

AGREEMENT MA-SF201904
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- In this Master Agreement (“Agreement”), the term “Contractor” refers to **L3 SECURITY & DETECTION SYSTEMS**, and the term “Establishing Judicial Branch Entity” or “Establishing JBE” refers to the **COURT OF APPEAL, FIFTH APPELLATE DISTRICT**. This Agreement is entered 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”).
- This Agreement is effective as of **August 16, 2019** (“Effective Date”) and expires on **August 15, 2022** (“Expiration Date”).

3. The title of this Agreement is: Master Agreement for **Purchase of Personnel Security System**.

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

- 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 – Goods and 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

ESTABLISHING JBE’S SIGNATURE	CONTRACTOR’S SIGNATURE
<b>COURT OF APPEAL, FIFTH APPELLATE DISTRICT</b>	(Contractor is a corporation, and the state or territory where Contractor is organized is in Massachusetts)  <b>L3 SECURITY &amp; DETECTION SYSTEMS</b>
BY (Authorized Signature) 	BY (Authorized Signature) 
Brian Cotta, Clerk/Executive Officer	Daniel Curtis, Contract Manager
DATE EXECUTED 11-20-2019	DATE EXECUTED 19 November 2019
ADDRESS 2424 Ventura Street Fresno, CA 93721	ADDRESS One Radcliff Road Tewksbury, MA 01867

## APPENDIX A

### Goods and 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 Goods, Services, and Deliverables as further described in Sections 2 and 3 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 the Agreement. The Participating Addendum and 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 Goods 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, 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. Goods**

- 2.1 Description of Goods.** As ordered by each JBE under a Participating Addendum, Contractor shall provide to the JBEs the following products, goods, materials, and supplies ("Goods") free and clear of all liens, claims, and encumbrances, and in accordance with this Agreement:

**PROVISION 2 Compact Advanced Personnel Screening (with Automatic Target Detection)**

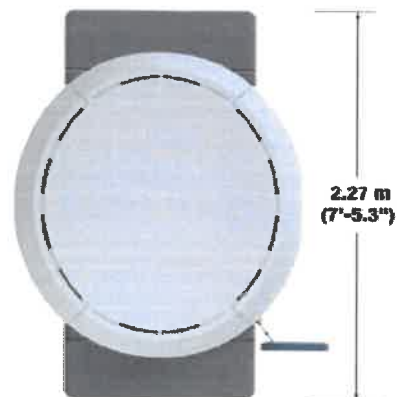
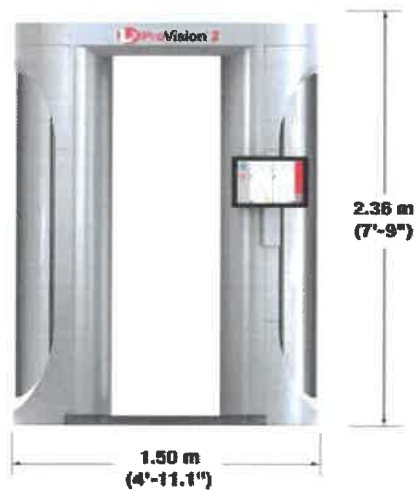


**APPLICATIONS**

- Aviation threat detection
- Non-aviation environments

**COMPLIANCE**

- TSA Approved
- EU CEP Approved



## Features

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### Standard Features

- Transparent walls
- Rigid construction
- Configurable operating modes
- Upgradeable detection software

### Scanning Features

- Automatic detection, no images presented or generated
- Front and back generic mannequin presented side-by-side
- Parallel screening options for increased throughput
- Automatic system diagnostics capabilities

### PHYSICAL SPECIFICATIONS

Inner walls:	Clear polycarbonate 3 mm
Outer walls:	Fiberglass and clear polycarbonate 4.5 mm
Height:	2.36 m (7' 9")
Width:	1.5 m (4' 11")
Depth:	2.27 m (7' 5")
Weight:	698.5 kg (1540 lbs)
Power:	100 VAC - 240 VAC / 1900 Watts Peak 50 hz - 60 hz
Temperature:	0° C to 35° C (32° F to 95° F)
Humidity:	10 – 90% non-condensing

### SAFETY

- Non-ionizing radio waves
- Interior lighting

**2.2 Risk of Loss; Title.** Contractor will deliver the Goods “Free on-Board Destination Freight Prepaid”, to the JBEs at the address specified in the applicable Participating Addendum. Title to the Goods vests in the applicable JBE upon such JBE’s receipt of the Goods.

**2.3 Inspection and acceptance criteria.**

*Inspection and acceptance shall be based upon the Contractors “Site Acceptance Test” (SAT) criteria, as approved for ProVision Systems by the Transportation Security Administration (TSA).*

**2.4 Warranties.** Contractor warrants to the JBEs that the Goods are warranted to perform as advertised, free from all defects in materials and workmanship, in compliance with all applicable specifications and documentation, and to the extent not manufactured pursuant to detailed designs furnished by the JBE, free from defects in design. The JBE’s approval of

designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.

*Each system includes a one-year warranty, parts and labor included, from the date of successful SAT.*

*Enhanced Security: The system eliminates the ambiguity of hand searches and detects a range of threats metal detectors cannot. Based on a 1.5 second scan, the system detects a broad range of targets including metallic and nonmetallic items, and both low- and high-density materials, including explosive sheets, powders, sheet and bulk explosives, liquids, gels, ceramics and other solids, etc., in accordance with TSA and/or EU ECAC specifications.*

*Health and Safety: Safe Radio Wave Technology: The ProVision 2's sensing mechanism is based on millimeter-wave technology using safe radio waves that pose no health and safety risks. These signals pass through most types of clothing, but do not penetrate the body. The reflected waves are captured by the system's sensors. The ProVision 2 does not use ionizing radiation, such as X-rays, and is tens of thousands of times less powerful than other commercial radio frequency devices like cell phones, wireless handsets and other standard household devices. The ProVision 2's millimeter wave technology has been extensively evaluated by regulators worldwide including the US Food and Drug Administration, Health Canada and the Dutch Institute of Applied Science and found to be safe.*

*Ultimate Privacy: Image-Free Technology: The ProVision 2 boasts similar privacy protocols as walk-through metal detectors since images are not generated. Numeric scan data is analyzed by software without human intervention to determine if any threats are present. Potential areas of concern are mapped onto a generic mannequin, which is identical for everyone, and presented to the operator. Security personnel can then assess the situation. If nothing is detected, a green screen with an "OK" appears and security personnel can clear the individual.*

*Efficient Operations: The system requires less than 1.5 seconds to scan an individual for a complete multi directional view, and less than six seconds total time for the scan and decision. The ProVision 2 can support processing 200-300 people per hour, depending on the application and supporting security protocols. Additional parallel screening options are available to further enhance throughput.*

*The ProVision 2 reduces the need for time consuming physical hand searches that can limit throughput levels. In addition to being more invasive and stressful for the individuals being screened, these hand searches place a high degree of physical stress on security personnel. With the ProVision 2 there is no need for the repetitive bending and stretching required for physical inspections.*

*Highly Configurable: Operational Simplicity: The ProVision 2 is a single, stationary pose system that accommodates the throughout needs of high traffic high volume checkpoints. The ProVision 2's transparent walls enable security personnel to keep individuals in view at all times. The system's reliable and robust design allows it to withstand rough handling. Fully networkable, the system can easily be configured to meet specific throughput and facility requirements.*

### 3. Services.

**3.1 Description of Services.** As ordered by each JBE under a Participating Addendum, Contractor shall perform the following services (“Services”) for the JBEs:

- Installation
- Commissioning
- Maintenance

All necessary repair parts and related freight expenses

Response Time: L3 SDS will provide On-site response as soon as possible to request for equipment service from JBE’s authorized representative – 8-hour to 24-hour response time.

### **PROVISION SEMI-ANNUAL PREVENTATIVE MAINTENANCE**

- PAT test system
- Verify proper torque setting for mounting bolts securing masts to rotation arm
- Inspect system cables, wiring and connectors
- Check all fans for correct operation and free of obstructions.
- Inspect Gigabit switch and cables for damage and secured correctly
- Perform field test on Master and Slave mast from LCU
- Perform antenna test and verify each antenna switch is selecting correctly
- Perform VCO test and verify correct operation
- Perform antenna switch test and is within specifications
- Check all LCU and COP for correct operation and image quality
- Check power supply for operation within specifications
- Inspect cable chain mechanism for clearance and guide springs for correct settings
- Inspect motor drive belt for proper tension, tracking and wear
- Inspect motor for proper operation and lubricant leakage

### **SELECT SCHEDULE ANNUAL EQUIPMENT MAINTENANCE CONTRACT DELIVERABLES**

- All necessary repair parts and related freight expenses.
- Regular (Monday-Friday, 8:00am-5:00pm) labor hours for remedial maintenance.
- Regular (Monday-Friday, 8:00am-5:00pm) travel time to and from the equipment site.
- Lodging, Airfare and Per Diem expenses as required per scope of repairs.
- Semi-annual preventative maintenance inspection (two per year, per ProVision system).
- Additional services are available upon request at Seller’s prevailing time and materials rates.

\* Note: SafeView and ProVision Portals do not receive radiation survey services because they only produce radio waves.

**3.2 Acceptance Criteria.** The Services and Deliverables must meet acceptance criteria or the JBE may reject the applicable Services or Deliverables. *Acceptance shall be based upon meeting SAT requirements.* The JBE may use the attached Acceptance and Signoff Form (Attachment 1) to notify Contractor of the acceptance or rejection of the Services and Deliverables. Contractor will not be paid for any rejected Services or Deliverables.

**3.3 Timeline.** Contractor must perform the Services and deliver the Deliverables according to the timeline on Section 4 below.

**3.4 Project Managers.** Each JBE may designate a project manager. The Establishing JBE's project manager is: **BRIAN COTTA**. A JBE may change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement. Contractor's project manager is: **DAN CURTIS**. Subject to written approval by the Establishing JBE, Contractor may change its project manager without need for an amendment to this Agreement.

**3.5 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 Deliverable and the 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 Deliverable or Service and shall continue for a period of one (1) year following acceptance. In the event any Deliverable or Service does not conform to the foregoing warranty, Contractor shall promptly correct all nonconformities to the satisfaction of the JBE.



The Technical Standards:

The technology used by the ProVision system is based upon millimeter wave signals (24 to 30 GHz) that bounce off the body. ProVision systems are compliant with EU, US, and Canada standards applicable for human exposure to electromagnetic fields as summarized below and tested by a third party (CKC lab), who is designated as a Notified Body for Europe:

- 1) **C95.1-2005** - IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz.
  - C95.1-2005 defines exposure as: "Typically, general public exposure occurs in uncontrolled environments and includes individuals of all ages and varying health status, including children, pregnant women, individuals with impaired thermoregulatory systems, individuals equipped with electronic medical devices, and persons using medications that may result in poor thermoregulatory system performance."
- 2) **EN 50371:2002**- Generic standard to demonstrate the compliance of low power electronic and electrical apparatus with the basic restrictions related to human exposure to electromagnetic fields (10 MHz - 300 GHz) - General public
- 3) **ICNIRP**- Guidelines for limiting exposure to time-varying electric, magnetic, and electromagnetic fields (up to 300 GHz)" (ICNIRP 1998)
- 4) **Directive 2004/108/EC**- Directive is to guarantee the free movement of apparatus and to create an acceptable electromagnetic environment in the Community.
- 5) **Industry Canada RSS-102** – RF exposure compliance of radio communication apparatus.

In addition to the above standards, the ProVision system has been tested by U.S. Food and Drug Administration (USFDA). The testing was documented in the report: "Assessment of Risks of EMI for Personal Medical Devices (PMEDS) from Emissions of Millimeter Wave Security Screening Systems". This assessment was made by the Office of Science and Engineering Laboratories who tested the ProVision system under a number of scenarios and included a number of devices selected to represent a significant portion of PMED's of historical concern. No effects were observed for any PMED's tested with the ProVision. PMED's include pacemakers; implantable cardioverter defibrillators (ICD's); neurostimulators; insulin pumps; glucose sensors; and transcutaneous electrical nerve stimulators (TENS)

The Declaration of Conformity:

**Model: PV-2**

to which this declaration relates is in conformity with the relevant provisions of the following standard(s) or other normative document(s).

**Directive 2014/53/EU (RED)**

Article 3.1a Safety: EN 61010-1:2010; EN 62479:2010

Article 3.1b EMC: EN 55022:2006 +A1: 2010; EN 61326-1:2006 EN 301 489-3 V2.1.1 (2017-03)

Article 3.2 Spectrum: EN 300 440-2 V2.1.1 (2017-01)

**Directive 2014/30/ EU (EMC)**

Annex I 1a/1b Emissions/Immunity: EN 55022:2006 +A1: 2010; EN 61326-1:2006; EN 50364:2010

**Directive 2014/35/EU (Low Voltage): EN 61010-1:2010**

**3.6 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.

**3.7 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 of a Participating Addendum) shall be at Contractor's own risk.

**3.8 Stop Work Orders.**

**A.** 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.

**B.** If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the performance of 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.

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

**4. Acceptance or Rejection.** All Goods, Services, and Deliverables are subject to acceptance by each JBE. The JBE may reject any Goods, Services or Deliverables that (i) fail to meet applicable requirements or specifications, including acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the JBE). If the JBE rejects any Good, Service, or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Good, Service, or Deliverable at no expense to the JBE to correct the relevant deficiencies and shall redeliver such Good, Service, or Deliverable 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 Good, Service, or Deliverable. The JBE may terminate the portion of the Participating Addendum that relates to a rejected Good, Service, or Deliverable at no expense to the JBE if the JBE rejects that Good, Service, or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

The installation will be done by Contractor. JBE is prepared to receive the shipment and may provide temporary storage. After the onsite visit of Contractor before L3 order processing, related shipping and/or related installation, the Contractor should absolutely confirm in writing with JBE that the unit will fit appropriately in the desired and agreed upon location. Shipping logistics shall also be agreed upon between JBE and Contractor after the visit, including door frame measurements to ensure the equipment can be staged and brought into the facility and transported to its final destination within the facility without issue(s).

Commissioning is as follows:

Scope of work to include the Installation and Site Acceptance Test (SAT), prior to turning over the system for full operational use.

Customer Training (Optional) will be provided by the L3 Training Department and included in price quote as optional.

Freight for the system included in price quote.

The Site Integrator has confirmed a clear rigging path to accommodate the entire scope of work.

Note that the customer will be responsible for delivering the System and Install Kit to the checkpoint location, prior to the Installation Techs Arriving.

Installation & Commissioning of a L3 ProVision 2 in the Field.

Item #	Qty	Unit	Product Code	Description
001	1		Provision 2	Install Kit Freight, Installation, Travel, & Expenses Associated with the Installation of 1 L3 Provision 2, in Fresno, CA.
002	1		Travel	Travel (Included-SOW will be 2 L3 Techs

- 1 SV Install Kit shipped directly to the site/rigger.
- 2 System Crates & Decomm Materials NOT NEEDED for this scope of work.
- 3 Proposal is based on a 1 day Installation & Commissioning effort. Any changes or lengthening of the project will be subject to additional charges.
- 4 PV2 SAT to be performed by the L3 Tech, and witnessed by the customer.
- 5 See "Optional" quote for Training. L3 will provide a 2 day Train the Trainer course for 5 instructors at our L3 Training facility located in Tewksbury, MA.

**NOTES:** 6 Permits obtained by others.

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Escorts will be provided - No L3 or 3rd Party personnel badging is required.

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**ATTACHMENT 1  
ACCEPTANCE AND SIGNOFF FORM**

Description of Services or Deliverables provided by Contractor:

\_\_\_\_\_

**Date submitted to the JBE:** \_\_\_\_\_

The Services or Deliverables are:

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

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

2) Complete:  yes  no. If no, please identify incomplete aspects of the Services or Deliverables.

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

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

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

Please note level of satisfaction:

Poor  Fair  Good  Very Good  Excellent

Comments, if any:

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

The Services or Deliverables listed above are accepted.

The Services or Deliverables listed above are rejected.

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

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

Name of JBE: \_\_\_\_\_

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

END OF ATTACHMENT

**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 for Goods.** Contractor will invoice the following amounts for Goods that the JBE has accepted:

MA-SF201904 L3 SECURITY & DETECTION SYSTEMS

Line #	Qty	Part #	Description	Unit Price (USD)	Extended Price (USD)
1.	1	1000-10002-PV	<b>ProVision 2, EU CEP</b> Includes: <ul style="list-style-type: none"> <li>• Operator Console Panel (OCP)</li> <li>• Stance Panel</li> <li>• Power Cord</li> </ul>	\$135,000	\$135,000
2.	1	1600-28355-00	<b>ProVision 2 Stance Mannequin</b>	Included	Included
3.	1	1000-27555-00	<b>ProVision 2 FIXED OCP Mount</b>	Included	Included
4.	1	1600-23975-00	<b>ProVision 2 Remote OCP Kit</b> <ul style="list-style-type: none"> <li>• A kit to connect a second remote desktop OCP to a system</li> <li>• Scans can be initiated from either the local or remote OCP</li> </ul>	\$4,000	\$4,000
5.	1	1600-23710-00	<b>Networking Hardware Kit, PV2</b>	\$1,080	\$1,080
6.	1	8800-10003-00	<b>ProVision2 Train The Trainer (Optional) TBD</b> <ul style="list-style-type: none"> <li>• L3 SDS will provide a 2 day Train the Trainer course for 5 instructors onsite at the customers location in California</li> <li>• The class duration will be 8-hours per day</li> <li>• All course materials will be provided, including a comprehensive English Technical Manual which will be provided on USB to each student</li> <li>• L3 SDS will require a machine to be made available throughout the course with a suitable classroom facility close to the machine</li> <li>• Relevant clearances must also be obtained for the trainer to be allowed access to the site</li> <li>• Please note: L3 SDS will not be liable for any machine down time, parts failures or damage incurred due to this training</li> <li>• Price includes trainers travel, subsistence and accommodation costs</li> <li>• All delegates must have a minimum BTEC or equivalent qualification in electronics</li> </ul>	\$6000	\$6000
7.	1	Installation & Commissioning	<b>Installation &amp; Commissioning</b> <ul style="list-style-type: none"> <li>• L3 will provide certified engineers to install the above machine</li> <li>Engineers travel, accommodation &amp; subsistence costs are included</li> </ul>	\$11,554	\$11,554
8.	1	Freight	<b>Freight – FOB Destination Freight Pre-Paid</b>	\$3,900	\$3,900
				<b>Total:</b>	<b>\$ 161,534</b>
<b>OPTIONS</b>					
9.	1	8000-A0080-00	<b>Select Annual Schedule Maintenance Contract – Year 1</b>	\$13,000	\$13,000
10.	1	8000-A0080-00	<b>Select Annual Schedule Maintenance Contract – Year 2</b>	\$13,390	\$13,390
11.	1	8000-A0080-00	<b>Select Annual Schedule Maintenance Contract – Year 3</b>	\$13,807	\$13,807
12.	1	8000-A0080-00	<b>Select Annual Schedule Maintenance Contract – Year 4</b>	\$14,222	\$14,222
13.	1	8000-A0080-00	<b>Select Annual Schedule Maintenance Contract – Year 5</b>	\$14,650	\$14,650
14.	1	8000-A0080-00	<b>Select Annual Schedule Maintenance Contract – Year 6</b>	\$15,090	\$15,090
15.	1	8000-A0080-00	<b>Select Annual Schedule Maintenance Contract – Year 7</b>	\$15,540	\$15,540
16.	1	8000-A0080-00	<b>Select Annual Schedule Maintenance Contract – Year 8</b>	\$16,000	\$16,000
17.	1	8000-A0080-00	<b>Select Annual Schedule Maintenance Contract – Year 9</b>	\$16,490	\$16,490

*For grounding purposes, the above included the local control panel mounted on the unit, part # 1000-27555-00, description ProVision 2 FIXED OCP Mount. It also includes the "Remote OCP Kit" and is part # 1600-23975-00, description ProVision 2 Remote OCP Kit, which includes a kit to connect a second remote desktop OCP to a system. Scans can be initiated from either the local or remote OCP.*

*Contractor does not offer any optional signage for facilities to post up; however, JBE may develop their own signage as applicable.*

### **3. Compensation for Services.**

**3.1 Amount.** Contractor will invoice the amounts indicated on Section 2 above for Services or Deliverables that the JBE has accepted. Each JBE has the right to choose which of the services in the Table on Section 2 above and or the maintenance option/s which to purchase.

*The "Year 1" cost item would be the following year of support and does not need to be paid at the time of purchase for the extended 1st year of warranty/support. The initial 12 months support is included in the equipment price.*

**3.2 Withholding.** When making a payment tied to the acceptance of Deliverables if any, the JBE shall have the right to withhold fifteen percent (15%) of each such payment until the JBE accepts the final Deliverable.

**3.3 No Advance Payment.** The JBEs will not make any advance payments.

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

**4.1 Allowable Expenses.** Contractor may NOT submit for reimbursement.

### **5. Invoicing and Payment**

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

**5.2 Payment.** The JBE will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Goods, Services, or Deliverables, 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.

*Payment to Contractor shall be **net 60** days after receipt of invoice. The check remittance address of Contractor is L3 Security & Detection Systems, Inc. 21867 Network Place, Chicago, IL 60673-1218.*

**5.3 No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice, Goods, Services, or Deliverables. 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.

**6. 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.



## APPENDIX C

### General Provisions

#### 1. Provisions Applicable to Services

- 1.1 Qualifications.** Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If 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 become 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 Goods, Services, Deliverables, 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. **Labor Code Provisions.** The Contractor will be required to perform certain services that are subject to California prevailing wage laws pursuant to sections 1770 et. seq of the California Labor Code. Work subject to California prevailing wage laws, includes but is not limited to, the installation and assembly or disassembly of the systems, attaching or detaching

equipment affixed to the real property, etc. The Contractor will be responsible for the proper classification of its employees.

### **3.1 Prevailing Wage:**

- A. Certain classifications of work performed under this Contract are subject to California prevailing wage laws. The Contractor and all Subcontractors under the Contractor shall pay workers subject to prevailing wage requirements on Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the Court's principal office. Prevailing wage rates are also available from the Court or on the internet at (<http://www.dir.ca.gov>).
- B. Contractor shall ensure that Contractor and all of Contractor's Subcontractors execute the Prevailing Wage and Related Labor Requirements.
- C. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

### **3.2 Registration:**

- A. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records ("CPR(s)") to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations ("DIR"). Labor Code section 1771.1(a) states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

- B. Contractor shall and shall ensure that all “subcontractors” (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. Contractor represents to the Court that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. Contractor shall not permit any Subcontractor to perform Work on the Project, without first verifying the Subcontractor is properly registered with the DIR as required by law and providing this information in writing to the Court. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this Work is public work to which Labor Code section 1771 applies.

### 3.3 Hours of Work:

- A. Notwithstanding the timing and duration of the Work under the Contract which is subject to court activities and other coordination required for occupied facilities, as provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal day’s work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. **Notwithstanding the provisions hereinabove set forth, Work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.**
- B. Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of Judicial Council and to the Division of Labor Standards Enforcement of the DIR.
- C. Pursuant to Labor Code section 1813, Contractor shall as a penalty to the Court forfeit the statutory amount (believed by the Court to be currently twenty five dollars (\$25)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

- D. **All Work shall be performed during regular working hours. Additional expenses for work performed after hours, overtime, Sundays or other holidays shall only be permitted upon prior written approval by the Court.**
- E. Project Work will typically take place in an occupied court facility; therefore, work hours may be restricted depending upon the Project. The individual Service Work Order will include any restrictions on hours of work. If the Service Work Order does not include a restriction on hours of work, then the work must take place during business hours.

### 3.4 Payroll Records:

- A. In addition to submitting CPR(s) to the Labor Commissioner of California pursuant to Labor Code section 1771.4 or any other applicable law, if requested by the Court, Contractor shall provide to the Court and shall cause each Subcontractor performing any portion of the Work to provide the Court CPR(s), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.
- B. All CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:
  - (1) A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.
  - (2) CPRs shall be made available for inspection or furnished upon request to a representative of the Court, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.
  - (3) CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the Court, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.
- C. The form of certification for the CPRs shall be as follows:

I, \_\_\_\_\_ (Name-Print), the undersigned, am  
the \_\_\_\_\_ (Position in business) with the authority to act

*for and on behalf of \_\_\_\_\_ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of \_\_\_\_\_ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.*

*Date: \_\_\_\_\_ Signature: \_\_\_\_\_*  
(Section 16401 of Title 8 of the California Code of Regulations)

- D. Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Court, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.
- F. Contractor shall inform the Court of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business Days, provide a notice of change of location and address.
- G. In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to the Court, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- H. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

### **3.5 Apprentices:**

- A. Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

- B. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.
- C. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed and shall be employed only at the work of the craft or trade to which she/he is registered.
- D. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.
- E. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.
- F. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.
- G. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
  - (1) Be denied the right to bid or propose on any subsequent project for one (1) year from the date of such determination; and
  - (2) Forfeit as a penalty to the Court the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
- H. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- I. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5,

1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

- J. Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code sections 108 et seq.

#### 4. Insurance

**4.1 Basic Coverage.** Contractor shall provide to each JBE and maintain at the Contractor's expense the following insurance during the Term:

- A. *Commercial General Liability.* The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
- B. *Workers Compensation and Employer's Liability.* The policy is required only if Contractor has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
- C. *Automobile Liability.* This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor's performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.
- D. *Professional Liability.* This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.
- E. *Commercial Crime Insurance.* This policy is required only if Contractor handles or has regular access to a JBE's funds or property of significant value to the JBE. 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 **\$400,000.00**.



- 4.2 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- 4.3 Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 4.4 Deductibles and Self-Insured Retentions.** Contractor shall declare to each JBE all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to each JBE's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- 4.5 Additional Insured Endorsements.** Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Establishing JBE, the State of California, the Participating Entities, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees).
- 4.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the Establishing JBE (and on request, any Participating Entity) certificates of insurance attesting to the existence of coverage. Contractor shall provide prompt written notice to the Establishing JBE and any Participating Entity in the event that insurance coverage is cancelled or materially changed from the coverage set forth in the current certificate of insurance provided to the Establishing JBE and Participating Entities.
- 4.7 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 4.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Establishing JBE, any Participating Entity, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 4.9 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.

- 4.10 Consequence of Lapse.** If required insurance lapses during the Term, the JBEs are not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 5. 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 Goods; (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 Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement 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.
- 6. 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 a single one-year term, 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.
- 7. 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.
- 8. Termination**
- 8.1 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: (a) stop Services (or development of Deliverables) as specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.

- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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, goods or services equivalent to those terminated, and Contractor shall be liable to the JBE for any excess costs for those goods or services. Notwithstanding any other provision, in no event shall the excess cost to the JBEs for such goods and services be excluded as indirect, incidental, special, exemplary, punitive or consequential damages of the JBEs. Contractor shall continue any Work not terminated.

*Notwithstanding the preceding, Contractor's liability shall in no event exceed the twice the value of the order.*

- C. *Delivery of Materials.* In the event of any expiration or termination of this Agreement (or a Participating Addendum), Contractor shall promptly provide the applicable JBE or JBEs with all originals and copies of the Deliverables for such JBE, including any partially-completed Deliverables-related work product or materials, and any JBE-provided materials in its possession, custody, or control. In the event of any termination of this Agreement or Participating Addendum, the JBEs shall not be liable to Contractor for compensation or damages incurred as a result of such termination.
- D. *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 Work 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.

**8.6 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.

**9. 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.

**10. Notices.** Notices must be sent to the following address and recipient:

<b>If to Contractor:</b>	<b>If to the Establishing JBE:</b>
Dan Curtis, Contracts Manager	Brian Cotta, Clerk/Executive Officer

<p>L3 Security &amp; Detection Systems                  One Radcliff Road                  Tewksbury, MA 01867                  Tel. 781-970-1619                  Cell: 781-301-1871                  Email: <a href="mailto:dan.curtis@L3T.com">dan.curtis@L3T.com</a></p>	<p>Administration                  Court of Appeal, Fifth Appellate District                  2424 Ventura Street, Fresno, CA 93721                  559-445-5226   <a href="mailto:brian.cotta@jud.ca.gov">brian.cotta@jud.ca.gov</a>                    <a href="http://www.courts.ca.gov/5dca">www.courts.ca.gov/5dca</a></p>
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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.

**11. 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.

**11.1 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.

**11.2 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.

**11.3 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.

- 11.4 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.
- 11.5 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 goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the 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).
- 11.6 Loss Leader Prohibition.** *If this Agreement (including any Participating Addendum) involves the purchase of goods, this section is applicable.* Contractor shall not sell or use any article or product as a “loss leader” as defined in section 17030 of the Business and Professions Code.
- 11.7 Recycling.** *If this Agreement (including any Participating Addendum) provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement (including any Participating Addendum) includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable.* Contractor shall use recycled products in the performance of this Agreement (including any Participating Addendum) to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
- 11.8 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.

**11.9 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.

**11.10 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* 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 goods, materials, or 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.

**11.11 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.

**11.12 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.

**11.13 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 deliverables and services to the JBEs. "Four-Digit Date Compliant" deliverables and 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.

## 12. Miscellaneous Provisions.

**12.1 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.

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

**12.3 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.

**12.4 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 (including Deliverables) or the delivery of the Goods. 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.

**12.5 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.

**12.6 Ownership of Deliverables.** *Contractor is selling commercial scanning systems, developed at private expense. As buyers, each JBE has the right to the use of the equipment, but not to the intellectual property rights which underlie it.*

*Under this Agreement, each JBE is granted a non-exclusive, non-transferable, royalty-free license to use Software solely on the Product designated in the Quotation in the normal course of the JBE's business, and for no other purpose or business; no source code will be supplied. Title to Software shall at all times remain with Contractor. Software is agreed to contain, and shall be treated as, Confidential Information. Each JBE shall maintain all copyright, proprietary and other notices on Software, and shall not decompile, disassemble or reverse engineer Software*

- 12.7 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).
- 12.8 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.
- 12.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 12.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the 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.
- 12.11 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 12.12 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 12.13 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.
- 12.14 Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.
- 12.15 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

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.

**“Consulting Services”** refers to the services performed under “Consulting Services Agreements,” which are defined in PCC 10335.5, substantially, as contracts that: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (iv) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

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

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

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

**“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.

**“Goods”** is defined in Appendix A.

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

**“JBEs”** and **“JBE”** are defined on the Coversheet.

**“Judicial Branch Entity”** or **“Judicial Branch Entities”** 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.

**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 Goods 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 Goods, Services and/or Deliverables.*
- *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:
<u>[name, title, address]</u>	<u>[name, title, address]</u>
<u>With a copy to:</u>	<u>With a copy to:</u>

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.

<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>