

**MASTER AGREEMENT**

AGREEMENT NUMBER  
**MA-2023-01**

1. In this Master Agreement ("Agreement"), the term "Contractor" refers to **Enera, Incorporated**, and the term "Establishing Judicial Branch Entity" or "Establishing JBE" refers to the **Judicial Council of California**. This Agreement is entered into between Contractor and the Establishing JBE for the benefit of the Judicial Branch Entities (as defined in Appendix D). Any Judicial Branch Entity that enters into a Participating Addendum with Contractor pursuant to this Agreement is a "Participating Entity" (collectively, "Participating Entities"). The Establishing JBE and the Participating Entities are collectively referred to as "JBEs" and individually as "JBE".

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2. This Agreement is effective as of **January 1, 2024** ("Effective Date") and expires on **December 31, 2026** ("Expiration Date").  
 This Agreement includes two (2) consecutive one-year Option Terms to extend through **December 31, 2028**.

3. The title of this Agreement is: Master Agreement for **Emergency Notification Services**.

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

4. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties' entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

- Appendix A – Services
- Appendix B – Payment Provisions
- Appendix C – General Provisions
- Appendix D – Defined Terms
- Appendix E – Participating Addendum
- Appendix F – Unruh Civil Rights Act and FEHA Certification
- Appendix G – Iran Contracting Act Certification
- Appendix H – Darfur Contracting Act Certification

Attachment 1– Cost Sheet

ESTABLISHING JBE'S SIGNATURE	CONTRACTOR'S SIGNATURE
Judicial Council of California	Enera Incorporated
BY (Authorized Signature) <i>Tracy Matthews</i>	BY (Authorized Signature) <i>Paul A. Erling</i>
PRINTED NAME AND TITLE OF PERSON SIGNING Tracy Matthews, Supervisor, Contracts	PRINTED NAME AND TITLE OF PERSON SIGNING Paul A. Erling, Vice President
DATE EXECUTED 10/02/2023	DATE EXECUTED <i>Sept. 22, 2023</i>
ADDRESS 2850 Gateway Oaks Drive, Suite 300 Sacramento, Ca, 95833-3509	ADDRESS 1525 E. 53 <sup>rd</sup> , Suite 438 Chicago, IL, 60615

## **APPENDIX A**

### **SERVICES**

#### **1. Background, Purpose, and Ordering.**

- 1.1** This Agreement sets forth the terms and conditions that apply to Contractor's provision of Work to the JBEs. "Work" shall mean the Services as further described in Sections 2 below. This Agreement does not obligate a JBE to place any orders for Work under this Agreement and does not guarantee Contractor a specific volume of orders.
- 1.2** Each JBE shall have the right to place orders under this Agreement for any of the Work. A JBE may place orders for Work by entering into a Participating Addendum with Contractor in the form attached as Appendix E to this Agreement ("Participating Addendum"). Pricing for Work shall be in accordance with the prices set forth in this Agreement. After a Participating Addendum has been presented to the Contractor by a JBE, the Contractor shall acknowledge, sign, and perform under the Participating Addendum in a timely manner. Contractor shall provide the Work for each JBE in accordance with the terms of this Agreement and the applicable Participating Addendum.
- 1.3** Each Participating Addendum constitutes and shall be construed as a separate, independent contract between Contractor and the JBE signing such Participating Addendum, subject to the following: (i) each Participating Addendum shall be governed by this Agreement, and the terms in this Agreement are hereby incorporated into each Participating Addendum; (ii) the Participating Addendum may not alter or conflict with the terms of this Agreement, or exceed the scope of the Work provided for in this Agreement; and (iii) the term of the Participating Addendum may not extend beyond the expiration date of this Agreement. The terms of the Participating Addendum and of this Agreement shall take precedence over any terms and conditions included on Contractor's invoice or similar document. Contractor shall notify the Establishing JBE within five (5) business days of receipt of a Participating Addendum from a Participating Entity. The Contractor shall promptly provide the Establishing JBE with a fully signed copy of each Participating Addendum between the Contractor and a Participating Entity.
- 1.4** Under a Participating Addendum, the JBE may at its option place orders for the Services using a purchase order, subject to the following: such purchase order is subject to and governed by the terms of this Agreement and the Participating Addendum, and any term in the purchase order that conflicts with or alters any term of this Agreement (or the Participating Addendum) or exceeds the scope of the Work provided for in this Agreement, will not be deemed part of the contract

between Contractor and the JBE. Subject to the foregoing, the Participating Addendum shall be deemed to include such purchase orders.

- 1.5** The JBE signing the Participating Addendum shall be solely responsible for: (i) the acceptance of and payment for the Work under such Participating Addendum; and (ii) its obligations and any breach of its obligations. Any breach of obligations by a JBE shall not be deemed a breach by any other JBE. Under no circumstances shall a JBE have any liability or obligation except pursuant to a Participating Addendum signed by such JBE, nor shall any breach by a JBE under a Participating Addendum give rise to a breach under any other Participating Addendum or be deemed grounds for termination of this Agreement by Contractor. The Establishing JBE shall have no liability or responsibility of any type related to: (i) any other JBE's use of or procurement through this Agreement (including any Participating Addendum), or (ii) such JBE's business relationship with Contractor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.
- 1.6** This Agreement is a nonexclusive agreement. Each JBE reserves the right to provide, or have others provide the Work. Contractor shall reasonably cooperate with any third parties retained by a JBE to provide the Work.

## **2. Services.**

**2.1 Description of Services.** As ordered by each JBE under a Participating Addendum, Contractor shall perform the following services ("Services" or "Work") for the JBEs:

### **2.2 General Description.**

Contractor shall provide JBEs with emergency notification services that enable the JBE's staff to immediately distribute an electronic voice or written message simultaneously to one or more individuals designated by the sender.

### **2.3 Mandatory Specifications.**

- A. The emergency notification service that Contractor provides and maintains on behalf of the Establishing JBE and any JBE that signs a Participating Addendum shall:
- B. Be straightforward and easy to operate for JBE staff that lacks training in information technology, readily allowing such staff to create and distribute notifications quickly from any location and to configure and maintain individual and group contact information.
- C. Be a secure, hosted, off-site service that operates independently of the infrastructure of the Establishing JBE and of any other JBE that protects all stored data from breach using security measures that at least meet, if they do not exceed, the applicable standards in Contractor's industry.
- D. Be backed up at more than one location maintained by Contractor and be

- supported by Contractor's plan for continuity of service in the event of an emergency at the location where the service is housed.
- E. Allow JBE staff to add/delete or designate users as Active/Inactive and/or as Administrator(s) and manage password creation, maintenance and permissions.
  - F. Be supported by 24/7 technical support available to JBE staff and their designated Administrator(s) via e-mail and phone number.
  - G. Resolve all customer service issues in a timely and consistent manner, with a maximum of one hour "Time-to-Respond" (TTR).
  - H. Support import and export of contact information via delimited text file or current Excel spreadsheet (e.g., CSV file, XLXS file, TXT file or etc.).
  - I. Allow users to create and distribute messages via mobile device (e.g., phone or tablet) or Internet at any time, with no restriction on the number of individuals or groups contacted.
  - J. Allow users to set up and use pre-made message templates or to create messages as needed.
  - K. Allow users the choice of sending messages to individuals or groups simultaneously, *or* in a pre-designated ranked order.
  - L. Allow for multiple means of notification (for example: calls to work phone and extension, home phone, mobile phone, text messaging, Telephone Device for the Deaf (TDD) and e-mail).
  - M. Make multiple or alternate (retry) connection attempts if a notification does not go through and shall also allow users to require acknowledgement of receipt.
  - N. Be able to dial extensions in addition to direct lines and to leave complete recorded voicemail messages.
  - O. Offer a real-time, web-based view detailing the overall progress of message notifications, receipts (if applicable), and acknowledgements (if applicable) suitable for JBE staff's response purposes.
  - P. Include a reporting feature that tracks and documents message notifications, receipts (if applicable), and acknowledgements (if applicable) suitable for auditing, compliance, and debriefing purposes.
  - Q. Be regularly updated for compatibility with modern operating systems and web browsers and include prudent security enhancements as needed.

- R. Be located in the continental United States.
- S. Allow for messages to be sent out as audio (phone call), text (SMS), and e-mail.
- T. Allow users to select the type of message, or combination of message types to send.
- U. Be web-browser-based and not require any software to be installed on users' computer(s) or device(s).
- V. Be compatible with the following web browsers, at their most current versions:
  - 1. Microsoft Internet Explorer
  - 2. Microsoft Edge
  - 3. Apple Safari
  - 4. Mozilla Firefox
  - 5. Google Chrome
- W. Not require any Active-X, non-default browser extensions that require installation or similar "plug-ins."
- X. Not require Java (JRE) "applets" or similar.

### **3. Ordering Process.**

Contractor shall establish (i) a customer account with the Judicial Council for placing orders on behalf of any JBE under this Agreement and (ii) an individual account for any JBE that elects to place an order directly from the Contractor.

Contractor shall provide the Judicial Council with the total cost and lead time required for the Services ordered, including for any maintenance and/or repairs needed on existing systems ("Estimate"). The Estimate shall itemize the cost of the and installation. Contractor shall coordinate installation dates with the Judicial Council prior to finalizing the order. Contractor shall provide the Judicial Council with immediate acknowledgement of each order received from a JBE by facsimile or email, regardless of what method is used to place the order. This acknowledgment shall include: the specific and Services ordered, installation dates, and Contractor contact information. If a JBE is ordering directly from the Contractor, the Contractor shall provide the same information to the JBE and use the same ordering process.

Contractor is required to maintain a staffed telephone number that JBE's are to use for placing orders, making inquiries, and obtaining customer service, including requests for maintenance service.

#### **4. Customer Service.**

Customer service issues shall be resolved in a timely and consistent manner, with an initial response time of 1 (one) hour. Customer service issues shall be classified and addressed based on level of severity.

#### **5. Training.**

Training is included in the subscription cost that each JBE pays the Contractor. Training may be developed in any of the following styles or formats: train the trainer, NetMeeting, or other style or format as mutually agreed to by JBE and Contractor. Contractor will provide a user guide for each JBE location.

#### **6. Reports.**

When transmitting messages, the system shall generate a call-out report that can be printed and exported as an Excel spreadsheet or a delimited text file with recipient's detailed information.

#### **7. Acceptance Criteria.**

The Services must meet the following acceptance criteria or the JBE may reject the applicable Services. Contractor will not be paid for any rejected Services.

#### **8. Timeline.**

Contractor must perform the Services according to the following timeline:

**8.1 Timeliness:** The Services were completed on time.

**8.2 Completeness:** The Services contained the materials and features required in the Agreement.

**8.3 Technical accuracy:** The Services are accurate as measured against commonly accepted standards in Contractor's industry.

#### **9. Project Managers.**

Each JBE may designate a project manager. The Establishing JBE's project manager is Ed Ellestad. A JBE may identify or change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement. Contractor's project manager is Paul Erling. Subject to written approval by the Establishing JBE, Contractor may change its project manager upon written Notice to the Establishing JBE without the need for an amendment to this Agreement.

#### **10. Service Warranties.**

Contractor warrants to the JBEs that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed

operations performing services similar to the Services; and (ii) Contractor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Contractor warrants that each Services will conform to the requirements of this Agreement and all applicable specifications and documentation. The foregoing warranty shall commence upon the JBE's acceptance of such Service and shall continue for a period of one (1) year following acceptance. In the event any Service does not conform to the foregoing warranty, Contractor shall promptly correct all nonconformities to the satisfaction of the JBE.

#### **11. Resources.**

Contractor is responsible for providing any and all facilities, materials and resources (including personnel, equipment, tools and software) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.

#### **12. Commencement of Performance.**

This Agreement is of no force and effect until signed by both parties and all Establishing JBE-required approvals are secured. Any commencement of performance prior to Agreement approval (and approval by a JBE via a duly executed Participating Addendum) shall be at Contractor's own risk.

#### **13. Stop Work Orders.**

**13.1** Each JBE may, at any time, by Notice to Contractor, require Contractor to stop all or any part of the Work being provided to such JBE for a period up to ninety (90) days after the Notice is delivered to Contractor, and for any further period to which the JBE and the Contractor may agree ("Stop Work Order"). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the JBE shall either (i) cancel the Stop Work Order; or (ii) terminate the Work covered by the Stop Work Order as provided for in this Agreement. Contractor shall not invoice any JBE for any Services or Work suspended, stopped or terminated by a Stop Work Order.

**13.2** If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the performance of the Work. The JBE shall make an equitable adjustment in the delivery schedule and the Participating Addendum shall be modified, in writing, accordingly, if:

- (i) The Stop Work Order results in an increase in the time required for performance of any part of the Participating Addendum; and
- (ii) Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage.

**13.3** The JBEs shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.

**14. Acceptance or Rejection.**

All Services are subject to acceptance by each JBE. The JBE may reject any Services that (i) fail to meet applicable requirements or specifications, including acceptance criteria, (ii) are not as warranted, or (iii) are performed late (without prior consent by the JBE). If the JBE rejects any Service, (other than for late performance), Contractor shall modify such Service, at no expense to the JBE to correct the relevant deficiencies and shall redeliver Service, to the JBE within ten (10) business days after the JBE's rejection, unless otherwise agreed in writing by the JBE. Thereafter, the parties shall repeat the process set forth in this section until the JBE accepts such corrected Service. The JBE may terminate the portion of the Participating Addendum that relates to a rejected Service, at no expense to the JBE if the JBE rejects that Service, (i) for late performance or (ii) on at least two (2) occasions for other deficiencies.

If a JBE requests maintenance services, a designated JBE representative will review all completed repairs by signing the Contractor's service report. The designated JBE representative must then be given a copy of this approved Contract service report. For time and material repairs, the JBE shall not pay the Contractor's invoice unless the Contractor's service report has been approved by the JBE representative.

END OF APPENDIX A



## **APPENDIX B**

### **PAYMENT PROVISIONS**

#### **1. General.**

Subject to the terms of this Agreement, Contractor shall invoice the JBE, and the JBE shall compensate Contractor, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the JBE shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature that Contractor incurs.

#### **2. Compensation.**

Contractor will invoice the amounts for Services that the JBE has accepted:

##### **2.1 Compensation for Services.**

Contractor will invoice the following amounts for Services that the JBE has accepted:

Contractor shall invoice the JBE the prices set forth in Attachment 1, Cost Sheet. Pricing shall be held firm for the entire Term of this Agreement, including the two one-year option terms.

##### **2.2 No Advance Payment.**

The JBEs will not make any advance payments.

#### **3. Required Certification.**

Contractor must include with any request for reimbursement from the JBE a certification that Contractor shall not invoice any JBE, nor seek 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 shall maintain records sufficient to show that no reimbursement from any JBE was sought for these costs, and Contractor shall provide those records to the Attorney General upon request.

#### **4. Invoicing and Payment.**

##### **4.1 Invoicing.**

Contractor shall submit invoices to the JBE in arrears no more frequently than monthly. Contractor's invoices shall include information and supporting documentation acceptable to the JBE. Contractor shall adhere to reasonable billing guidelines issued by the JBE from time to time.

##### **4.2 Payment.**

The JBE shall pay each correct, itemized invoice received from Contractor after acceptance of the applicable Services in accordance with the terms of this Agreement and the applicable Participating Addendum. Notwithstanding any

provision to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations.

#### **4.3 No Implied Acceptance.**

Payment does not imply acceptance of Contractor's invoice Services. Contractor shall immediately refund any payment made in error. The JBE shall have the right at any time to set off any amount owing from Contractor to the JBE against any amount payable by the JBE to Contractor under this Agreement.

#### **5. Taxes.**

Unless otherwise required by law, the JBE 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 JBE shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the JBE pursuant to this Agreement.

END OF APPENDIX B

**APPENDIX C**  
**GENERAL PROVISIONS**

**1. Provisions Applicable to Services**

**1.1 Qualifications.**

Contractor shall assign to perform the Services only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If a JBE is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel with respect to such JBE.

**1.2 Turnover.**

Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.

**1.3 Background Checks.**

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

**2. Contractor Certification Clauses.**

Contractor certifies to the JBEs that the following representations and warranties, which shall apply to this Agreement and any Participating Addendum, are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JBEs if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

**2.1 Authority.**

Contractor has authority to enter into and perform its obligations under this Agreement and any Participating Addendum, and Contractor's signatory has authority to bind Contractor to this Agreement and any Participating Addendum.

**2.2 Not an Expatriate Corporation.**

Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1 and is eligible to contract with the JBEs.

**2.3 No Gratuities.**

Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement (or any Participating Addendum) or securing favorable treatment with respect to any determinations concerning the performance of this Agreement (or any Participating Addendum).

**2.4 No Conflict of Interest.**

Contractor has no interest that would constitute a conflict of interest under PCC 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.

**2.5 No Interference with Other Contracts.**

To the best of Contractor's knowledge, this Agreement and any Participating Addendum does not create a material conflict of interest or default under any of Contractor's other contracts.

**2.6 No Litigation.**

No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform its obligations.

**2.7 Compliance with Laws Generally.**

Contractor complies with all laws, rules, and regulations applicable to Contractor's business and its obligations under this Agreement and any Participating Addendum.

**2.8 Drug Free Workplace.**

Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.

**2.9 No Harassment.**

Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement (and any Participating Addendum), and Contractor takes all reasonable steps to prevent harassment from occurring.

## **2.10 Noninfringement.**

The Services, and Contractor's performance under this Agreement (and any Participating Addendum) do not infringe, or constitute an infringement, misappropriation, or violation of, any third party's intellectual property right.

## **2.11 Nondiscrimination.**

Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.

## **2.12 National Labor Relations Board Orders.**

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

## **3. Insurance.**

### **3.1 General Requirements.**

- A. By requiring the minimum insurance set forth in this Agreement, the JBE shall not be deemed or construed to have assessed the risks that may be applicable to Contractor under this Agreement. Contractor shall assess its own risks and if it deems appropriate or prudent, maintain higher limits or broader coverage.
- B. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to the JBE in compliance with the insurance requirements set forth in this Agreement. The JBE may, in its sole discretion, accept self-insurance or risk-pool coverage as a substitute for any of the

required insurance policies under this Agreement. No representation is made by the JBE that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.

- C. Contractor shall obtain and maintain the required insurance for the duration of this Agreement with an insurance company or companies acceptable to the JBE, in its sole discretion, and that are rated "A-VII" or higher by A. M. Best's key rating guide and are authorized to do business in the state of California.
- D. For all insurance policies required under this Agreement, no deductible shall exceed five (5) percent of the minimum limit of insurance required under this Agreement unless authorized in writing by the JBE. Any Contractor deductible must be clearly stated on the appropriate certificate of insurance.

Self-Insured retentions (SIR) must be declared to and approved in writing by the JBE. The JBE may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or JBE. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to Judicial Branch Entities or Judicial Branch Personnel. JBE may deduct from any amounts otherwise due Contractor to fund the SIR. Policies shall NOT contain any SIR provisions that limit the satisfaction of the SIR to the named insured. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR. JBE reserves the right to obtain a copy of any policies and endorsements for verification.

- E. Contractor is responsible for and may not recover from the State of California, Judicial Council, or the JBE any deductible or self-insured retention that is connected to the insurance required under this Agreement. If self-insured, Contractor warrants that it will maintain funds to cover losses required to be insured against by Contractor under the terms of this Agreement.
- F. Contractor, prior to commencing performance under this Agreement, shall provide JBE with certificates of insurance and signed insurance policy endorsements, on forms acceptable to JBE, as evidence that the required insurance is in full force and effect. The insurance required under this Agreement, and any excess liability or umbrella liability insurance, that Contractor maintains in compliance with the terms of this "General

Requirements” subsection (with the exception of Professional Liability Insurance, if required) must be endorsed to include the State of California; Judicial Council of California; the JBE; the Judicial Branch Entities; and their respective elected and appointed officials, judicial officers, officers, employees, and agents as additional insureds. No payments will be made to Contractor until all required current and complete certificates of insurance and signed insurance policy endorsements are properly endorsed and on file with the JBE.

- G. The insurance required under this Agreement, including all required additional insured coverages, must be endorsed to be primary and non-contributory to any insurance or self-insurance maintained by the State of California, Judicial Council, or the JBE. Contractor’s liabilities under this Agreement shall not be limited in any manner to the insurance coverage required.
- H. Failure to provide the documentation as required prior to the commencement of Work shall not constitute or be construed as a waiver of the obligation to provide such documentation.
- I. All insurance policies required under this Agreement must remain in force for the entire duration of this Agreement. If the insurance expires during the Term of this Agreement, Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsement(s), or Contractor will be in breach of this Agreement, and the JBE may direct the Contractor to stop work or may take other remedial action. Contractor must provide renewal insurance certificates and signed policy endorsements to JBE on or before the expiration date of the previous insurance certificates and signed policy endorsements. Any new insurance procured by Contractor must conform to the requirements of this Agreement.
- J. In the event Contractor fails to keep the specified insurance coverage in force at all times required under this Agreement, JBE may, in addition to and without limiting any other remedies available to it, (i) order the Contractor to stop work, or (ii) terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- K. Contractor, and each insurer providing insurance required under this Agreement, expressly waives all rights of recovery and subrogation rights it may have against the State of California, Judicial Council, the JBE, and their respective elected and appointed officials, judicial officers, officers, employees, and agents for direct physical loss or damage to the Work, and for

any liability arising out of or in connection with the Work performed by Contractor under this Agreement or arising out of or in connection with Contractor's breach of this Agreement. This provision does not apply to professional liability insurance policies.

- L. Contractor shall provide the JBE with written notice within TEN (10) calendar days of becoming aware of a material change or cancellation of the insurance policies required under this Agreement. In the event of expiration or cancellation of any insurance policy, Contractor shall immediately notify the JBE's Project Manager.
- M. JBE reserves the right to request certified copies of any of the insurance policies required under this Agreement, which must be provided by Contractor within ten (10) business days following the request by JBE.
- N. Contractor must require insurance from its Subcontractors in substantially the same form as required of the Contractor herein and with limits of liability that are sufficient to protect the interests of the Contractor, State of California, the Judicial Council, the JBE, and the Judicial Branch Entities.

### **3.2 Individual Policy Requirements.**

#### **A. Commercial General Liability.**

Commercial General Liability Insurance shall be written on an occurrence form with limits of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage and two million dollars (\$2,000,000) annual aggregate. The policy shall include coverage for liabilities arising out of or in connection with premises, operations, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom a claim is made, or suit is brought. The products and completed liability shall extend for not less than three (3) years past the completion of the Work or the termination of this Agreement, whichever occurs first.

#### **B. Commercial Automobile Liability.**

Commercial Automobile Liability Insurance shall have limits of not less than one million dollars (\$1,000,000) per accident. This insurance must cover liability arising out of or in connection with the operation, use, loading, or unloading of a motor vehicle assigned to or used in connection with the Work including, without limitation, owned, hired, and non-owned motor vehicles.



### **C. Workers' Compensation & Employers' Liability Insurance.**

If Contractor has employees, it shall maintain workers' compensation insurance as required by law. Employer's liability limits shall be not less than one million dollars (\$1,000,000) for each accident, one million dollars (\$1,000,000) as the aggregate disease policy limit, and one million dollars (\$1,000,000) as the disease limit for each employee. If Contractor does not have employees, it shall provide a letter, on company letterhead, to the JBE certifying, under penalty of perjury, that it does not have employees. Upon the JBE's receipt of the letter, Contractor shall not be required to maintain workers' compensation insurance.

### **D. Professional Liability Insurance.**

**Professional Liability Insurance shall include coverage for any negligent act, error, or omission committed or alleged to have been committed which arises out of rendering or failure to render the Work provided under the terms of this Agreement.** The policy shall provide limits of not less than one million dollars (\$1,000,000) per claim or per occurrence and two million dollars (\$2,000,000) annual aggregate. If the policy is written on a "claims made" form, Contractor shall continue such 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. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that Work commences pursuant to the Agreement.

### **E. Cyber Liability Insurance.**

Cyber Liability Insurance, with limits not less than two million dollars (\$2,000,000) per occurrence or claim, two million dollars (\$2,000,000) aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Contractor in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

### **F. Technology Professional Liability Errors & Omissions.**

Technology professional liability errors and omissions insurance appropriate to the Contractor profession and work hereunder, with limits not less than two million dollars (\$2,000,000) per occurrence, and two million dollars (\$2,000,000) per annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by the Contractor pursuant to this Agreement and shall include, but not be limited to, claims involving

security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties, as well as credit monitoring expenses.

The technology professional liability errors and omissions insurance policy shall include or be endorsed to include *property damage liability coverage* for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the JBE in the care, custody, or control of the Contractor. If not covered under Contractor’s technology professional liability errors and omissions insurance, such “property” coverage of the JBE must be endorsed onto the Contractor’s Cyber Liability Policy.

### **3.3 Umbrella Policies.**

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

## **4. Indemnity.**

Contractor will defend (with counsel satisfactory to the JBE or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys’ fees and costs, that arise out of or in connection with: (i) a latent or patent defect in any Services (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement; (iii) a breach of a representation, warranty, or other provision of this Agreement or any Participating Addendum; and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made, or a loss occurs. This indemnity will survive the expiration or termination of this Agreement or any Participating Addendum, and acceptance of any Services. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement that would bind an indemnified party, without the affected JBE’s prior written consent, which consent shall not be unreasonably withheld; and such JBE shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor’s duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

## **5. Option Term.**

Unless Section 2 of the Coversheet indicates that an Option Term is not applicable, the Establishing JBE may, at its sole option, extend this Agreement for up to two consecutive one-year option terms, at the end of which Option Term this Agreement shall expire. In order to exercise this Option Term, the Establishing JBE must send

Notice to Contractor at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Contractor's signature.

## **6. Tax Delinquency.**

Contractor must provide Notice to the JBEs immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Establishing JBE may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below (and each JBE may terminate its Participating Addendum immediately "for cause" pursuant to Section 7.2 below) if (i) Contractor fails to provide the Notice required above, or (ii) Contractor is included on either list mentioned above.

## **7. Termination**

### **7.1 Termination for Convenience.**

The Establishing JBE may terminate, in whole or in part, this Agreement (and a JBE may terminate, in whole or in part, a Participating Addendum) for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Establishing JBE (and regarding a Participating Addendum, except as otherwise directed by the JBE), Contractor shall immediately stop Services as specified in the Notice.

### **7.2 Termination for Cause.**

The Establishing JBE may terminate this Agreement, in whole or in part, immediately "for cause" (and a JBE may terminate a Participating Addendum, in whole or in part, immediately "for cause"): if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement or a Participating Addendum, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the JBE, is not capable of being cured within this cure period); (ii) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement (or any Participating Addendum) any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.

### **7.3 Termination upon Death.**

This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.

### **7.4 Termination for Changes in Budget or Law.**

Each JBE's payment obligations are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement or Participating Addendum. Funding beyond the current appropriation year is

conditioned upon appropriation of sufficient funds to support the activities described in this Agreement (including a Participating Addendum). The Establishing JBE may terminate this Agreement (and any JBE may terminate a Participating Addendum), and each JBE may limit Contractor's Work (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the JBEs if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the Establishing JBE determines that Contractor's performance under this Agreement (or a JBE determines that Contractor's performance under a Participating Addendum) has become infeasible due to changes in applicable laws.

## **7.5 Rights and Remedies.**

- A. Nonexclusive Remedies.** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Establishing JBE and the affected Participating Entities 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 (or a Participating Addendum). If Contractor is in default: (i) a JBE may 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; (ii) a JBE may require Contractor to enter into nonbinding mediation; (iii) the Establishing JBE may exercise, following Notice, the Establishing JBE's right of early termination of this Agreement (and a JBE may exercise its right of early termination of a Participating Addendum) as provided herein; and (iv) a JBE may seek any other remedy available at law or in equity.
- B. Replacement.** If the Establishing JBE terminates this Agreement (or if a JBE terminates a Participating Addendum) in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate services equivalent to those terminated, and Contractor shall be liable to the JBE for any excess costs for those services. Notwithstanding any other provision, in no event shall the excess cost to the JBEs for such services be excluded as indirect, incidental, special, exemplary, punitive or consequential damages of the JBEs. Contractor shall continue any Services not terminated.
- C. Participating Addenda.** The termination of this Agreement shall not result in the termination of any outstanding Participating Addendum that has not been terminated by a JBE, and this Agreement shall continue to apply to any such Participating Addendum until such time as all Services under such Participating Addendum has been completed by its terms or is terminated as provided in this Section 7; provided, however, that the Term of such Participating Addendum may not exceed the expiration date of this Agreement. Issuance and acknowledgement of any Participating Addendum (as evidenced by the JBE's and Contractor's signature on the Participating Addendum) must be completed before the termination or expiration of this Agreement.

**7.6 Survival.**

Termination or expiration of this Agreement shall not affect the rights and obligations of Contractor, the Establishing JBE, and the Participating Entities which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations that by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

**8. Assignment and Subcontracting.**

Contractor may not assign or subcontract its rights or duties under this Agreement (including any Participating Addendum), in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Establishing JBE. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

**9. Notices.**

Notices must be sent to the following address and recipient:

<b>If to Contractor:</b>	<b>If to the Establishing JBE:</b>
Enera, Incorporated  Attn: Pau Erling, Vice President 1525 E 53 <sup>RD</sup> Street, Suite <del>516-4438</del> Chicago, IL 60615	Judicial Council of California  Attn: Contracts Supervisor 2850 Gateway Oaks Drive, Suite 300 Sacramento, CA 95833-4348

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

**10. Provisions Applicable to Certain Agreements.**

The provisions in this section are applicable to this Agreement and to any Participating Addendum, provided, however that if this Agreement or a Participating Addendum is not of the type described in the first sentence of a subsection, then that subsection does not apply to this Agreement or such Participating Addendum.

### **10.1 Union Activities Restrictions.**

*If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no JBE funds received under this Agreement, or any Participating Addendum will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

### **10.2 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.**

*If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.

### **10.3 Child Support Compliance Act.**

*If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

### **10.4 Priority Hiring.**

*If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

### **10.5 Iran Contracting Act.**

*If the Contract Amount is \$1,000,000 or more and Contractor did not provide to the Establishing JBE an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Establishing JBE to enter into this Agreement (and written permission from

each JBE to enter into the applicable Participating Addendum) pursuant to PCC 2203(c).

### **10.6 Sweatshop Labor.**

*If this Agreement (including any Participating Addendum) provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable.* Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBEs under this Agreement (or any Participating Addendum) have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweat free Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the JBEs.

### **10.7 Federal Funding Requirements.**

*If this Agreement (or a Participating Addendum) is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement (or a Participating Addendum) may have been written for the mutual benefit of both parties (or Participating Entities) before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement (or a Participating Addendum) were executed after that determination was made. This Agreement (or a Participating Addendum) is valid and enforceable only if sufficient funds are made available to the Establishing JBE (or the applicable Participating Entity) by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement (or a Participating Addendum) 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 (or a Participating Addendum) in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement (or a Participating Addendum) is intended to be paid, this Agreement (or Participating Addendum) shall be deemed amended without any further action of the parties to reflect any reduction in funds. The Establishing JBE may invalidate this Agreement (and a JBE may invalidate a Participating Addendum) under the termination for convenience or cancellation clause (providing for no more than thirty (30) days'

Notice of termination or cancellation) or amend this Agreement (or Participating Addendum) to reflect any reduction in funds.

### **10.8 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 (or a Participating Addendum): (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the Establishing JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must complete and return to the JBE a post-contract certification form (<https://www.courts.ca.gov/documents/JBCM-Post-Contract-Certification-Form.docx>), promptly upon completion of the Participating Addendum, and by no later than the date of submission of Contractor's final invoice to the JBE. If the Contractor fails to do so, the JBE will withhold \$10,000 from the final payment, or withhold the full payment if it is less than \$10,000, until the Contractor submits a complete and accurate post-contract certification form. The JBE shall allow the Contractor to cure the deficiency after written notice of the Contractor's failure to complete and submit an accurate post-contract certification form. Notwithstanding the foregoing and any other law, if after at least 15 calendar days, but no more than 30 calendar days, from the date of the written notice the Contractor refuses to comply with these certification requirements, the JBE shall permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. The post-contract certification form shall include : (1) the total amount of money Contractor received under the Participating Addendum; (2) the total amount of money and the percentage of work Contractor committed to provide to each DVBE subcontractor,; (3) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Participating Addendum; (4) the amount of money each DVBE subcontractor actually received from Contractor in connection with the Participating Addendum, and the corresponding percentage this payment comprises of the total amount of money Contractor received under the Participating Addendum; and (5) that all payments under the Participating Addendum have been made to the applicable DVBE subcontractors. Upon request by the JBE, Contractor shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Contractor will comply with all rules, regulations, ordinances and statutes that govern the DVBE program, including, without limitation, Military and Veterans Code section 999.5.



### **10.9 Antitrust Claims.**

Contractor shall assign to the applicable JBE 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 services by Contractor for sale to the JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to Contractor. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the JBE shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action.

### **10.10 Good Standing.**

*If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement (and any Participating Addendum) is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.

### **10.11 Equipment Purchases.**

*If this Agreement (or any Participating Addendum) includes the purchase of equipment, this section is applicable.* The JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the JBE, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the JBE at no expense to the JBE. If a theft occurs, Contractor must file a police report immediately.

### **10.12 Four-Digit Date Compliance.**

*If this Agreement (or any Participating Addendum) includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Contractor represents and warrants that it will provide only Four-Digit Date Compliant services to the JBEs. "Four-Digit Date Compliant" services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation are subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement or any Participating Addendum.

### **10.13 Small Business Preference Commitment.**

This section is applicable if Contractor received a small business preference in connection with this Agreement. Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement (and any Participating Addendum). Contractor must within sixty (60) days of receiving final payment under this Agreement (and any Participating Addendum) report to the JBE the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than seventy-five percent (75%) of the person-hours of direct labor required for the production the provision of services performed pursuant to this Agreement (and any Participating Addendum).

## **11. Miscellaneous Provisions.**

### **11.1 Independent Contractor.**

Contractor is an independent contractor to the JBEs. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBEs. Contractor has no authority to bind or incur any obligation on behalf of the JBEs. If any governmental entity concludes that Contractor is not an independent contractor, the Establishing JBE may terminate this Agreement (and a JBE may terminate a Participating Addendum) immediately upon notice.

### **11.2 GAAP Compliance.**

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

### **11.3 Audit.**

Contractor must allow the JBEs or their designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement (including any Participating Addendum), and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement (including any Participating Addendum), Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the JBE five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JBE in an amount equal to the cost of such audit. This Agreement (and any Participating Addendums) are subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.

### **11.4 Licenses and Permits.**

Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of

the Services. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.

### **11.5 Confidential Information.**

During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the JBE's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement and any Participating Addendum. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. Each JBE owns all right, title and interest in its Confidential Information. Contractor will notify the affected JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JBE to protect such Confidential Information. Upon a JBE's request and upon any termination or expiration of this Agreement or a Participating Addendum, Contractor will promptly (a) return to the JBE or, if so directed by the JBE, destroy all such JBE's Confidential Information (in every form and medium), and (b) certify to the JBE in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the JBEs shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

### **11.6 Publicity.**

Contractor shall not make any public announcement or press release about this Agreement (or any Participating Addendum) without the prior written approval of the Establishing JBE (and with respect to any Participating Addendum, the prior written approval of the applicable JBE).

### **11.7 Choice of Law and Jurisdiction.**

California law, without regard to its choice-of-law provisions, governs this Agreement (including any Participating Addendum). The Contractor and the applicable JBEs shall attempt in good faith to resolve informally and promptly any dispute that arises. Jurisdiction for any legal action arising from this

Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.

**11.8 Negotiated Agreement.**

This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.

**11.9 Amendment and Waiver.**

Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Establishing JBE. A waiver of enforcement of any of this Agreement's terms or conditions by the Establishing JBE is effective only if expressly agreed in writing by a duly authorized officer of the Establishing JBE. Any waiver or failure by a JBE to enforce any provision of this Agreement or Participating Addendum on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**11.10 Severability.**

If any part of this Agreement is held unenforceable, all other parts remain enforceable.

**11.11 Headings; Interpretation.**

All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.

**11.12 Time of the Essence.**

Time is of the essence in Contractor's performance under this Agreement.

**11.13 Counterparts.**

This Agreement may be executed in counterparts, each of which is considered an original.

END OF APPENDIX C

## APPENDIX D

### Defined Terms

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

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

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

**“Confidential Information”** means: (i) any information related to the business or operations of each JBE, including information relating to its personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of each JBE (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the JBEs’ satisfaction that: (a) Contractor lawfully knew prior to the JBE’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.

**“Contract Amount”** means the contract amount of any Participating Addendum.

**“Coversheet”** refers to the first page of this Agreement.

**“Effective Date”** is defined on the Coversheet.

**“Establishing JBE”** is defined on the Coversheet.

**“Expiration Date”** is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.

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

**“Judicial Branch Entity (JBE)”** or **“Judicial Branch Entities (JBEs)”** means the Establishing JBE and any other California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

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

**“Notice”** means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Appendix C.

**“Option Term”** means a period, if any, through which this Agreement may be or has been extended by the Establishing JBE.

**“Participating Addendum”** is defined in Appendix A.

**“Participating Entities”** and **“Participating Entity”** are defined on the Coversheet.

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

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

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

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

**“Work”** is defined in Appendix A.

END OF APPENDIX D

## APPENDIX E

### Participating Addendum

- (1) This Participating Addendum is made and entered into as of [month/day/year] (“Participating Addendum Effective Date”) by and between the \_\_\_\_\_ **[add full name of the JBE]** (“JBE”) and [add name of Contractor] (“Contractor”) pursuant to the Master Agreement # \_\_\_\_\_ **[add Master Agreement # - see cover page]** (“Master Agreement”) dated \_\_\_\_\_, 20\_\_ **[add Effective Date of the Master Agreement]** between the **[add name of the JBE that established the Master Agreement]** (“Establishing JBE”) and Contractor. Unless otherwise specifically defined in this Participating Addendum, each capitalized term used in this Participating Addendum shall have the meaning set forth in the Master Agreement.
- (2) This Participating Addendum constitutes and shall be construed as a separate, independent contract between Contractor and the JBE, subject to the following: (i) this Participating Addendum shall be governed by the Master Agreement, and the terms in the Master Agreement are hereby incorporated into this Participating Addendum; (ii) the Participating Addendum (including any purchase order documents pursuant to the Participating Addendum) may not alter or conflict with the terms of the Master Agreement, or exceed the scope of the Work provided for in the Master Agreement; and (iii) the term of the Participating Addendum may not extend beyond the expiration date of the Master Agreement. The Participating Addendum and the Master Agreement shall take precedence over any terms and conditions included on Contractor’s invoice or similar document.
- (3) Under this Participating Addendum, the JBE may at its option place orders for the Services using a purchase order, subject to the following: such purchase order is subject to and governed by the terms of the Master Agreement and the Participating Addendum, and any term in the purchase order that conflicts with or alters any term of the Master Agreement (or the Participating Addendum) or exceeds the scope of the Work provided for in this Agreement, will not be deemed part of the contract between Contractor and JBE. Subject to the foregoing, this Participating Addendum shall be deemed to include such purchase orders.
- (4) The JBE is solely responsible for the acceptance of and payment for the Work under this Participating Addendum. The JBE shall be solely responsible for its obligations and any breach of its obligations. Any breach of obligations by the JBE shall not be deemed a breach by the Establishing JBE or any other Participating Entity. The Establishing JBE shall have no liability or responsibility of any type related to: (i) the JBE’s use of or procurement through the Master Agreement (including this Participating Addendum), or (ii) the JBE’s business relationship with Contractor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.
- (5) Pricing for the Work shall be in accordance with the prices set forth in the Master Agreement.

- (6) The term of this Participating Addendum shall be from the Effective Date until:  
 [\_\_\_\_\_ month/day/year – may not exceed the term of the Master Agreement].
- (7) The JBE hereby orders, and Contractor hereby agrees to provide, the following Work:

***[Instructions to the JBE establishing the Master Agreement: add provisions as appropriate, and in accordance with the terms of the Master Agreement. For example:***

- ***Options for ordering, including description of the Services.***
- ***Options for: service levels, quantity, model #s, delivery dates, pricing, etc.***

- (8) Any notices must be sent to the following address and recipient:

If to Contractor:	If to the JBE:
Enera, Incorporated	Judicial Council of California
Attn: Pau Erling, Vice President 1525 E 53 <sup>RD</sup> Street, Suite <del>516-4438</del> Chicago, IL 60615	Attn: Contracts Supervisor 2850 Gateway Oaks Drive, Suite 300 Sacramento, CA 95833-4348

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

- (9) This Participating Addendum and the incorporated documents and provisions (including the terms of the Master Agreement) constitute the entire agreement between the parties and supersede any and all prior understandings and agreements, oral or written, relating to the subject matter of this Participating Addendum.

IN WITNESS WHEREOF, JBE and Contractor have caused this Participating Addendum to be executed on the Participating Addendum Effective Date.

***[JBE]***

***[CONTRACTOR]***

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:



APPENDIX F

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

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

**CERTIFICATIONS:**

1. Contractor is in compliance 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. The certifications made in this document shall be deemed to be made for, and apply to, the Agreement and each Participating Addendum of \$100,000 or more.

Contractor Name (Printed) <i>Enera, Inc</i>		Federal ID Number <i>36-4033280</i>
By (Authorized Signature) <i>Paul A. Erling</i>		
Printed Name and Title of Person Signing <i>Paul A. Erling</i>		
Date Executed <i>Sept 22, 2023</i>	Executed in the County of <i>Cook</i> in the State of <i>IL</i>	

### APPENDIX G IRAN CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of \$1,000,000 or more.

To submit a proposal to the JBE, you must complete **ONLY ONE** of the following two paragraphs. To complete paragraph 1, check the corresponding box **and** complete the certification for paragraph 1. To complete paragraph 2, simply check the corresponding box.

1. We are not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to PCC 2203(b), and we are not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 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 current list of persons engaged in investment activities in Iran created by DGS.

OR

2. We have received written permission from the JBE to submit a proposal pursuant to PCC 2203(c) or (d). A copy of the written permission from the JBE is included with our proposal.

#### CERTIFICATION FOR PARAGRAPH 1:

I, the official named below, certify that I am duly authorized to legally bind the proposer to the clause in paragraph 1. This certification is made under the laws of the State of California.

Company Name (Printed)	Enera, Inc	Federal ID Number	36-4033280
By (Authorized Signature)	Paul A. Erling		
Printed Name and Title of Person Signing	Paul A. Erling		
Date Executed	Executed in the County of <u>Cook</u> in the State of <u>IL</u>		
Sept. 22, 2023			

### APPENDIX H DARFUR CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 10478, if a proposer currently or within the previous three years has had business activities or other operations outside of the United States,

it must either (i) certify that it is not a "scrutinized company" as defined in PCC 10476, or (ii) receive written permission from the JBE to submit a proposal.

To submit a proposal to the JBE, the proposer must insert its company name and Federal ID Number below and complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

Company Name (Printed)	Enera, Inc	Federal ID Number	36-4033280
Printed Name and Title of Person Checking Box (for paragraph 1 or 2 below)			
Paul A. Erling, Vice President			

1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.

OR

2. We are a "scrutinized company" as defined in PCC 10476, but we have received written permission from the JBE to submit a proposal pursuant to PCC 10477(b). A copy of the written permission from the JBE is included with our proposal.

OR

3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a "scrutinized company" as defined in PCC 10476.

#### CERTIFICATION FOR PARAGRAPH 3:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer to the clause in paragraph 3. This certification is made under the laws of the State of California.

Company Name (Printed)	Enera, Inc	Federal ID Number	36-4033280
By (Authorized Signature)	Paul A. Erling		
Printed Name and Title of Person Signing			
Paul A. Erling			
Date Executed	Executed in the County of <u>Cook</u> in the		
Sept 27, 2023	State of <u>IL</u>		

**ATTACHMENT 1**  
**COST SHEET**

Item Description	Initial Year One Pricing	Initial Year Two	Initial Year Three	Option Year One	Option Year Two
Annual Subscription Price (includes service maintenance, support and web-based training costs): Cost per recipient – unlimited use:	\$2,500 \$1.75 per user	\$2,500 \$1.75 per user	\$2,500 \$1.75 per user	\$2,500 \$1.75 per user	\$2,500 \$1.75 per user