**ATTACHMENT 4**

**STANDARD TERMS AND CONDITIONS**

Use the “styles” created for each Exhibit to number and format the document, for example: for the first level of Exhibit A which assigns the next consecutive provision number, use the style named “ExhibitA1”; for the second level under level 1 in Exhibit A, to assign the next consecutive alphabet, use the style named “ExhibitA2”; for the third level under level 2 of Exhibit A, to assign the next consecutive small case Roman Numeral, use the style named “ExhibitA3.” Each Exhibit A, B, C, and D are all defined in this manner. Do not use the styles defined for one Exhibit in another, as this will result in deterioration of the order. However, the style named “Heading5” (or “Heading 1” in Exhibit C) can be used to format the body of any provision, which does not need to be linked in any consecutive order. Other styles that can be used throughout the document are: “Heading10” for titles, “Hidden” for hidden directions, and “Heading7” for end of Exhibits. If automatic numbering or formatting deteriorates, select a paragraph intended for the style and redefine this style, including each of the levels linked to it, under Format / Style / Modify / Format / Numbering menu. If additional exhibits are incorporated and therefore require new styles to be defined, suggest using existing “Style2,” “Style3,” and “Style4” formats as defined and naming the new styles in manner consistent with styles defined for existing exhibits. Ensure instructions and unused provisions are not printed in final Agreement.

EXHIBIT A

STANDARD PROVISIONS

1. Indemnification

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

1. Relationship of Parties

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

1. Termination for Cause

(do not use the following version for ISD’s contracts; see Alternate Provisions identified at end of exhibit B)

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

1. No Assignment

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

1. Time of Essence

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

1. Validity of Alterations

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

1. Consideration

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

END OF EXHIBIT

EXHIBIT B

SPECIAL PROVISIONS

1. Definitions

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

(Modify terms as needed. Throughout document, introduce a defined term by including it in quotes and bold font.).

* 1. “**Administrative Director of the Courts**” refers to that individual, or authorized designee, empowered by the Judicial Council to make final and binding executive decisions on behalf of the Judicial Council.
	2. “**Amendment**” means a written document issued by the Judicial Council and signed by the Contractor which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
	3. “**Confidential Information**” means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the Judicial Council’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
	4. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the Judicial Council and the Contractor, as attached to and incorporated by a fully executed Judicial Council Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “**Agreement**.”
	5. The “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, subsidiaries, affiliates, or combination thereof, including joint ventures, contracting with the Judicial Council to do the Contract Work. The Contractor is one of the parties to this Agreement.
	6. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
	7. “**Day**” means calendar day, unless otherwise specified.
	8. “**Deliverable(s)**” or “**Submittal(s)**” means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the Judicial Council for acceptance.
	9. “**Force Majeure**” means a delay which impacts the timely performance of Work which neither the Contractor nor the Judicial Council are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
		1. Acts of God or the public enemy;
		2. Acts or omissions of any government entity;
		3. Fire or other casualty for which a party is not responsible;
		4. Quarantine or epidemic;
		5. Strike or defensive lockout; and,
		6. Unusually severe weather conditions.
	10. “**Judicial Council Standard Agreement**” means the form used by the Judicial Council to enter into agreements with other parties. Several originally signed, fully executed versions of the Judicial Council Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual “**Contract Counterpart**.”
	11. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
	12. “**Notice**” means a written document initiated by the authorized representative of either party to this Agreement and given by:
		1. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
		2. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
	13. “**Project**” refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the Judicial Council and the Judicial Council’s representatives.
	14. “**Stop Work Order**” means the written Notice, delivered in accordance with this Agreement, by which the Judicial Council may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this Exhibit B.
	15. “**Subcontractor**” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the Judicial Council refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
	16. “**Task(s)**” means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the Judicial Council.
	17. “**Third Party**” refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the Judicial Council or the Contractor, which is not a party to this Agreement.
	18. “**Work**” or “**Work to be Performed**” or “**Contract Work**” may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the Judicial Council. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.
1. Termination Other Than for Cause
	1. In addition to termination for cause under Exhibit A, Standard Provisions paragraph 3, the Judicial Council may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.
	2. If the Judicial Council terminates all or a portion of this Agreement other than for cause, the Judicial Council shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.
2. Judicial Council's Obligation Subject to Availability of Funds
	1. The Judicial Council's obligation under this Agreement is subject to the availability of authorized funds. The Judicial Council may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the Judicial Council, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the Judicial Council may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the Judicial Council's rights to terminate for convenience or default.
	2. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
		1. The Judicial Council will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
		2. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
	3. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.
3. Stop Work
	1. The Judicial Council may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree (“**Stop Work Order**”). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Judicial Council shall either:
		1. Cancel the Stop Work Order; or
		2. Terminate the Work covered by the Stop Work Order as provided for in either of the termination provisions of this Agreement.
	2. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume Work. The Judicial Council shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
		1. The Stop Work Order results in an increase in the time required for, or in the Contractor’s cost properly allocable to the performance of any part of this Agreement; and
		2. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the Judicial Council decides the facts justify the action, the Judicial Council may receive and act upon a proposal submitted at any time before final payment under this Agreement.
	3. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the Judicial Council’s Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the Judicial Council shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
	4. The Judicial Council shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.
4. Agreement Administration / Communication
	1. Under this Agreement, the Project Manager, TBD, shall monitor and evaluate the Contractor's performance. All requests and communications about the Work to be Performed under this Agreement shall be made through the Project Manager.
		1. Any Notice from the Contractor to the Judicial Council shall be in writing and shall be delivered the Project Manager as follows:

##### TBD, Project Manager

##### Judicial Council of California

455 Golden Gate Avenue

San Francisco, CA 94102-3688

* + 1. Other than for Notices, the Project Manager may be contacted as follows:

TBD, Project Manager

Telephone: 415-865-TBD

Facsimile: 415-865-TBD

Email: TBD.jud.ca.gov

* + 1. Notice to the Contractor shall be directed in writing to:

Ktr TBD

Attn: TBD

Address1 TBD

Address2 TBD

* + 1. Other than for Notices, the Contractor may be contacted as follows:

Attn: TBD

Telephone: TBD

Facsimile: TBD

Email: TBD

1. Manner of Performance of Work

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

1. Subcontracting

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

1. Changes and Amendments

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

1. Accounting System Requirement

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

1. Retention of Records

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

1. Audit

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

1. Insurance Requirements

(Tailor this provision as necessary. See Optional Special Provisions for additional insurance requirements or alternate insurance provisions located in the end of file.)

* 1. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the Judicial Council shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an “occurrence” form; excepting that insurance for professional liability, when required, may be acceptable on a “claims made” form. If coverage is approved and purchased on a “claims made” basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.

(Alternate Provisions and option (sub)paragraphs are located at end of exhibit B. Modify insurance coverage as appropriate. Consider type of work, contractor, and solicitation document and discuss with Business Services Manager if assistance is needed.)

* 1. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
		1. Workers' Compensation at statutory requirements of the state of residency.
		2. Employers' Liability with limits not less than **$1,000,000.00** each accident.
		3. Commercial General Liability Insurance with limits not less than **$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage.
		4. Business Automobile Liability Insurance with limits not less than **$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
		5. Professional Liability: **$1,000,000.00**.
	2. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the Judicial Council. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor’s liability to the Judicial Council and shall be the sole responsibility of the Contractor.
	3. Other Insurance Provisions. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:

(Modify additional insured to include appropriate constituents, i.e. appropriate courts, if not included in list and coverage is necessary.)

* + 1. The Judicial Council, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
		2. To the extent of the Contractor’s negligence, the Contractor’s insurance coverage shall be primary insurance as respects the Judicial Council, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the Judicial Council, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way,
		3. The Contractor’s insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer’s liability.
	1. The Contractor shall provide the Judicial Council certificates of insurance satisfactory to the Judicial Council evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the Judicial Council's request.
	2. If at any time the foregoing policies shall be or become unsatisfactory to the Judicial Council, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Judicial Council, the Contractor shall, upon Notice to that effect from the Judicial Council, promptly obtain a new policy, and shall submit the same to the Judicial Council, with the appropriate certificates and endorsements, for approval.

(Modify number of days and address information, as appropriate – consider solicitation document.)

* 1. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the Judicial Council of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Judicial Council of California, Manager, Business Services, 455 Golden Gate Ave., 6th Floor, San Francisco, CA 94102-3688.
1. Confidentiality

(see Alternate Provisions for other confidentiality provisions located at end of exhibit B)

* 1. Both the Judicial Council and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the Judicial Council may disclose Confidential Information to the Contractor.
	2. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the Judicial Council’s Confidential Information on a “need to know” basis to the Contractor’s employees and Subcontractors and, as directed by the Project Manager, representatives of the Judicial Council that are working on the Project. All such employees and Subcontractors of the Contractor shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor’s clients and business.
	3. The Contractor shall acquire no right or title to the Confidential Information. The Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.
1. Conflict of Interest
	1. The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of state funds or that are sponsored by the Judicial Council if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or (v) adverse effects on the confidence of the public in the integrity of the government or this Agreement.
	2. The Contractor certifies and shall require any Subcontractor to certify to the following: Former Judicial Council employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from state service.
2. Covenant Against Gratuities

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

1. Drug-Free Workplace

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

1. Americans with Disabilities Act

Provision revised per Mary Roberts 10/25/02

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

1. California Law

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

Per Mary Roberts and Grant Walker on9/9/02: OGC needs to revise the Dispute Resolution provision, so do not include the following Dispute Resolution provision in contracts:

Dispute Resolution

The parties shall deal in good faith and attempt to resolve potential disputes informally. The parties agree that all disputes arising out of or relating to this Agreement that cannot be resolved informally shall first be submitted to non-binding mediation. If said non-binding mediation is unsuccessful, the parties agree to submit all disputes to binding arbitration to be held in accordance with the Commercial Rules of Arbitration of the American Arbitration Association, as such rules shall be in effect on the date of delivery of demand for arbitration. Such arbitration shall be held in San Francisco, California. The arbitration of such issues, the determination of the amount of any damages of either party, or the decision of the arbitrator, or a majority of the arbitrators, shall be final and binding on both parties. All fees associated with the arbitration shall be borne equally by the parties, and each party shall bear its own attorney fees and costs.

1. Severability

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

1. Waiver

##### The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

1. Signature Authority

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

1. Survival

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

1. Judicial Branch Contracting Law Provisions

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

* 1. **Contractor Certification Clauses.** Contractor certifies that the following representations and warranties are true, and shall cause these representations and warranties to remain true during the term of this Agreement. Contractor shall promptly notify the Judicial Council if any representation and warranty becomes untrue.
		1. **Non-discrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California’s Fair Employment and Housing Act (Government Code section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of non-discrimination.
		2. **National Labor Relations Board.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
		3. **Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Judicial Council.
	2. **Provisions Applicable Only to Certain Agreements**. The provisions in this section are ***applicable only to the types of agreements specified in the title of each subsection*.** If the agreement is not of the type described in the title of a subsection, then that subsection does not apply to the agreement.
		1. **Agreements over $10,000.** This Agreement is subject to examinations and audit by the California State Auditor for a period of three years after final payment.
		2. **Agreements over $50,000.** No funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term).
		3. **Agreements of $100,000 or More.** Contractor certifies that it is, and will remain for the term of the Agreement, in compliance with PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits regarding marital or domestic partner status. Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq*.* Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
		4. **Agreements for Services over $200,000 (Excluding consulting services).** Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare & Institutions Code section 11200 and PCC 10353.
		5. **Agreements of $1,000,000 or More.** Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran (“Iran List”) created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending $20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Judicial Council to enter into this Agreement pursuant to PCC 2203(c).
		6. **Agreements for the Purchase of Goods.** Contractor shall not sell or use any article or product as a “loss leader” as defined in Business and Professions Code section 17030.
		7. **Agreements for the Purchase of Certain Goods, and Printing, Parts Cleaning, Janitorial, and Building Maintenance Services Agreements**. If Contractor will sell to the Judicial Council, or use in the performance of this Agreement, goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), then with respect to those goods: (i) Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible, and (ii) upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
		8. **Agreements for Furnishing Equipment, Materials, Supplies, or for Laundering Services.** Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Judicial Council under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, 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 Judicial Council.
		9. **Agreements for which Contractor Has Committed to Achieve DVBE Participation.**  Contractor shall within sixty (60) days of receiving final payment under this Agreement certify in a report to the Judicial Council: (i) the total amount the prime Contractor received under this Agreement; (ii) the name and address of any disabled veterans business enterprise (“DVBE”) that participated in the performance of this Agreement; (iii) the amount each DVBE received from the Contractor; (iv) that all payments under this Agreement have been made to the DVBE; and (v) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
		10. **Agreements Resulting from Competitive Solicitations.** Contractor shall assign to the Judicial Council all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Judicial Council. Such assignment shall be made and become effective at the time the Judicial Council tenders final payment to the Contractor. If the Judicial Council receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Judicial Council any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the Judicial Council as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by the Contractor, the Judicial Council shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the Judicial Council has not been injured thereby, or (b) the Judicial Council declines to file a court action for the cause of action.
		11. **Agreements for Legal Services.** Contractor shall: (i) adhere to legal cost and billing guidelines designated by the Judicial Council; (ii) adhere to litigation plans designated by the Judicial Council, if applicable; (iii) adhere to case phasing of activities designated by the Judicial Council, if applicable; (iv) submit and adhere to legal budgets as designated by the Judicial Council; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the Judicial Council; and (vi) submit to legal bill audits and law firm audits if so requested by the Judicial Council, whether conducted by employees or designees of the Judicial Council or by any legal cost-control provider retained by the Judicial Council for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the Judicial Council. If (a) the value of this agreement is greater than $50,000, (b) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the agreement equal to the lesser of either (A) thirty (30) multiplied by the number of full time attorneys in the firm’s offices in California, with the number of hours prorated on an actual day basis for any period of less than a full year or (B) the number of hours equal to ten percent (10%) of the contract amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for non-renewal of the agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with a judicial branch entity for legal services.
		12. **Agreements Allowing for Reimbursement of Contractor’s Costs.** Contractor must include with any request for reimbursement from the Judicial Council a certification that the Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the Judicial Council was sought for these costs, and Contractor will provide those records to the Attorney General upon request.
		13. **Agreements Performed in California by Contractors that are Corporations, LLCs, or LPs.**  Contractor is, and will remain for the term of the Agreement, qualified to do business and in good standing in California.
1. Entire Agreement

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

**(The following clauses may be incorporated into the Special Provisions if appropriate; otherwise delete from Contract when drafting. Not all have been approved by legal as written):**

1. Optional Definitions

(Optional definitions to insert into the Contract, as needed.)

* 1. “**Acceptance**” means the written acceptance issued to the Contractor by the Judicial Council after the Contractor has completed a Deliverable, Submittal, or other Contract requirement, in compliance with the Contract Documents, including without limitation, Exhibit D, Work to Be Performed, the applicable test criteria to be agreed upon by the parties, and the Acceptance of the Work provision set forth in this exhibit.
	2. “**Change Order**” means a written document issued by the Judicial Council and signed by both parties which directs the Contractor to proceed promptly with specific Work and which does not, in and of itself, constitute the Contractor’s entitlement to a change in time for performance, the Contract Amount, and/or Contract terms and conditions.
	3. “**Change Proposal**” means a document prepared by the Contractor at the request of the Judicial Council, which proposes in detail changes to the Work and/or adjustments to the Contract Amount and/or time for performance.
	4. The “**Contractor’s Technology**” refers to various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques including, without limitation, function, process, system and data models; templates; generalized features of the structure, sequence and organization software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and, logic, coherence and methods of operation of systems which the Contractor has created, acquired or otherwise has rights in and may, in connection with the performance of services hereunder, create, acquire or otherwise obtain rights in.
	5. “**Disabled Veteran’s Business Enterprise**” or “**DVBE**” means a business entity that has complied with the requirements under California law to become certified by the California Office of Small Business Certification and Resources as a business owned and operated by a disabled veteran of the United States military, naval or air services.
	6. “**Final Acceptance**” is the written acceptance issued by the Judicial Council, by and through its Project Manager, that accepts as final and complete the Work requirements of this Contract, in accordance with the terms and conditions of the Contract Documents, including without limitation Exhibit D, Work to Be Performed, and the Acceptance of the Work provision of this exhibit.
	7. “**Key Personnel**” refers to the Contractor’s personnel named in Exhibit E, Contractor’s Key Personnel, whom the Judicial Council has identified and approved to perform the Work of the Contract. Qualifications of Key Personnel are represented by the resumes set forth in Exhibit E. Roles of Key Personnel are set forth in Exhibit D, Work to be Performed.
	8. “**Master Agreement**” means the component of the Agreement that sets forth the terms and conditions under which the Judicial Council retains the Contractor and the Contractor provides consulting Work by executing an individual Work Order for a particular Project for a particular Work Order Amount.
	9. “**Milestone(s)**” means one or more events or dates, if specified in the Contract Documents, by which Work, as identified, must be provided by the Contractor.
	10. “**Judicial Council Representative**” shall mean those individuals and/or functions set forth in the Contract Documents or any Notice associated with this Contract. Judicial Council Representatives shall also include those individuals designated to perform technical and/or administrative functions pursuant to this Contract. All communications with the Judicial Council shall be through such individuals.
	11. “**Substantial Completion**” will be defined by the following conditions, at a minimum:
		1. All parts of the Work, as set forth in Exhibit D, Work to be Performed, are functional;
		2. The Judicial Council has full use and benefit of the Work for the purpose intended; and
		3. Only minor incidental work or correction or repair remains to complete all Agreement requirements.
	12. “**Term**” refers to the period defined by a beginning date and an end date, in accordance with the terms and conditions set forth in the Agreement, during which the Contactor is authorized to provide the Contract Work. The possible Terms of the Agreement are described further in this Exhibit’s paragraph 47, Agreement Term(s) and Options to Renew.
	13. “**Trial Court(s)**” or “**Court(s)**” means one or more of the fifty-eight (58) superior courts in the California state trial court system.
	14. “**Working Hours**” refers to an average eight (8) hour work shift in a business day, falling between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday. @Pacific time
	15. “**Work Order**” refers to a document, substantially in the form of Exhibit E, Attachment 2, Work Order Form, that is used by the Judicial Council to authorize Work pursuant to this Master Agreement. Each Work Order will include details about the nature of the Work the Contractor will perform, the timeline for completion of the Work, budget requirements, additional reporting guidelines, or other practical details. A Work Order is authorized when the Judicial Council Standard Agreement form that is the first page of the Work Order has been bilaterally executed.
	16. “**Work Order Amount**” refers to the amount of funds that is encumbered via the Judicial Council Standard Agreement form that is the first page of each authorized Work Order. The amount that the Judicial Council may pay to the Contractor for Work provided pursuant to each Work Order, if any, shall not exceed the Work Order Amount stated therein.
1. Evaluation of Contractor

##### The Judicial Council shall evaluate the Contractor's performance under the Agreement.

(Include the following for “completion” type contracts especially, e.g. when deliverables are required:)

1. Acceptance of the Work

* 1. The Project Manager shall be responsible for the sign-off acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the Project Manager will apply the acceptance criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
	2. Acceptance Criteria for Work (“**Criteria**”) provided by the Contractor pursuant to this Agreement:
		1. Timeliness: The Work was delivered on time;
		2. Completeness: The Work contained the Data, Materials, and features required in the Contract; and
		3. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
	3. The Contractor shall provide the Work to the Judicial Council, in accordance with direction from the Project Manager. The Judicial Council shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria.
	4. If the Judicial Council rejects the Work provided, the Judicial Council’s Project Manager shall submit to the Contractor a written rejection using describing in detail the failure of the Work as measured against the Criteria. If the Judicial Council rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
	5. If the Project Manager requests further change, the Contractor shall meet with the Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the Administrative Director of the Courts and a principal of the Contractor, as set forth in subparagraph F below.
	6. If agreement cannot be reached between the Judicial Council’s Project Manager and the Contractor on the Work’s acceptability, a principal of the Contractor and the Administrative Director of the Courts (or designee), shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the Courts (or designee), or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director of the Courts (or designee), in the reasonable time established by the Administrative Director of the Courts, the Judicial Council may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the Judicial Council may terminate this Agreement pursuant to the terms of Standard Provisions paragraph 3, as set forth in Exhibit A.

(Include the following in “term” type contracts, especially in services agreements that do not include an Acceptance of the Work and/or a Warranty provision:)

1. Standard of Professionalism

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

(Include one of the following, if some degree of guarantee for services rendered is desired:)

1. Service Guarantee

##### The Contactor agrees that throughout the term of this Agreement, the guarantee set forth in the provision shall apply. The Contractor guarantees that Work performed pursuant to this Agreement shall be fit for use as reasonably intended by the parities and shall be in accordance with Contract and performance requirements.

1. Services Warranty

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

(Include one of the following, if some warranty of work is desired:)

1. Warranty – Basic & Professional
	1. Unless otherwise specified, the warranties contained in this Agreement begin after Work has been approved and accepted by the Judicial Council.
	2. The Contractor warrants that the Work furnished hereunder will conform to the requirements of this Agreement and such Work (if a product) will be merchantable, for its intended purposes, free from all defects in Materials and workmanship, and to the extent not manufactured pursuant to detailed designs furnished by the Judicial Council, free from defects in design. The Judicial Council’s approval of designs or specifications furnished by the Contractor shall not relieve the Contractor of its obligations under this warranty.
	3. All warranties, including any special warranties specified elsewhere herein, shall inure to the Judicial Council, its successors, assigns, customer agencies, and users of the Work provided hereunder.
2. Warranty
	1. The Contractor warrants and represents that each of its employees, Subcontractors and/or agents assigned to perform any services or provide any technical assistance in assessment, requirements review, design, build, testing, and production or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of responsibility, so as to be able to perform in a competent and professional manner, in accordance with generally accepted industry standards.
	2. The Contractor warrants that, for a period of TBD months after final Acceptance of the Work, as set forth in Exhibit D, Work to be Performed:
		1. The Work provided hereunder will conform to the requirements of this Agreement.
		2. The Work will conform to the business requirements as approved by the Judicial Council’s Project management and will be free from technical design flaws.
	3. The Judicial Council’s approval of designs or specifications furnished by the Contractor shall not relieve the Contractor of its obligations under this warranty, the duration of which is controlled by subparagraph B of this provision.
	4. All warranties, including any special warranties specified elsewhere herein, shall inure to the Judicial Council, its successors, assigns, constituent agencies, and any other recipients of the Work provided hereunder.
	5. In the event the Contractor fails to perform according to any warranty hereunder, the Judicial Council shall provide prompt Notice of such nonconformance. The Contractor shall immediately within a commercially reasonable period correct any deficiencies or repair or replace any errors and/or malfunctions, at no additional charge to the Judicial Council, so long as the deficiencies, errors or malfunctions were not caused by any act of the Judicial Council or a Third Party. If the Contractor can demonstrate to the reasonable satisfaction of the Judicial Council that the deficiencies, errors or malfunctions identified by the Judicial Council is not under warranty, then the Contractor shall submit a change request to the Judicial Council requesting reimbursement of its actual costs in analyzing the deficiencies, errors or malfunctions, pursuant to the changes provision herein.
3. Permits and Licenses

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

This provision may apply when Contract is written on behalf of another judicial entity, such as a trial court:

1. Third Party Representation

##### The Judicial Council has the authority to speak on behalf of the Trial Court and to bind such Trial Court with respect to Acceptance of all matters hereunder.

This provision may apply when Contract is written on behalf of another judicial entity, such as a trial court.

1. Third Party Beneficiary

##### The Trial Court shall be an intended Third Party beneficiary of this Agreement. Without limiting the foregoing, the Judicial Council and the Contractor agree and acknowledge that the Trial Court shall have the right to enforce all terms and conditions set forth herein that affect such Trial Courts. In the event a Trial Court gives conflicting instructions or makes conflicting determinations with respect to any matter, it shall be the Judicial Council's responsibility to resolve any such conflict promptly.

(Optional paragraph to incorporate as appropriate per consulting attorney Leigh Cassidy, Mary Roberts, and Grant Walker on 7/24/02:)

(Additional / Other Insurance Requirements, set forth below, can be incorporated into the Insurance Requirements provision:)

1. Additional/Other Insurance Requirements

(Optional paragraph to be modified and included, if necessary:)

* 1. Contractor represents and warrants that Contractor is a sole proprietor without any employees as of the Effective Date of the Agreement. If, during the term of this Agreement, Contractor hires, engages, or otherwise obtains any employee(s), or any individual that may be deemed to be an employee whether full-time or part-time, Contractor shall immediately notify the Judicial Council, and shall immediately obtain insurance in the following amounts and coverage:
		1. Workers' Compensation, with limits not less than the statutory requirement for the state of residency.
		2. Employers' Liability, with limits not less than $1,000,000.00 for each accident.

(Optional paragraph to be modified and included, if necessary:)

* 1. Acceptability of Insurers. Unless otherwise approved by the Judicial Council:

Insurance is to be placed with insurers with an A.M. Best Company’s rating of no less than A:VIII, or, if not rated with A.M. Best Company’s, with minimum surpluses the equivalent of A.M. Best Company’s surplus size VIII.

(Optional paragraph to be included, if subcontracting is a possibility:)

* 1. Subcontractors. The Contractor shall include any Subcontractors as insured under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

(Optional paragraph to be included, if Contractor should have control over job site:)

* 1. The Contractor shall have the “right to control” and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable federal, state and local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for Subcontractor’s compliance with these provisions.

(Optional paragraph to be included, if evidence is to be attached and incorporated into agreement.)

1. Copyrights and Rights in Data

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

1. Ownership of Results

##### Any interest of the Contractor in Data in any form, or other documents and/or recordings prepared by the Contractor for performance of services under this Agreement shall become the property of the Judicial Council. Upon the Judicial Council's written request, the Contractor shall provide the Judicial Council with all this Data within thirty (30) Days of the request.

(Optional additional paragraph:)

##### The Contractor agrees not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole, or part, or any manner or form, or authorize others to do so without the written consent of the Judicial Council.

1. Limitation on Publication

##### The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the Judicial Council without prior review and written permission by the Judicial Council’s Business Services Manager.

(Optional additional paragraph:)

##### The Judicial Council review shall be completed within thirty (30) Days of submission to the Project Manager and, if permission is denied, the Judicial Council shall provide its reasons for denial in writing.

1. Limitation on Judicial Council's Liability

##### The Judicial Council shall not be responsible for loss of or damage to any non-Judicial Council equipment arising from causes beyond the Judicial Council's control.

(Modify and include the following appropriate paragraphs for consulting work. To help substantiate any future issues, it would be beneficial to incorporate consultants resumes, at least for designated key personnel:)

1. Contractor's Personnel--Replacement
	1. The Contractor shall provide a Consultant to perform the Work set forth in this Agreement. The Contractor’s Consultant shall:
		1. Serve as the primary contact with the Judicial Council’s personnel;
		2. Manage the day to day activities of the Contractor’s personnel;
		3. Identify the appropriate resources needed;
		4. Plan and schedule the Work;
		5. Meet budget and schedule commitments on this Project;
		6. Provide Progress Reports and Project Reviews in accordance with this Agreement; and
		7. Manage the overall quality of the Deliverables and the Work performed.
	2. The Judicial Council reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the Judicial Council under this Agreement if in the Judicial Council's opinion, the performance of the Contractor’s personnel is unsatisfactory. The Judicial Council agrees to provide Notice to the Contractor in the event it makes such a determination. If the Judicial Council exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
	3. If any of the Contractor's Key Personnel become unavailable during the term of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills as demonstrated in the resume set forth in Exhibit E.
	4. The Contractor shall endeavor to retain the same individuals on the Project during the performance of the Work of this Agreement. However, the Contractor may, with approval of the Judicial Council’s Project Manager, introduce personnel to the Project with specific skill sets or release personnel from the Project whose skill set is not needed at the time, except for the Contractor’s Project contact TBD.
	5. If any of the Contractor's Key Personnel identified within the Agreement become unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the Judicial Council's Project Manager.
	6. If any of the Contractor's Key Personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the Judicial Council, the Judicial Council may terminate this Agreement for cause pursuant to Standard Provisions paragraph 3, as set forth in Exhibit A.
2. Prohibited Bids Concerning End Product of this Agreement

(Include in all agreements when the contractor’s recommendations will require the State to purchase Materials or additional consulting. It does not apply to contracts for consulting architect or engineer services, pursuant to GC section 4525 et seq., or for electronic data processing or telecommunications goods or services pursuant to PCC section12100 et seq.)

##### No person, firm, or subsidiary thereof, which has been awarded a consulting services agreement may submit a bid for, nor be awarded an agreement for, the provision of services, procurement of Materials or Data, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of this Agreement. This provision shall not apply to any person, firm, or subsidiary thereof, which is awarded a subcontract to this Agreement in amounts no more than ten percent (10%) of the total monetary value of this Agreement.

1. Preparation and Distribution of Recordings

##### The Contractor shall permit the Judicial Council, at its option, to make audio or video recordings, or both, of the Contractor's presentations and to distribute the recordings for educational purposes and not for profit. Any copyright shall be held by the Judicial Council of California. The Contractor shall receive no additional compensation or royalties from the distribution or use of these recordings.

1. Progress Reports

(Progress reports should be required in some format when progress payments are allowed by the Contract. Progress Reports can be a provision in this exhibit or set forth in the Work to be Performed exhibit)

(Option 1)

##### The Contractor shall submit progress reports to the Project Manager, as required, describing work performed, work status, work progress difficulties encountered, remedial actions, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices. Invoices shall include, in detail, all costs and charges applicable.

(Option 2)

* 1. The Contractor shall submit to the Project Manager four (4) quarterly progress reports in writing immediately following the end of each calendar quarter. Each progress report is to provide the Contractor and the Judicial Council with an evaluation of Project progress performing the tasks set forth in Exhibit D, Work to be Performed.
	2. Each progress report shall include, but is not limited to, the following sections:
		1. Narrative summary: This section shall be a thorough statement of the Project activities and progress during the previous quarter. It should include a discussion of any problems encountered, and any proposed changes to the tasks set forth in Exhibit D, Work to be Performed necessitated by these problems.
		2. Schedule status: This section shall state whether the Project is progressing according to the schedule in Exhibit D, Work to be Performed. If delays have been experienced, the section shall include a discussion of how the Project will be brought back on schedule or any necessary revision to the schedule.
		3. Activities planned for next period: This section shall include a discussion of the accomplishments anticipated in the next period. When appropriate, this section shall include a discussion of difficulties expected in the next period and methods proposed for dealing with these difficulties.
1. Non Hire Clause

(if required to contract with a firm)

##### The Judicial Council and the Contractor agree that, during the term of this Agreement and for a period of 30 days thereafter, each party will not directly or indirectly employ or otherwise engage any person who has been involved in performing services hereunder as an employee or contractor of the other party, without the express written consent of the other party.

1. Background Check Requirements

(if prudent)

##### The Contractor shall conduct a background check that, for each person upon which such background check is conducted, accurately produces a list of all felony convictions of any kind such person has had in any state or federal court. For purposes of this Exhibit, “conviction” includes a verdict of guilty, a plea of guilty, a plea of *nolo contendere*, or a forfeiture of bail in any state or federal court, regardless of whether sentence is or was imposed.

1. Agreement Term(s) and Options to Renew
2. Until this Agreement is mutually signed and delivered, none of the terms and conditions of this Agreement shall have any legal force or effect and any such prior commencement of performance by the Contractor shall be at the Contractor’s own risk; provided, however, following mutual execution and delivery of this Agreement, there terms and conditions of this Agreement shall be deemed to apply equally to both subsequent and prior performance.

**The Agreement Initial Term shall be in effect for three (3) years from**

**TBD.**

The parties agree that the Judicial Council may elect to extend the Agreement up to two (2) optional Terms, identified as follows, if authorized in writing in accordance with the terms and conditions of this Agreement:

**1st Option Term: TBD.**

**2nd Option Term: TBD.**

1. In the event the Judicial Council elects to exercise one or more options to extend the Agreement, as set forth in this provision, the parties will memorialize the extension via bilateral execution of the Judicial Council’s Standard Amendment form.

##### In the event any option Term is exercised under this Agreement, all hourly rates shall remain firm fixed for the full duration of the Initial Term. If the Judicial Council elects to exercise an option term, hourly rates may not increase by more than the lesser of 3% or the average percentage change in the Consumer Price Index over the previous twelve (12) month period. Except for such rate increases, rates shall remain firm fixed for the duration of the option term.

1. Dispute Resolution
	1. Project Manager Negotiations. The Project Manager and the Contractor’s point of contract shall attempt in good faith to informally and promptly resolve any disagreement that arises (“**Dispute**”) that can be settled within the limits of authority granted them under this Agreement.
	2. Dispute Notice. If the settlement of a disagreement is beyond the authority allowed the Project Manager and the Contractor’s project manager under this Agreement, or if a disagreement has in the opinion of either Party persisted for an undue length of time, either Party may submit a written Notice to the other Party that the Parties will commence the procedure set forth in this provision to resolve the Dispute (“**Dispute Notice**”). The Dispute Notice shall include: (i) detailed factual information and supporting documentation in support of the submitting Party’s position; (ii) the specific Agreement provisions on which the Dispute is based; and (iii) if the Dispute involves a cost adjustment, the exact amount of the cost adjustment accompanied by all records supporting the submitting Party’s position. The Dispute Notice shall include a written statement signed by an authorized representative of the submitting Party indicating that the Dispute is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested, if any, accurately reflects the adjustment for which the submitting Party believes the other Party is responsible. To assist the other Party in its review of the Dispute, the submitting Party shall promptly comply with reasonable requests for additional information.
	3. Dispute Notice Response. Within fifteen (15) Days of receiving the Dispute Notice, the receiving Party shall provide a written response to the submitting Party’s Dispute Notice (“**Dispute Notice Response**”). The Dispute Notice Response shall include: (i) detailed factual information and supporting documentation in support of the receiving Party’s position; and (ii) if the Dispute involves a cost adjustment, state the exact amount that the receiving Party believes is at issue accompanied by all records supporting the receiving Party’s position.
	4. Senior Level Negotiations. If after fifteen (15) Days of receipt of the Dispute Notice Response by the submitting Party or, in the event that the receiving Party fails to timely submit a Dispute Notice Response, either Party may, by providing written Notice to the other Party, request that the Dispute be resolved by direct negotiations between senior level negotiators of the Parties (“**Senior Level Negotiations Notice”**). The senior level negotiators shall meet in person or by phone as often as they deem reasonably necessary to exchange information and attempt to resolve the Dispute within thirty (30) Days after the Senior Level Negotiations Notice is given to the other Party.
	5. Litigation. If the senior level negotiations do not result in resolution of the Dispute, either Party may pursue any legally available remedy.
	6. Confidentiality. All negotiations conducted pursuant to this section 37 are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code section 1152 applies. The mediation shall be confidential and shall be subject to the provisions of California Evidence Code section 703.5 and sections 1115 through 1128.
	7. Continuation of Work. Pending the final resolution of any Dispute arising under, related to, or involving this Agreement, Contractor agrees to diligently proceed with the performance any Work under Dispute in accordance with the provisions of this Agreement and the Judicial Council’s instructions. Contractor’s failure to diligently proceed with performance in this manner will be considered a material breach of this Agreement.
2. Transition Services
	1. During the Transition Period, the Contractor shall provide to the Judicial Council or the Judicial Council’s designee, in a manner consistent with Contractor’s normal business practices, the services set forth in the Transition Plan, if any, or any other services reasonably necessary to enable the Judicial Council to obtain from another contractor, or to provide for itself, services to substitute for or replace the services provided by Contractor under this Agreement without interruption or adverse effect and to facilitate the orderly transfer of the Services to the Judicial Council or the Judicial Council’s designee (collectively, “**Transition Services**”). Contractor shall provide Transition Services to the Judicial Council or the Judicial Council’s designee regardless of the reason for termination or expiration.
	2. Transition Services shall be provided at no cost to the Judicial Council or the Judicial Council’s designated successor except as otherwise provided for in Exhibit C, Payment Provisions.
3. Right to Audit
	1. The Court shall permit all Data and records relating to performance, procedures, and billing to the Judicial Council under this Agreement to be inspected and/or audited, at any reasonable time, by the authorized representative of any of the following or its designee:
		1. The Judicial Council;
		2. The California State Auditor; and/or
		3. (if applicable) Any state or federal government auditing agency.
	2. The right of each agency to inspect and/or audit this Agreement is independent of whether or not any other audit or inspection has been performed.
4. Audit Requirement

(applicable with federal grants)

##### The expenditure of funds under the Program is subject to the annual audit requirements under the Single Audit Act of 1984 (P.L. 98-502) and the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). For your information, the U.S. General Accounting Office maintains a toll free telephone number, (800) 424-5454, from receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. Such reports are kept confidential, and callers may decline to give their names if they choose re remain anonymous.

1. Copyrights and Rights in Data
	1. The Judicial Council reserves the right to use and copyright, in whole or in part, any Data produced with funding from this Agreement.
	2. The Contractor agrees not to copyright any Data produced with funding from this Agreement unless the Judicial Council gives the Contractor express permission to do so. If such permission is obtained and the Data is copyrighted, the Judicial Council will be given an exemption that reserves for it the right to use, duplicate, and disseminate the Data without fee.
2. Publications
	1. The following disclaimers and notations will accompany the dissemination and/or publication of all Data developed under funding from this Agreement:

 "The preparation of this Data was financially assisted through a grant from the Judicial Council of California (“Judicial Council”). The opinions, findings, and conclusions in this publication are those of the author and not necessarily those of the Judicial Council. The Judicial Council reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use this Data. The Judicial Council also reserves a royalty-free, nonexclusive, and irrevocable license to authorize not-for-profit agencies and other governmental agencies to use this Data."

* 1. No dissemination or publication of Data developed under funding from the Agreement will take place before the Agreement has expired and the products of this Agreement have been approved for release by the Judicial Council. Once Judicial Council approval has been obtained, the Contractor may publish the Data.
1. Limitation on Publication

(developed per request by Christine Patton, 1/9/07)

##### In any contract the Court may enter into with a Subcontractor for Work provided under this Agreement, the Court shall include language that prohibits the Subcontractor from publishing or broadcasting any article, press release, advertisement, or other writing that references “Judicial Council of California,” unless previously approved the Judicial Council.

1. Patent

##### If any discovery or invention arises or is developed in the course of or as a result of Work performed, the Contractor shall refer the discovery or invention to the Judicial Council. The Contractor hereby agrees that determinations of rights to inventions or discoveries made under this Agreement shall be made by the Judicial Council, or its duly authorized representative, who shall have the sole and exclusive powers to determine the disposition of all rights in such inventions or discoveries, including title to and license rights under any patent application or patent that may issue thereon. The determination of the Judicial Council, or its duly authorized representative, shall be accepted as final. The Contractor agrees and otherwise recognizes that the Judicial Council shall acquire at least an irrevocable, nonexclusive, and royalty-free license to practice and have practiced throughout the Work for governmental purposes an invention made in the course of or under this Agreement.

1. Assignments or Subcontracting

(replaces other Subcontracting provision)

##### This Agreement is based upon the unique expertise of the Contractor. Therefore, in addition to the prohibition against assignment under Exhibit A, Standard Provisions paragraph 4, it is the policy of the Judicial Council to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the Judicial Council's likelihood of receiving performance under this Agreement. No performance of this Agreement or any portion thereof may be assigned or subcontracted by the Contractor without the express written consent of the Judicial Council, and any attempt by the Contractor to assign or subcontract any performance of this Agreement without the express written consent of the Judicial Council shall be void and shall constitute a breach of this Agreement. If the Contractor is authorized by the Judicial Council to subcontract or assign, all the terms of this Agreement shall be included in such subcontract or assignment.

(If personnel were proposed and accepted:)

##### Any substitution or prolonged absence of the personnel who were specifically identified in the original proposal, as accepted, must be approved. Failure to obtain acceptance shall constitute a major breach of this Agreement

1. Optional Definitions

(Optional definitions to insert into the Contract, as needed.)

* 1. “**Contractor Works**” shall have the meaning set forth in Exhibit B’s provision entitled “Ownership of Data, Materials and Deliverables,” sub-paragraph 63.
	2. “**Developed Works**” means any and all Works first created, made, developed, conceived, or reduced to practice, in whole or in part, by or on behalf of the Contractor, the Contractor’s agents or subcontractors, or any combination of the Contractor, the Contractor’s agents or subcontractors, and the Judicial Council in connection with the performance of the Services, but excluding Judicial Council Works, Contractor Works and Third Party Works.
	3. “**Intellectual Property Rights**” means all copyrights, including without limitation any renewal terms, patents, trademark, service mark, and/or trade name rights, trade-secret rights, and other proprietary rights.
	4. “**Judicial Council Works**” shall have the meaning set forth in Exhibit B’s provision entitled “Ownership of Data, Materials and Deliverables,” sub-paragraph 63.
	5. “**Third Party Works**” means Works owned by third parties, including but not limited to third-party software products.
	6. “**Works**” means any and all inventions (whether or not patentable), discoveries, literary works and other works of authorship, mask works, designations, designs, know-how, ideas and information.
1. Protection of Proprietary Software and Other Proprietary Data

(alternate 1)

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

(alternate 2)

* 1. The Judicial Council agrees that all Contractor Works appropriately marked or identified in writing as Confidential Information of the Contractor, and furnished to the Judicial Council hereunder as exemplars or samples, are provided for the Judicial Council’s exclusive use for the purposes of this Agreement only. All such Confidential Information shall remain the property of the Contractor. However, in accordance with the Work of this Agreement, the Judicial Council, with the Contractor’s written approval, may use and adapt such exemplars to the Judicial Council’s specific purposes and requirements hereunder and such Work, Deliverables, and end results shall no longer be the Confidential Information of the Contractor.
	2. The ideas, concepts, know-how, or techniques relating to Data processing, Work, Deliverables, and end results developed during the course of this Agreement by the Contractor or jointly by the Contractor and the Judicial Council can be used by either party in any way it may deem appropriate.
1. Rights in Data

(alternate 1)

* 1. All technical communications and Data originated or prepared by the Contractor pursuant to this Agreement, but not including Contractor’s administrative communications and Data relating to this Agreement, shall be delivered to and shall become the exclusive property of the Judicial Council and may be copyrighted by the Judicial Council.
	2. The ideas, concepts, know-how, or techniques relating to Data processing, developed during the course of this Agreement by the Contractor or jointly by the Contractor and the Judicial Council can be used by either party in any way it may deem appropriate.
	3. All inventions, discoveries or improvements of the computer programs developed pursuant to this Agreement shall be the property of the Judicial Council. The Judicial Council agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor program or any other such person and further agrees that the Contractor or any other such person may sublicense additional persons on the same royalty-free basis.
	4. This Agreement shall not preclude the Contractor from developing Data or Materials outside this Agreement that are competitive, irrespective of their similarity to Data or Materials which might be delivered to the Judicial Council pursuant to this Agreement.
1. Rights in Data and Deliverables

(alternate 2)

* 1. All communications and Data originated or prepared by the Contractor pursuant to this Agreement including, but not including the Contractor’s administrative communications and Data relating to this Agreement, shall be delivered to and shall become the exclusive property of the Judicial Council and may be copyrighted by the Judicial Council. Upon the Judicial Council’s written request, the Contractor shall provide the Judicial Council with all this Data within thirty (30) Days.
	2. The ideas, concepts, know-how, or techniques relating to Data processing, developed during the course of this Agreement by the Contractor or jointly by the Contractor and the Judicial Council can be used by either party in any way it may deem appropriate.
	3. All inventions, discoveries, or improvements of the computer programs developed pursuant to this Agreement shall be the property of the Judicial Council. The Judicial Council agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor, or any other such person, and further agrees that the Contractor, or any other such person, may sublicense additional persons on the same royalty-free basis.
	4. This Agreement shall not preclude the Contractor from developing Data or Materials outside this Agreement that are competitive, irrespective of any similarity to Data or Materials which might be delivered to the Judicial Council pursuant to this Agreement.
1. Ownership of Intellectual Property, Etc.

(alternate 3)

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

(alternate 4)

* 1. Judicial Council Works. As between the Contractor and the Judicial Council, the Judicial Council will be the sole and exclusive owner of all Works owned by the Judicial Council as of the Effective Date or created by the Judicial Council separate from this Agreement (collectively, the “**Judicial Council Works**”). Judicial Council Works include, but shall not be limited to, proprietary works of authorship, software, process or logic flowcharts, architecture designs, specifications, models, and documentation, as well as any associated Intellectual Property Rights. As of the Effective Date, the Contractor will be granted a limited, non-exclusive license during the term of the Agreement to use, access, copy, maintain, modify, enhance and create derivative works of the Judicial Council Works solely as necessary for and for the sole purpose of providing the Services. The Contractor may not use Judicial Council Works for any other purpose, and may not sublicense any rights with respect to such Judicial Council Works. The Contractor will cease use of such Judicial Council Works upon expiration or termination of this Agreement.
	2. Rights in Developed Works. The Contractor hereby irrevocably assigns all right, title, and interest, including without limitation any and all Intellectual Property Rights (all copyrights, including without limitation any renewal terms, patents, trademark, service mark, and/or trade name rights, trade-secret rights, and other proprietary rights), in and to the works first created, made, developed, conceived, or reduced to practice in whole or in part, by or on behalf of the Contractor, the Contractor’s agents or subcontractors, or any combination of the Contractor, the Contractor’s agents or subcontractors, and the Judicial Council in connection with the performance of the services of this Agreement, but excluding Contractor Works and Third Party Works, (including, without limitation, any modifications, enhancements and derivative works of the Judicial Council Works) to the Judicial Council. Accordingly, the Judicial Council shall be entitled to access to and copies of any source code and any technical or user documentation relating to the Developed Works at all times, including during the progress of the work and upon completion of the work. The Judicial Council may seek registration of its rights in and to the Developed Works, including without limitation copyright, trademark, service mark, and patent applications, in its own name, though it will not be obligated to do so.
	3. Contractor Works. As between the Contractor and the Judicial Council, the Contractor will be the sole and exclusive owner of all Works owned by it as of the Effective Date or created by it separate from this Agreement (collectively, the “**Contractor Works**”). Contractor Works that may be used as part of Contractor’s provision of Services include, but shall not be limited to, proprietary works of authorship that have not been created specifically for the Judicial Council, including without limitation software, process or logic flowcharts, architecture designs, specifications, models, and documentation, as well as any associated Intellectual Property Rights (“**Contractor’s Information**”). Upon introduction of any Contractor Works, the Contractor grants to the Judicial Council and their subcontractors, without additional charge, (i) a perpetual, irrevocable (except as otherwise expressly provided in this paragraph), fully paid-up, non-exclusive license to use, copy, maintain, modify, enhance and create derivative of such Contractor Works (including, with respect to software, source code, and programmer interfaces) and to sublicense such rights to other entities; and (ii) with respect to Contractor Works that are software, copies of machine-readable and human-readable source code and technical documentation for such software. The foregoing license is subject to a right of revocation only upon the expiration or any whole or partial termination of this Agreement (following notice and a 45-day opportunity to cure) if the Judicial Council has not made full payment of undisputed amounts properly due and owing to the Contractor.
1. Copyrights, Patents, Royalties, and other Rights in Data

 (alternate 5)

* 1. The costs or fees relating to royalties, patents, copyrights, trademarks or similar property rights (including, but not limited to, misappropriation of trade secrets) or claims for any such rights pertaining to inventions, articles, processes or methods that may be used upon or in a manner connected with the Work under this Agreement or with the use of completed Work by the Judicial Council shall be paid by the Contractor. The Contractor and any of its sureties shall protect and hold the Judicial Council, and its officers, agents and employees, harmless against any and all demands made for such fees or claims brought or made by or on behalf of the holder of any invention, patent, copyright, trade mark or similar property right (including, but not limited to, misappropriation of trade secrets). Before final payment is made on the account of this Agreement, the Contractor shall, if requested by the Judicial Council, furnish acceptable proof of a proper release from all such fees or claims.
	2. Should the Contractor, its agent, representatives or employees, or any of them, be enjoined from furnishing or using any invention, Data, Material, or appliances supplied or required to be supplied or used under the Agreement, the Contractor shall promptly notify the Judicial Council of the Contractor’s intent to substitute other Data, Materials, or appliances in lieu thereof which are of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the Judicial Council. In the event the Judicial Council elects, in lieu of such substitution, to have supplied and to retain and use any such invention, Data, Material, or appliances as may be required to be supplied by the Agreement, the Contractor shall pay all royalties or fees and secure such valid licenses as may be requisite and necessary for the Judicial Council, its officers, agents, representatives and employees, or any of them to use such invention, Data, Material, or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse to make the substitution promptly or to pay such royalties or fees and secure such licenses as may be necessary, then in that event the Judicial Council shall have the right to make such substitution or the Judicial Council may pay such royalties or fees and secure such licenses and charge the Contractor, even though final payment under the Agreement may have been made.
1. Trade Secret, Patent and Copyright Indemnification
	1. The Contractor shall hold the Judicial Council, its officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in connection with the Agreement.
	2. The Contractor may be required to furnish a bond to the Judicial Council against any and all loss, damage, costs, expenses, claims, and liability for patent, copyright, and trade secret infringement.
	3. The Contractor, at its own expense, shall defend any action brought against the Judicial Council to the extent that such action is based upon a claim that the Data or Materials supplied by the Contractor or the operation of such Data or Materials pursuant to a current version of Contractor-supplied operating software infringes a United States patent or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the Judicial Council in any such action. Such defense and payment shall be conditioned on the following:
		1. That the Contractor shall be notified within a reasonable time in writing by the Judicial Council of any Notice of such claim; and,
		2. That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the Judicial Council shall have the option to participate in such action at its own expense.
	4. Should the Data, Materials, or the operation thereof, become, or in the Contractor’s opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the Judicial Council shall permit the Contractor at its option and expense either to procure for the Judicial Council the right to continue using the Data or Materials, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Data or Materials by the Judicial Council shall be prevented by injunction, the Contractor agrees to take back such Data or Materials and make every reasonable effort to assist the Judicial Council in procuring substitute Data or Materials. If, in the sole option of the Judicial Council, the return of such infringing Data or Materials makes the retention of other Data or Materials acquired from the Contractor under this Agreement impractical, the Judicial Council shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Data or Materials and refund any sums that the Judicial Council has paid the Contractor less any reasonable amount for use or damage.
	5. The Contractor shall have no liability to the Judicial Council under any provision of this clause with respect to any claim of patent, copyright, or trade secret infringement which is based upon the following:
		1. The combination or utilization of Data and/or Materials furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
		2. The operation of equipment furnished by the Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or,
		3. The modification by the Judicial Council of the equipment furnished hereunder or of the software; or,
		4. The combination or utilization of software furnished hereunder with non-Contractor supplied software.
	6. The Contractor certifies that it has appropriate systems and controls in place to ensure that Judicial Council funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
	7. The foregoing states the entire liability of the Contractor to the Judicial Council with respect to infringement of patents, copyrights, or trade secrets.
2. Limitation of Liability

(Option 1)

##### Each party’s liability to the other party for damages arising from an act or omission under this Agreement shall be limited to the amount of direct damages actually incurred. In no event shall either party be liable to the other party or to any other Third Party, for any indirect, special, incidental or consequential damages of any kind, including lost profits, income, or revenue, whether or not advised of the possibility of such loss or damage, by reason of any act or omission in the party’s performance under this Agreement.

1. Limitation of Liability

(Option 2)

##### The Judicial Council shall not be liable to the Contractor for any indirect, special, or consequential damages or loss of anticipated profits in connection with or arising out of the furnishing, functioning, or use of any item or service provided under this Agreement. The Contractor indemnifies and holds harmless the Judicial Council from and against all liability for personal injury or property damage caused by the Contractor’s negligence or willful misconduct while performing its obligations pursuant to this Agreement on the Judicial Council’s premises. Any expiration or termination of this Agreement shall not affect the continuing obligations of the parties described in this Agreement.

1. Limitation of Liability

(Option 3)

* 1. The Contractor’s liability for damages to the Judicial Council for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the greater of **$200,000.00** or the purchase price stated herein that are the subject matter of or are directly related to the cause of action. In those instances where the Contractor has failed to perform as called for by the Contract, the Limitation of Liability provided above shall not limit any right to recover the ‘Cost to Cover.’ 'Cost to Cover' means the cost of procuring a machine or machines of equivalent (not greater) capability, function, and performance, less the Contractor's bid price.
	2. The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the paragraph entitled “Patent, Copyright, and Trade Secret Protection”, to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Contractor’s negligence. This limitation of liability does not apply to the receipt of court costs or attorney’s fees that might be awarded by a court in addition to damages after litigation based on this Agreement.
	3. The Judicial Council’s liability for damages for any cause whatsoever, and regardless of the form of action whether in Contract or in tort, excluding negligence, shall be limited to the greater of **$200,000.00** or the purchase price stated herein that are the subject matter of or are directly related to the cause of action.
	4. In no event will either the Contractor or the Judicial Council be liable for consequential damages even if notification has been given as to the possibility of such damages.

 (for Material or facility modifications)

 (Replace Standard or Special Provisions with an alternate provision, as provided below, if more appropriate.)

(Alternate 1 to Termination for Default, Standard Provisions paragraph 3.)

 (Alternate 2 to Termination for Default, Standard Provisions paragraph 3.)

1. Disclaimer

(Force Majeure Alternate 1)

##### Neither the Contractor nor the Judicial Council shall be responsible for nonperformance due to acts of God, governmental actions, labor unrest, riots, unusual traffic delays or other causes beyond the parties’ control.

(Force Majeure Alternate 2)

##### Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by Force Majeure. Force Majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.

1. Confidentiality

(Confidentiality Alternate #1:)

##### All financial, statistical, personnel, technical, and other Data and information relating to the Judicial Council's operation that are designated confidential by the Judicial Council and are disclosed to the Contractor shall be protected by the Contractor from unauthorized use and disclosure.

(Confidentiality Alternate #2:)

##### In the performance of the Work under this Agreement or contemplation of this Agreement, the Contractor may gain access to private or confidential information of the Judicial Council that if disclosed to Third Parties may be damaging to the Judicial Council. All information disclosed by the Judicial Council to the Contractor shall be held in confidence and used only in performance of this Agreement.

(Confidentiality Alternate #3:)

##### Both the Judicial Council and the Contractor acknowledge and agree that in the course of performing services under this Agreement, each may disclose to the other trade secrets and other confidential information relating to such party’s business (“**Confidential Information**”). Notwithstanding the foregoing, Confidential Information of a party shall not include (i) information that is already known by the receiving party, free of restriction; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in violation of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of restriction. Each party agrees not to disclose the Confidential Information of the other to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the Judicial Council’s Confidential Information on a “need to know” basis to employees and Subcontractors of the Contractor performing services for the Judicial Council, which shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor’s clients and business. All Confidential Information shall remain the exclusive property of the party disclosing such information. Each party agrees not to use the other party’s Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, a party may disclose the other party’s Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

1. Additional Insurance Requirements

(Alternate subparagraphs for insurance coverage:)

* + 1. Commercial General Liability: Insurance Services Office form number CG 00 01 Ed. 11-88 covering Commercial General Liability; **$2,000,000.00** combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a **$2,000,000.00** aggregate limit.
		2. Business Automobile Liability: Insurance Services Office form number CA 00 01 Ed. 12-90 covering Business Auto Coverage, symbol 1 “any auto”, or the combination of symbols 2, 8, and 9; **$1,000,000.00** combined single limit per accident for bodily injury and property damage.

(Insurance Requirements Alternate #1:)

##### The Contractor shall obtain for itself and its personnel before providing services, at its own expense, Commercial General Liability (“**CGL**”) insurance coverage for projects covered by this Agreement, for limits of liability not less than **$500,000.00**, and worker’s compensation coverage. The Contractor will provide a copy of the binder, the policy or a certificate of insurance to the Judicial Council upon request.

(Do not include the following without discussing with Business Services Manager:)

1. State of California Public Liability and Workers’ Compensation Program
	1. The Judicial Council has elected to be insured for its motor vehicle, aircraft liability and general liability exposures through the State of California’s self-insurance program. The State of California’s Attorney General administers the general liability program through an annual appropriation from the Legislature’s general fund. The State of California’s Office of Risk and Insurance Management administers the motor vehicle liability program.
	2. Under this form of insurance, the Judicial Council and its employees, as defined in Section 810.2 of the Government Code, are isured for any tort liability that may develp through carrying out official activities, including state official operations on non-state owned property. Should any claims arise by reason of such operations or under an official contract or license agreement, they should be referered to the Attorney General, State of California, Tort Liability Section, 1300 “I” Street, Sacramento, CA 95814.
	3. The State of California has entered into a Master Agreement with the State Compensation Insurance Fund to administer workers’ compensation benefits for all State of California employees, as required by the Labor Code.

EXHIBIT C

PAYMENT PROVISIONS

The following provision is optional for payment terms that need to be defined:

1. Contract Amount
	1. The total amount the Judicial Council may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, and any allowable expenses, shall be the actual costs not to exceed the Contract Amount of **$TBD**, as set forth in this Exhibit.

(The following paragraph is optional:)

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

(If Work is cost reimbursable at hourly rate(s), modify & include the following:)

* 1. For performing the Work of this Agreement, the Judicial Council shall compensate the Contractor for the actual cost, at the hourly rates set forth in Table 1, below.

#### **Table 1: Hourly Rates**

| ***Contractor’s Key Personnel*** | ***Hourly Rate*** |
| --- | --- |
| TBD | **$TBD.00** |
| TBD | **$TBD.00** |

(If Materials and expenses are to be considered, address in this provision or incorporate an optional paragraph; otherwise, include the following:)

* 1. The hourly rates set forth in Table 1, above are inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for services rendered to the Judicial Council, with the exception of certain expenses as set forth under Compensation for Allowable Expenses, below.
	2. The Contractor shall not exceed nor bill the Judicial Council in excess of TBD hours of service under this Agreement.

(if overtime is expressly not permitted, add:)

* 1. The Contractor shall not charge nor shall the Judicial Council pay any overtime rate.
	2. The Contractor shall not request nor shall the Judicial Council consider any reimbursement for non-production work including but not limited to time spent traveling to and from the job site or any living expenses.
	3. The total actual cost which the Judicial Council may reimburse the Contractor, pursuant to this provision, shall not exceed **$TBD**.

(If payment is based upon completion of some effort, ensure the conditions to be satisfied are defined either in this provision or Method of Payment, and/or Work to be Performed.)

1. Compensation for Allowable Expenses

(If expenses are cost reimbursable, modify the following and include:)

##### The Judicial Council shall reimburse the Contractor as follows:

(If expenses are inclusive in payment terms, see paragraph on Direct Expenses; if expenses are not reimbursable, see paragraph on Other Expenses)

* 1. Administrative and Operating Expenses
		1. The Judicial Council shall reimburse the Contractor for itemized administrative and operating expenses that are reasonably incurred in performing this Agreement, provided that the Project Manager approves them. These expenses may include communication, clerical assistance, graphics, production, duplicating, and reasonable costs.
		2. The total actual cost which the Judicial Council may reimburse the Contractor, pursuant to this provision, shall not exceed **$TBD**.
	2. Transportation, Meals, and Lodging Expenses

(modify this paragraph as approved and authorized)

* + 1. The Judicial Council shall reimburse the Contractor for actual expenses incurred for reasonable and necessary transportation, meals, lodging, and other travel-related expenses required to perform the Work of this Agreement.
		2. The Contractor shall submit a written travel plan to the Project Manager prior to incurring any travel expenses, including the reason for the trip, number of persons traveling, types of expenses the Contractor expects to incur and the estimated costs. Prior approval of the travel plan is required.
		3. For necessary air transportation, the Judicial Council will reimburse the Contractor for the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of @fourteen (@14) days prior to travel, unless the Project Manager agrees otherwise in writing.
		4. For overnight travel, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) California Department of Human Resources guidelines, the Judicial Council will reimburse lodging expenses incurred while traveling, at Contractor’s actual cost. Lodging costs may not exceed $150 (per day per person), plus tax and energy surcharge in San Francisco county; $125 (per day per person), plus tax and energy surcharge in Monterey and San Diego counties; $120 (per day per person), plus tax and energy surcharge in Los Angeles, Orange and Ventura counties; $140 (per day per person), plus tax and energy surcharge in Alameda, San Mateo, and Santa Clara counties; or $110 (per day per person), plus tax and energy surcharge in all other California counties. Meals shall be reimbursed at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~**$8.00**; lunch~**$12.00**; dinner~**$20.00**; and/or incidentals~**$6.00**.

 (Effective January 1, 2010, use language referring to IRS approved rate; effective January 1, 2009 through December 31, 2009, insert $0.55 cents per mile; effective July 1, 2008, insert $0.585 cents per mile; effective January 1, 2008, insert $0.505 cents per mile; effective January 1, 2007, insert $0.485 cents per mile; effective January 1, 2002, insert $0.34 cents per mile; and for previous, insert $0.31 cents per mile:)

* + 1. For necessary private vehicle ground transportation usage, the Judicial Council will reimburse the Contractor at the applicable IRS-approved rate per mile.
		2. Upon the Project Manager’s request, the Contractor shall provide copies of receipts for reimbursement of transportation, lodging, and meal expenses.
		3. The total actual cost which the Judicial Council may reimburse the Contractor, pursuant to this provision, shall not exceed **$TBD**..
1. Payment for Contract Work

(If Work is lump sum or firm fixed price, modify and include the following – payment schedule should reflect any progress payments allowable too:)

* 1. For performing the Work of this Agreement, the Judicial Council shall compensate the Contractor as set forth in Table 1, below, inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for services rendered to the Judicial Council.

# **Table 1: Hourly Rates**

|  |  |
| --- | --- |
| **Job Title** | **Rate in USD per Hour\*** |
|  | **Senior Resource** | **Junior Resource** |
| **Currently Utilized Resource Consultants:** |  |  |
| SAP Financial Functional Analyst |  |  |
| SAP HCM Functional Analyst |  |  |
| SAP Technical Consultant |  |  |
| SAP Basis Consultant |  |  |
|  |  |  |
| **Additional Consultant Resources:** |  |  |
| SAP Project Manager  |  |  |
| SAP Quality Assurance Analyst |  |  |
| OCM/Training Consultant |  |  |
| SAP Business Warehouse Architect/Developer |  |  |
| SAP Security Analyst |  |  |
| SAP Specialist Other |  |  |

 (If progress payments are allowable, include some provision in Exhibit B or D requiring progress reports and include a payment schedule, such as the following:)

* 1. The total amount the Judicial Council may pay the Contractor, pursuant to this provision, shall be **$TBD**.
1. Direct Expenses

##### All fees and charges noted in this Agreement are inclusive of any and all anticipated travel, lodging, transportation, clerical support, Materials, fees, overhead, profits, and other costs and/or expenses incidental to the performance of the specified requirements under this Agreement.

(If expenses are allowed and are separately reimbursable or payable, see paragraph on Compensation for Allowable Expenses or Payment for Allowable Charges, as applicable; if expenses are not allowable/reimbursable, see paragraph on Other Expenses)

1. Other Expenses

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

(If expenses are allowed and are separately reimbursable or payable, see paragraph on Compensation for Allowable Expenses or Payment for Allowable Charges, as applicable; if expenses are inclusive in reimbursement or payment terms, see paragraph on Direct Expenses.)

1. Taxes

(Revised per Lew Hurwitz, 2/15/02:)

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

1. Method of Payment

(modify the following paragraph to reflect payment schedule, including allowable progress payments, if appropriate:)

* 1. The Contractor shall submit an invoice for Work provided upon completion of Work, as set forth in Exhibit D, Work to be Performed, no more often than once a month. After receipt of invoice, the Judicial Council will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.
	2. The Judicial Council will make payment in arrears after receipt of the Contractor’s properly completed invoice. Invoices shall clearly indicate the following:

(modify this paragraph as appropriate)

* + 1. The Contract number.
		2. An unique invoice number.
		3. The Contractor's name and address.
		4. The taxpayer identification number (the Contractor’s federal employer identification number).
		5. A description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate.
		6. The DVBE dollars expended, if DVBE commitments were made;
		7. The appropriate receipts for reimbursement of allowable expenses, if this Agreement provides for reimbursement.
		8. The dates and hours worked.
		9. The contractual charges, including the appropriate rates, or expenses, if allowable under this Contract.
		10. A preferred remittance address, if different from the mailing address or the following remittance address:

###### TBDKtr

###### TBD Attn

###### TBD remit address

###### TBD remit address

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

(All contracts except CJER:)

###### Judicial Council of California

###### c/o Accounts Payable

###### 455 Golden Gate Avenue, 6th Floor

###### San Francisco, CA 94102-3688

(For all of CJER’s contracts only:)

(Include the following in forward-funded, multi-year, or certain grant-funded agreements and when a deadline for submittal is necessary:)

* 1. Note that invoices to be paid from certain funding sources used for this Agreement, must be submitted to Judicial Council’s Accounts Payable no later than the applicable dates set forth in Table 2, below. The Judicial Council may not be responsible for payment of invoices from the funding sources identified in Table 2, below, if invoices to be paid from such funding sources are received after the applicable dates specified in Table 2.

**Table 2, Invoice Due Dates for Specified Funding Sources**

|  |  |  |
| --- | --- | --- |
| ***Fund Title*** | ***Fiscal Year*** | ***Invoice Due By*** |
| TBD Fund | TBD | April 30, 20TBD |
| TBD Fund | TBD  | April 30, 20TBD |

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

(If Contract includes cost reimbursement elements, include the following:)

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

1. Payment Does Not Imply Work Is Accurate

(If Contract includes lump sum or firm fixed price elements, modify and include the following – Contract should be clear on whether or not progress payments are allowable:)

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

(Optional paragraph to include for high volume service contracts:)

1. Most Favorable Price

##### The Contractor agrees that no other customer will receive better rates for substantially similar services offered under substantially similar terms and conditions when the volume of business from such other customers is equal to or less than the volume of business the Judicial Council delivers under this Agreement.

(Optional provision as tool for project management to anticipate if additional funding should be encumbered:)

1. Limitation of Cost
	1. The parties estimate that completion of the scope of work set forth in Exhibit D, Work to be Performed, exclusive of any Amendment, will not cost the Judicial Council more than the estimated amount specified in this Exhibit. The Contractor agrees to use its best efforts to complete the scope of work specified in Exhibit D, Work to be Performed, and all obligations under the Agreement within the estimated amount*.*
	2. The Contractor shall send the Project Managers a Notice within ten (10) days of it having reason to believe that:
		1. The costs the Contractor expects to incur for the Work in the next sixty (60) Days, when added to all costs previously incurred under the Work, will exceed seventy-five percent (75%) of the estimated corresponding cost specified in this Exhibit for that Work; or
		2. The total cost for completing the Work, exclusive of any Amendment, will be either greater or substantially less than had been previously estimated.
	3. As part of the Notice, the Contractor shall provide the Project Managers with a revised estimate of the total cost of completing the specific Work and completing all Work as specified in Exhibit D, Work to be Performed.
	4. It is understood and agreed that, in no event, shall:
		1. The Judicial Council be obligated to reimburse the Contractor for costs incurred in excess of the estimated amount specified in this Exhibit; and
		2. The Contractor be obligated to continue performance under this Agreement, including actions under the termination provisions of this Agreement, or otherwise incur costs in excess of the estimated amount specified in this Exhibit, until and unless (a) the Agreement has been amended to include a revised estimate to cover such increases in cost; or (b) the excess costs are attributable to Contractor’s own inefficiencies and mismanagement or to correct any deficiencies with Contractor’s work, including, but not limited to, any errors with its work.
2. Final Invoicing
	1. Contractor must submit invoices for completed and accepted Deliverables no later than the “Invoice Due By Date” identified for each appropriate fund source in Table 2 of this Exhibit.  The Judicial Council may not be responsible for payment of invoices received after the “Invoice Due By Date” specified in this Exhibit for the applicable fund source.
	2. For the very last invoice to be processed against this Agreement, Contractor will identify as “Final Invoice.”

END OF EXHIBIT

EXHIBIT D

WORK TO BE PERFORMED

(The language currently in this Exhibit is provided solely to demonstrate the Style set up for Exhibit D. Draft specific Work to be Performed Exhibit for each Contract, setting for scope of work, including identification of appropriate Deliverables, Submittals, Tasks, Milestones, as defined, specifications, and Project schedule.)

1. General Information or Introduction
	1. The Contractor shall provide summary of work for the Judicial Council of California.
2. Background

##### The Judicial Council of California, chaired by the Chief Justice of California, is the chief policy making organization of the California judicial system. The California Constitution directs the Judicial Council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The Judicial Council also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law.

1. Objective or Purpose of the Agreement or Summary of Work
2. SAP Financial Functional Analyst

Performs professional-level analytical and functional work maintaining system configuration. Will coordinate the functional/business unit activities related to the requirements gathering, use cases, process documentation, development, training, testing and use of the Phoenix Financial System. This position provides the subject matter expertise to support the development and configuration updates in support of Judicial Council’s SAP implementation for the courts. In addition, provides lead direction and senior level subject matter expertise, and work review of project staff and/or performs and coordinates complex and specialized work to include defining test plans, training plans and recommendations for business process reengineering. Preferable skills would include expertise using SAP Solution Manger, SAP Productivity Pak, and Judicial Council’s support tools. The SAP Senior Financial Functional Analyst’s skill set required may include any of or a combination of the following or similar areas.

* Team Lead
* Integration Manager
* General Ledger
* Accounts Payable
* Accounts Receivable
* Cash Management
* Controlling (Cost Center and Internal Order Accounting)
* Project Systems (Project Accounting)
* Funds Management Budget Control System
* Grants Management
* Public Sector Collections and Disbursements
* Materials Management (Procurement)
* Public Sector Budgeting
* Workflow
* eProcurement
* Fixed Assets Management
* Inventory Management

The regular location to which this individual would report is the Judicial Council Sacramento office during regular business hours.

1. SAP HCM Functional Analyst

See SAP Financial Functional Analyst for preferred experience and expectations. The SAP HCM Functional Analyst’s skill set required may include any of or a combination of the following or similar areas:

* Team Lead
* Integration Manager
* Personnel Administration
* Organizational Management
* Payroll (HR and Finance)
* Time Management
* Benefits Administration
* Organization Management
* HR/Payroll Financials
* Employee and Manager Self-Service
* Workflow
* Learning Management Solution
* Performance Management

The regular location to which this individual would report is the Judicial Council Sacramento office.

1. SAP Technical Consultant

Performs professional-level analytical ABAP or other SAP-relevant design, review and development. Senior developer has ability to lead ABAP or other SAP-relevant development staff, with Finance and/or HCM development expertise on Reports, Interfaces, Enhancements, Forms, Personas, Fiori Apps, etc. - designs, codes, configures, tests and debugs ABAP programs. Performs code review/analysis, requirements analysis, quality assurance, and performance tuning. Supports, maintains, and documents Phoenix SAP custom functions and routines. Analyzes support issues in interaction with functional team members, participates in design and develops viable solutions. Develops and provides production support of the Phoenix SAP application using best practices and complies with Judicial Council development standards. The ideal candidate will support existing and new interfaces, thus would have a good understanding of integration with 3rd party tools using Web Services, SFTP, etc.

The regular location to which this individual would report is the Judicial Council San Francisco office.

1. SAP Basis Consultant

Provides basis consulting, system administration and operation control for Support and Maintenance and Implementation Projects. Should have strong technical skills in SAP support, which includes

* Upgrades, system copy, performance tuning, authorization setup, TMS admin, applying patches, backup and restore processes
* Support for ECC, Netweaver, BW, and Enterprise Portal, experience supporting add-on tools such as Solution Manager, Productivity Pack, EPI-USE HR data migration tools, BSI Taxfactory, Secude/NetWeaver SSO and FileNet
* Understanding of ESS/MSS configuration and portal content management
* Knowledge of Oracle database administration, Linux OS and application and infrastructure security.

The regular location to which this individual would report is the Judicial Council San Francisco office.

1. Additional Consultant Resources – Position Titles and Descriptions:

Additional consultant resources (“Additional Consultant Resources”) will at times be needed by the Judicial Council. The selected contractor must be able to provide these additional resources, if and when needed, for durations of time that will be specified by the Judicial Council when the resource is needed.

These Additional Consultant Resources include the position descriptions in section below, as well as, the four (4) position descriptions listed in section above. The vendor is expected to be able to provide resources that have the skills described in sections and with either approximately 10 years experience, or approximately 3 years experience.

These consultant resources will usually be located at locations noted in the position descriptions, however, remote support may at times be appropriate.

The Judicial Council requires a contractor that will be able to provide consultants of various work experience levels. For this reason, the Judicial Council is requesting separate rates for ‘senior’ (at least 10 years of relevant work experience) and ‘less-senior’ (approximately 3 years of relevant work experience) resources having the same job descriptions.

The Additional Consultant Resources positions include:

* SAP Project Manager
* SAP Quality Assurance Analyst
* OCM/Training Consultant
* SAP Business Warehouse Architect/Developer
* SAP Security Analyst
* SAP Specialist Other

The positions described in section

Position Descriptions - Additional Consultant Resources:

Below are the position descriptions of the Additional Consultant Resources:

1. SAP Project Manager

Lead and participate in project planning and monitoring, and vendor resource management, including tasks such as:

* Develop or assist in development and monitoring of detailed project work plans using Microsoft Project and other tools
* Review and provide assistance in managing the support process and specific incident handling using SAP Solution Manager and other tools
* Support Quality Assurance process
* Review support needs and ensure proper resources are assigned and functioning at a high level.
* This position would primarily be located in the Sacramento office.
1. SAP Quality Assurance Analyst
* Design, automate, and execute test plans, scripts, and test data creating to ensure the quality of software applications and enhancements; supports research, triage and resolution for both production and testing incidents; performs related work as assigned. This position would primarily be located in the Sacramento office.
1. OCM/Training Consultant

Leads and participates in project training and communication planning and execution, including tasks such as:

* Assist in Training Curriculum and Material development and review using SAP Productivity Pak and Microsoft Office tools
* Provide and support in-person and online End-User Training
* This position would primarily be located in the Sacramento office.
1. SAP Business Warehouse Architect/Developer
* Supports existing SAP Business Warehouse solution and assists with design, development, configuration and tuning of new and existing Business Warehouse extractors, data providers, cubes and reports. This position would primarily be located in the Sacramento office.
1. SAP Security Analyst
* Supports maintenance of existing catalog of user roles, identifies and provides recommendations for mitigating risk. Work with technical and functional support staff on design of new roles and user maintenance.
* This position would primarily be located in the Sacramento office.
1. SAP Specialist Other

An expert resource would be called upon as needed to provide strategy, functional and/or technical input, or implementation or maintenance support, in one or more areas of interest to the Phoenix Program. These areas include, but are not limited to:

* HANA
* SAP Cloud Services
* Netweaver Portal
* User Experience/User Interface
* Solution Manager
* Public Sector Budget Formulation
* Governance Risk and Compliance
* SuccessFactors, etc.
* This resource could be primarily located in either the San Francisco or Sacramento office, depending upon Judicial Council need for each resource.
1. Consultant Resource Utilization:

While the Judicial Council expects to utilize Consultant Resources as described in Sections and above, the actual number of Consultant(s) and the type of Consultant(s) utilized will vary depending upon the Judicial Council’s needs throughout the duration of the term of the Legal Agreement.

The Judicial Council shall not be obligated to use any number or type of Consultant(s) except as authorized by the Work Authorization Process given in the Legal Agreement.

The Judicial Council shall have the right under the Legal Agreement to utilize any number of Consultants of any type for any time period and the selected Contractor will be obligated to provide such Consultants when needed.

The actual numbers and types of Consultants to be used will be specified via the Work Authorization process given in the Legal Agreement.

1. Contractor Responsibilities
	1. The Contractor’s Project Manager will have the following responsibilities under this Contract:
		1. Is responsible for the end results and for day-to-day Project management;
		2. Serves as the Contractor’s primary contact;
		3. Works closely with the Judicial Council’s Project Manager;
		4. Provides on-going status reports to Judicial Council management;
		5. Manages, prepares, and refines the Contract’s end results;
		6. Proactively assists with resolution of issues with any aspect of the Work;
		7. Proactively anticipates Project deviations and is responsible for taking immediate corrective action;
		8. Works with Project Manager to manage and coordinate Work and knowledge transfer; and
		9. Is responsible for management of Project budget within constraints of Work requirements.
2. Judicial Council Responsibilities
	1. The Judicial Council’s **Project Manager** will be responsible for managing, scheduling, and coordinating all Project activities, including Project plans, timelines, and resources, and escalating issues for resolution to Judicial Council management.
3. Work Requirements
	1. The Contractor shall provide the following Work TBD.
4. Project Schedule
	1. The Contractor shall complete and submit the Work pursuant to the following schedule TBD.

END OF EXHIBIT

Exhibit E

attachments

(Attach forms and other attachments to this exhibit as “Attachments”)

This Exhibit includes the following:

Attachment 1, Contractor’s Key Personnel

Attachment 2, Work Order Form

END OF EXHIBIT

EXHIBIT E

ATTACHMENT 1

CONTRACTOR’S KEY PERSONNEL

END OF ATTACHMENT