hosted Services” means any cloud-based services, hosted service (including hosted services relating to the Licensed Software), software as a service, or other Internet or network-based services provided under the Agreement.

“Intellectual Property Rights” means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

“IT Infrastructure” means software, all computers, related equipment, including, as applicable, central processing units and other processors, controllers, modems, servers, communications, telecommunications equipment, other hardware, and peripherals.

“Judicial Council” has the meaning defined in the coversheet of this Agreement.

“Judicial Council Contractors” means the agents, subcontractors and other representatives of the Judicial Branch Entities, other than Contractor and Subcontractors.

“Judicial Council Data” means the Confidential Information, Personal Information, and any information, data, or content that is provided to or accessed by Contractor.

“Judicial Council Project Manager” means the individual appointed by the Judicial Council to communicate directly with the Contractor Project Manager.

“Judicial Council Service Locations” means any Judicial Council facility at which Contractor provides Service.

“Judicial Council Materials” means Materials owned, licensed, made, conceived, or reduced to practice by a Judicial Branch Entity or a Judicial Council Contractor, any Materials developed or acquired separate from this Agreement, and all modifications, enhancements, derivative works, and Intellectual Property Rights in any of the foregoing.

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

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

“Malicious Code” means any (i) program routine, device or other feature or hidden file, including any time bomb, virus, software lock, Trojan horse, drop-dead device, worm, malicious logic or trap door that may delete, disable, deactivate, interfere with or otherwise harm any of the Judicial Branch Entities’ hardware, software, data or other programs, and (ii) hardware-limiting, software-limiting or services-limiting function (including any key, node lock, time-out or other similar functions), whether implemented by electronic or other means.

“Materials” means all inventions (whether patentable or not), discoveries, literary works and other works of authorship (including software), designations, designs, expertise, technology, tools, ideas and information.

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“Parties” means the Judicial Council and Contractor, collectively.

“Party” means either the Judicial Council or Contractor, as the case may be.

“Personal Information” means any personally-identifiable information (e.g., person’s name, address, credit card number, email address) that is provided, generated, collected, accessed, stored or obtained pursuant to this Agreement, including transactional and other data pertaining to individuals.

“Project Staff” means the personnel of Contractor and Subcontractors who provide the Service.

“Source Code” means human-readable program statements written by a programmer or developer in a high-level or assembly language that are not directly readable by a computer and that need to be compiled into object code before they can be executed by a computer.

“Specifications” means with respect to each Requirement, Licensed Software, service or other portion of the Service, the detailed provisions and documents setting out the specifications, functionality and requirements.

“Statement of Service” means one or more statements of Service to be provided pursuant to and governed under the terms of this Agreement, substantially in the form attached as Appendix A, as agreed to by the Parties.

“Subcontractor” means the agents, subcontractors and other representatives of Contractor providing Service hereunder who are not employees of Contractor.

“Term” means the term of this Agreement.

“Termination Assistance Period” means the period commencing upon the expiration or termination of this Agreement and each Statement of Service and expiring six (6) months thereafter, as such period may be extended by the Parties.

“Third Party” means any person or entity other than the Judicial Council or Contractor.

“Third Party Materials” means Materials that are licensed or obtained by Contractor from a Third Party.

“Upgrades” means all new versions and releases of, and bug fixes, error corrections, Workarounds, updates, upgrades, modifications, patches for, the Licensed Software, Requirements, Documentation, or any other portion of the Service.

“Service” means each of the following, individually and collectively: the services (including the Maintenance and Support Services, and the Hosted Services), Requirements, Licensed Software (including equipment) and materials provided under this Agreement, including those services and Requirements set forth in a Statement of Service, and any incidental services, items, or responsibilities that are reasonable and customary in the industry and not specifically described in this Agreement (or the Statement of Service), but which are required for the performance of Contractor’s obligations and delivery of services.

“Workaround” means a temporary modification to or change in operating procedures for the Service that: (i) circumvents or effectively mitigates the adverse effects of a Defect so that the Service complies with and performs in accordance with the applicable Specifications and Documentation; (ii) does not require substantial reconfiguration of the Service or any reloading of data; and (iii) does not otherwise impose any requirements that would impede an end user’s efficient use of the Service.

“Service Location(s)” means any Judicial Council Service Location or Contractor Service location.



**APPENDIX E**

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

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

**CERTIFICATIONS:**

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

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

<i>Contractor Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>	